

From Smooth (Seamless) Flow to Bumpy (and Seems Less) Flow of ITC

Snapshot

With a view to tackle the menace of fake invoicing the Government has brought in the following changes to the CGST Rules:

- ITC to be restricted to 105% (reduced from 110%) of the invoices appearing in GSTR 2A / 2B.
- Those Taxpayers who are not covered by exceptions and have a taxable turnover of more than Rs. 50 lacs must make mandatory cash payment of at least 1% of the output liability.
- Form GSTR-1 shall not be allowed to be filed in case of non-filing of Form GSTR-3B
- E-way bill shall not be allowed to be generated in case of non-filing of returns or suspension of registration
- Biometric based registration procedure along with physical visits
- Powers granted to officers to suspend registrations without providing opportunity of being heard
- January 1, 2021 is notified as effective date for amendments proposed in Finance Act, 2020
- Time limit to avail ITC in respect of Debit Notes delinked from the date of invoice
- The Government has notified Form GSTR 2B after making it active on the portal for a few months.
- Changes on GST portal for providing auto populated returns

Background

Since the beginning of the year 2020, the world has been suffering from the consequences of outspread of Covid-19 pandemic. Reports suggest that the economies of the world and India in particular, are witnessing negative growth. While the Indian Government is struggling with deficit in revenue collections one hand due to this, on the other hand, it seems to be facing another challenge of dealing with the menace of fake invoicing under GST. The Government is taking measures to track down such persons involved in fake invoicing / ITC transactions, it seems that it is not proving to be sufficient.

The Central Board of Indirect Taxes and Customs ('CBIC') has, therefore, brought in a slew of measures by way of amending the Central Goods and Services Tax Rules, 2017 ('the rules') to weed out the fake invoicing transactions. Further, certain changes were carried out in the Central Goods and Services Tax Act, 2017 ('the Act') by the Finance Act, 2020, however, these were not notified. The Government has now notified most of these changes to be effective from January 1, 2021. In this update, we analyse the impact of such changes and effect on the genuine taxpayers. This update also covers an update on the recent changes made in the GSTN portal which would augment or change the way compliance is being currently undertaken.

Changes brought in to deal with fake invoicing / fake ITC¹

Restriction on availing Input Tax Credit Claim under Rule 36(4) of CGST Rules, 2017

Rule 36 (4) of the rules was inserted w.e.f. from October 2019 wherein it was stated that the ITC availed by a taxpayer shall not exceed 120% of the details uploaded by suppliers. Accordingly, if all the suppliers did not file their returns within the time limit, the taxpayer could claim an additional amount to the extent of 20% of the details uploaded by suppliers. Such limit of 20% was reduced to 10% w.e.f. January 2021.

The above limit has now been reduced to 5% which effectively means that a taxpayer shall be allowed to claim an additional ITC of only 5% over and above the details that are uploaded by his suppliers.

KCM Comments

The Government seems to be bringing in force the earlier idea of allowing ITC in respect of only such invoices which are shown in the GSTR 1 filed by the suppliers. However, since GSTR 2 has not been made operational, this is being done by way of a workaround by inserting Rule 36 (4) and reducing the availability of ITC where invoices are not uploaded by the supplier. Rule 36 (4) when introduced, provided a leeway to avail an additional 20% of ITC, if suppliers did not upload the returns. That 20% has now been reduced to 5% in one year. It is to be noted that as per the original scheme of returns as envisaged under GST, the GSTR 2 did provide the recipients an opportunity to intimate the suppliers to make corrections in case of mistake so that proper ITC could be availed before filing the GSTR 3, which is missing in the current workaround and which would leave recipients at the mercy of the compliance done by the suppliers.

Restriction on utilizing ITC in excess of 99% (Mandatory payment in cash @1%)

The CBIC has introduced Rule 86B which imposes a restriction on setting off more than 99% of output tax liability from the balance available in electronic credit ledger for certain taxpayers. This means that specified taxpayers shall be required to pay 1% of their output tax liability in cash even if there is a sufficient balance in the electronic credit ledger.

