



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)



सी.ए. नवीन एन. डी. गुप्ता
अध्यक्ष
CA. Naveen N.D. Gupta
President

O/C

ICAI/IDTC/2018-19/Rep/10

11th October, 2018

Shri Arun Jaitley
Hon'ble Union Minister of Finance, and
Chairman, Goods & Services Tax Council
Ministry of Finance,
Government of India, North Block
New Delhi - 110001



Subject: Request for permitting availment of input tax credit under GST pertaining to Financial Year 2017-18 till 31st December, 2018

Sir,

The Institute of Chartered Accountants of India (ICAI) has been proactively supporting the Government by providing suggestions at each stages of development, creating awareness and disseminating knowledge of GST among various stakeholders.

We are writing this letter considering the practical difficulties being faced by the trade and industry in availing input tax credit under the GST laws. In terms of provision of Section 16(4) of the CGST Act, 2017 the time limit for availing the input tax credit by a registered person is restricted and the said provision is reproduced below:

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."

The rationale of providing a cut-off date of 20th October, 2018 for invoices pertaining to Financial Year 2017-18 was, as we understand, more to do with the return filing system (Form GSTR - 1, 2 & 3). This is because as per the original system of return filing, there was a facility of bi-lateral flow of input credit and



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hence there was a justified need to restrict the flow of credit by the due date for September return of the succeeding financial year.

Now, since the entire return filing system is based on Form GSTR 3B and the Annual Return in Form GSTR 9 together with reconciliation statement in Form GSTR 9C, there is a need to reconsider the due date for availment of input tax credit. We humbly submit for extension of the due date for availing input tax credit due to the following reasons:

1. Financial Year 2017-18 is the first year of implementation of GST Law. Hence, especially in the SME there is still confusion with respect to eligibility and availment of input tax credit. One of the main objectives of GST is to avoid cascading impact of taxes.
2. On account of network related issues the last date for filing of the GSTR-1 returns was extended from time to time and finally by *Notification No. 72/2017 - Central Tax dated 29.12.2017*, the last date for GSTR-1 returns for month July to November 2017 was extended up to 10.01.2018 and for the month of March 2018 it was extended up to 10th May, 2018. As a result, complete GSTR-2A for the period July to March 2018 were received by the registered tax payers only in the month of May - June 2018, leaving them with little time to reconcile the purchases or taking up the cases of any mistakes or mismatches with their vendors. The dates have now been extended again up to 31st October, 2018.
3. As disclosed by official statistics at least 30-35 % of the registered tax payers who have filed GSTR-3B returns have not filed the GSTR-1 returns. In such a situation, it is impossible for the recipient to confirm by 20th October 2018, that credit has correctly been availed for invoices issued up to 31/3/18. Further, since complete GSTR-2A became available only in May, 2018 (with last date for GSTR 1 of March 2018 being May 2018), an additional time needs to be provided to the recipients to take up cases with the vendors where they have either not uploaded the invoices or not filed their GSTR 1 and get them to take appropriate action.
4. The system for filing of GSTR-6 returns has still not been stabilized and as per the last Notification No. 30/2018 - Central Tax dated 30.07.2018, the last date for filing of GSTR-6 return for the period up to July, 2018 has been



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extend up to 30.09.2018. Accordingly, input tax credit can only be availed in such cases once GSTR-6 is filed. It is still not certain that date for filing GSTR-6 will not be extended further as there continue to be several glitches in the GSTN's system for filing of the GSTR-6 return. In case the date is extended further, it will not be possible for ISD registrants to comply with the provisions of section 16(4).