This provision shall be applicable to taxpayers having a turnover (which does not include exempt and zero-rated supplies) of more than Rs. 50 lakhs in a month. Even for such taxpayers, the said provision shall not apply in cases where:

- The taxpayer is a Government Department, PSU, a local authority or a statutory body or
- The taxpayer or the proprietor or managing / whole time director or partners have paid an Income Tax of more than Rs. 1 lakh in preceding two financial years or
- The taxpayer has received a refund more than Rs. 1 lakh in respect of ITC unutilised on account of making zero rated supplies or on account of inverted duty structure or
- The taxpayer has paid in cash, at least 1% of the total outward GST liability applied cumulatively up to the that month (for which calculation is being made) in the current Financial Year.

The Commissioner has also been granted powers to provided relaxation from the above provision after due verifications and imposing such safeguards as he may deem fit.

KCM Comments

While it seems that the circular has received negative reactions from various corners, if one were

¹ Notification No. 94 /2020 – CT dated December 22, 2020 effective from January 1, 2020

to look at the exclusions provided, most of the taxpayers would fall under one or the other exceptions. While there may be genuine difficulties for taxpayers who have commenced the business and have accumulated ITC due to substantial investments in capital goods, the exclusions such as payment of tax amounting to more than 1 lac by a managerial person may be of help. Further there is also a provision to apply to the Commissioner to get a relaxation from the compliance of the above provision in case of genuine difficulties.

The above provision is directed to weed out the fake invoice suppliers who are understood to discharge their liabilities using fake ITC availed and who never pay any tax out of their pocket. Only time can tell, how effective this restriction turns out to be in keeping the issuers of fake invoices / fake ITC out of the system.

Restrictions in furnishing returns and generating E-way Bills by defaulters

- i. A taxpayer shall not be allowed to furnish form GSTR-1 or upload information using invoice furnishing facility if:
 - The taxpayer has opted to file quarterly returns or restriction under Rule 86B is applicable to him and such taxpayer has not furnished return in form GSTR-3B for the preceding period
 - In case of other taxpayers, such taxpayer has not furnished return in form GSTR-3B for the preceding 2 months
- ii. The following taxpayers shall not be allowed to generate E-way Bills;
 - Taxpayers who have not furnished return in form GSTR 1 for 2 months or 2 quarters, as the

case may be². Till now this restriction was applicable only if the return in form GSTR 3B was not been filed

- Taxpayers whose registration has been suspended under Rule 21A of the rules³
- iii. Validity period of e-way bill reduced to half from January 1, 2021. Earlier E-way Bill was valid for 24 hours for each 100 kms or part thereof. Now an e-way bill shall be valid for 24 hours for a distance of 200 kms.

KCM Comments

It is general notion that the persons issuing fake invoices do not undertake timely compliances. Further, it was noticed that while such persons where filing the GSTR 1, they were not filing GSTR 3B thereby avoiding payment of taxes. Such measure of not allowing to file returns or generating E-way Bill in case of non-compliance would result in curbing the fake invoices menace to some extent.

Change in procedure for obtaining registration

- Biometric-based Aadhaar authentication or normal biometric + KYC authentication shall be mandatory for obtaining registration under GST (with effect from a date to be notified)
- The time limit for granting registration or issuance of notice where registration application is found to be deficient by the department has been enhanced from 3 days to 7 days.
- Where the applicant fails to undergo Aadhaar authentication or where the department deems it fit to carry out physical verification, the time limit for grant of registration shall be 30 days.

² Notification No. 75/2019 – Central Tax dated 26-12-2019 applicable w.e.f. January 11, 2020

³ Notification No. 94 /2020–CT dated December 22, 2020 applicable w.e.f. January 1, 2020

KCM Comments

Compulsory verification of business premises before granting registration was done under the VAT as well as Excise regime, however, bringing this provision back surely takes us a step back in terms of the “ease of doing business”. Further, the requirement to undergo biometric verification would surely be a time-consuming affair and would certainly result in taking more time in getting a registration.

Wide powers to cancel and suspend the registrations in case of default:

- i. Registration of a taxpayer may be cancelled in the following additional cases:
 - Where a taxpayer avails ITC in violation of Section 16 of the Act or the rules\
 - Where the taxpayer violates the provisions of Rule 86B of the rules
 - The details of outward supplies furnished FORM GSTR 1 is in excess of the outward supplies declared in the final return in FORM GSTR 3B.
- ii. Registration of a taxpayer shall be suspended without affording any opportunity of being heard to the taxpayer in case the officer has reasons to believe that the registration of a person is liable to be cancelled.
- iii. After suspension of registration an opportunity shall be granted to the taxpayer to explain why registration should not be cancelled only in case the following cases:
 - Significant differences are observed leading to contravention of the Act or Rules while comparing the return filed in form GSTR 3B v/s

the details of outward supplies filed in form GSTR 1 or the inward supplies appearing in form GSTR – 2A

- Any such other analysis carried out on the recommendations of the GST council
- iv. Where a registration of a taxpayer has been suspended, no refund shall be granted to him during the period of such suspension.

KCM Comments

The amended provision seeks to give wide powers to the department to suspend the GST registration of a taxpayer and thereafter cancel it in case of violation of provisions of the Act and the Rules without providing an opportunity to the taxpayer to justify his case. The said suspension and cancellation although being penal in nature, there is no reference to such action being taken only in case where the taxpayer has contravened the provisions with a malafide intention.

Granting such wide powers to the officers to suspend or cancel GST registration for violation of provisions of the Act and the Rules seems to be very drastic and may prove to be counter-productive in case the provision is resorted to by the officers even in case of genuine mistakes by the taxpayers. As it is rightly said, with great powers, comes great responsibility.

Form GSTR 2B notified⁴

While the due date of filing the monthly return of liability in form GSTR 3B is 20th of the next month (22nd or 24th in case of small taxpayers), in terms of rule 36 (4), only those details are to be considered where the supplier has filed the details of outward supplies within the due date specified i.e. 11th of

⁴ Notification No. 82 /2020 – CT dated November 10, 2020 effective from January 1, 2020

the next month. In such scenario, GSTR 2A being a dynamic form which gets updated as and when a supplier files details of outward supplies, would not reflect the correct picture of the ITC available in terms of Rule 36 (4) if the same is downloaded any time after the due date of furnishing GSTR 1.

Keeping the above in mind, the Government has notified form GSTR 2B which is a static form and reflects the details uploaded by the suppliers in FORM GSTR 1, 5 and 6 after the due date of the previous month till the due date of the current month. The GSTR 2B shall also indicate the ITC that is not available in terms of Section 16 (4) of the Act or due to the reason that the supply is an intra state sale in a state other than the state in which the recipient is registered.

Based on the amended rules and the instructions of FORM 2B, it can be said that form GSTR 2B does not replace GSTR 2A. In fact, while GSTR 2A still remains the form to match the ITC availed by the taxpayer v/s the details uploaded by the suppliers, the GSTR 2B is more of a facilitation measure provided to the taxpayer to comply with the provisions of Rule 36(4) of the rules.

KCM Comments

While many taxpayers were struggling with reconciling their purchase registers with the GSTR 2A, that the taxpayers would now be required to reconcile the GSTR 2B on monthly basis with the purchase register and also undertake a three-way reconciliation of the purchase register with GSTR 2A and GSTR 2B at some point in time to ensure that proper ITC has been availed. For many small taxpayers, the option of straight away availing 105% of the ITC of appearing in the GSTR 2B or availing only the ITC appearing in GSTR 2B would make more

sense rather than undertaking the reconciliation exercise every month.

It appears that the Government is slowly making way for the reincarnation of the original scheme of GSTR 1, 2 and 3 but with a workaround which is flawed in many ways. Therefore, it is the need of the hour that the Government implements the GST compliances in the original form in which it was envisaged i.e. GSTR 1, 2 and 3 or the new return formats i.e. GST RET-1 along with annexures. The present workaround method is only going to increase the compliance woes of genuine small taxpayers.

Certain amendments to the GST Act carried of Finance Act, 2020 to come into effect from January 01, 2021⁵

Time limit to avail ITC in respect of debit notes –

The time limit for availing ITC in respect of invoices / debit notes is currently the due date of filing return for the month of September of the next year or filing of annual return, whichever earlier. In case of debit notes such time, limit is currently to be seen from the date of invoice. Now, the time limit to avail of ITC in respect of debit notes issued by the suppliers has been delinked from the to the date of issuance of the invoice and the time limit to claim ITC in respect of debit notes shall be now reckoned from the date of issuance of such debit notes. This was a much-awaited notification which will be effective from January 1, 2021.

Composition Scheme:

The following categories of suppliers of services shall not be eligible to opt for composition scheme. Earlier the restriction was only applicable to supplier of goods:

⁵ Notification No. 92 /2020-CT dated December 22, 2020 applicable w.e.f. January 1, 2020

- Supply of services which are not leviable to tax
- Inter-state supply of services
- Supply of services through E-commerce operator

Cancellation of voluntary registration –

Taxpayers who have opted for voluntary registration under GST can now also opt for cancellation of such registration on voluntary basis.

Time period for application of revocation of cancellation of registration –

The time limit for application for revocation of cancellation of registration is 30 days. Powers have been granted to Additional or Joint Commissioner to extend the said period for another 30 days and to Commissioner to further extend the said period to another 30 days, on sufficient cause being shown.

Transfer of business assets under Schedule II –

Entry 4 of the Schedule II of the Act classified certain transactions of transfer of business assets as either supply of goods or services. However, the said entry covered transfer of business assets even without consideration. Since Schedule II is only meant to determine the nature of supply as goods or services, the said words have been now removed to make Schedule II of consistent with the definition of Supply under Section 7 of the Act.

Penalty for fraudulent transactions:

In case of fraudulent transactions such as supply of goods or services without an invoice or with a false

invoice, issuance of an invoice without actual supply of goods or services or wrongfully availment of ITC without actual receipt of goods or services, a penalty equal to the tax amount has been prescribed which shall be levied on the following persons:

- The taxpayer who retains the benefit of such transaction
- The taxpayer at whose instance such transaction has been conducted.

Tax deduction at source Certificate: The provision containing the form and manner in which the Certificate of Tax deduction has to be issued has been removed from the Act and the form and manner shall now be contained in the rules.

KCM Comments

The present amendments to the CGST Act carried out by the Finance Act, 2020 are in the nature of fixing certain issues such as delinking the debit note from the date of invoice for availing ITC, amendment to entry in Schedule II. These are welcome changes and shall be effective from January 1, 2020.

Changes on GSTN Portal

Auto Population of details in Form GSTR-3B from Form GSTR-1 and FORM GSTR-2B for monthly filers

GSTN has introduced a new facility to auto-populate system computed details in FORM GSTR-3B for monthly filers. The auto-populated Form GSTR-3B has been made available in PDF format also which can be downloaded by clicking on the "System Generated FORM GSTR-3B" tab.

	Table	Details to be auto populated from
Auto-population of details	3.1 and 3.2 – details of outward supplies	FORM GSTR-1 for the tax period
	4 – Details of ITC	Details generated in FORM GSTR-2B
	3.1 (d) – Inward supplies liable to reverse charge	
	5 and 6.2 – supplies received from composite dealers and payment of tax details	To be manually filled

Features

- Auto-populated values shall be editable
- Alert to taxpayers in case the variance of the edited values from the auto-populated values is higher than a particular threshold (currently 10%)
- In case FORM GSTR-1 is not filed for the tax period, system generated summary will display the respective values as 'Not filed'
- If FORM GSTR-2B is not generated for the period, system generated summary will display the respective values as 'Not generated'
- If the taxpayer has entered and saved any values in FORM GSTR-3B before auto-population, the saved values will not be changed/over-written by the system
- It is also to be noted that the details of GST paid on imports and purchases from SEZ will now be reflected in the GSTR 2A as well as GSTR 2B

Mismatch Report Option

GSTN has introduced a mismatch report option. The said report can be access through

Dashboard > File Returns > Select tax period > View FORM GSTR-2B > Service tab > Returns > Mismatch report

The said facility is under testing and shall be made available soon

Communication Between Taxpayers

GSTN has introduced a new facility that will provide a communication platform between suppliers and recipients wherein query/reply can be raised/submitted in relation to payment, uploading of the invoice, amendment of filed invoice or any other issue. The said facility can be accessed through the following path:

Dashboard > Services > User Services > Communication Between Taxpayers

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For further analysis and discussion, you may please reach out to us.

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