5. The system for downloading of GSTR 2A from GSTN was provided only in July- August 2018. There were technical glitches in downloading GSTR 2A through APIs and the system has stabilized only recently. The system for download of GSTR 6A has also been provided only in August 2018 and that too only in JSON format. Excel download of GSTR 6 A is still not available. The system for downloading GSTR 6A through APIs has not been released till date and has gone into sandbox testing only on 10/9/18. Apart from delay in making available these facilities, which are critical for carrying out any reconciliation exercise, there are issues in downloading voluminous files from GSTN which impacts large tax payers. One can understand that these delays/glitches have occurred on account of time being taken by GSTN to stabilize. But at the same time it needs to be appreciated that in the absence of timely availability of robust facilities for downloading GSTR 2A and GSTR 6A, it is not possible for the tax payers to reconcile the data.
6. In view of the above it is impossible for registered tax persons to confirm by 20.10.2018 that credit has appropriately been taken on the invoices issued up to 31.03.2018. There are several issues hampering this like non-upload of invoices by vendors, upload of invoices from wrong GSTN, mention of wrong GSTN of the buyer etc. Then there are issues of mismatches in capturing key data fields at the time of booking of invoices like date format, minor mistakes in capturing GSTIN or invoice numbers etc. which make invoice matching a challenging task.
7. In addition to the above, GST law also provides for certain restrictions on input tax credit as enshrined under section 17 of the CGST Act, 2017 and other related provisions. You will appreciate that calculation of such restrictions (more by applying Rule 42 & 43 of the CGST Rules, 2017) in



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respect of exempted supplies requires thorough examination of all inward supplies.

8. Consequence for incorrect claim of input tax credit are grave (in terms of interest @ 24%) and hence many tax payers are yet to identify and claim correct input tax credits.
9. The due date of filing Income Tax Return and Audit under Income tax as of 30th September, 2018 has also been extended upto 15th October, 2018 and hence effectively industry will only get 5 days' time during the month of October to prepare the input tax credit claims not yet made by the tax payer and suggest appropriate action.
10. Notwithstanding the above, even legally, Section 16(4) of the CGST act, 2017 talks about the due date for filing of return under section 39 of the CGST Act, 2017. Amended Rule 61(5) of the CGST Rules, 2017 provides that Form GSTR-3B is not a return in lieu of Form GSTR-3. Moreover, all the Notifications providing for due dates or extending the said due dates for filing Form GSTR-3B provides that the due date for filing of the return under section 39(1) of the CGST Act, 2017 shall be notified separately. In the above backdrop, it is contended that there is, as of today, no due date for filing return (Form GSTR-3) under section 39 of the CGST Act, 2017 and hence, input tax credit pertaining to Financial Year 2017-18 can be claimed till the date of filing of the annual return. This interpretation may also lead to disputes and aggrieved assessee may drag the matter in the court, which needs to be avoided.
11. Provision of filing of statement in FORM GSTR-2 after viewing FORM GSTR-2A has been suspended. Hence, there is no limitation of system to permit claim of input tax credit for invoices pertaining to Financial Year 2017-18 till 31st December, 2018.
12. In spite of audits under other statutory provisions like Income Tax Act and Companies Act would be completed by 15th October, 2018 and 30th November, 2018 respectively, the GST auditor requires scrutiny and investigation of the records maintained by the taxpayer with a different



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angle in terms of the provisions of GST law. The GST law has yet to attain stability and frequent notifications and circulars are creating less clarity and more confusion. In spite of the completed audits the GST auditor has to look aspects like-

- (a) Maintenance of books of accounts and records under the GST law.
- (b) There may be valuation issues in terms of variances between book value & transaction value. (section 15)
- (c) The concept of cross-charge has emerged as a latest contentious issue which the auditors have to determine after having gone through the facts of each case. (Columbia Asia Hospital Advance Ruling)
- (d) Whether the place of supply provisions have been correctly followed by the taxpayer which will determine whether he should have charged IGST or CGST/ SGST.
- (e) Whether input tax credits have been legitimately claimed, reversed and reclaimed in terms of the provisions of GST law.
- (f) Classification issues
- (g) RCM issues both under section 9(3) and section 9(4).
- (h) Post-sale debit and credit note issues more specifically to create difference between the legitimate debit and credit notes issued in terms of provisions of section 34 and financial debit and credit notes.
- (i) Reconciliations of inward/ outward supplies and claim of input tax credit for multi-location taxpayers may require longer time.
- (j) Furnishing details of exempt, nil rated, non-taxable and no supply both on inward and outward side and that too with HSN details may require longer time.

In view of the above difficulties, your goodself would appreciate that it is only at the time of preparation of annual return along with the reconciliation statement that the tax payer will become aware about the input tax credit which has not yet been claimed pertaining to Financial Year 2017-18. Hence, *we humbly request you to consider extending the due date for claiming the input tax credit for invoices pertaining to Financial Year 2017-18 till 31st December, 2018.* The format of annual return in FORM GSTR-9 also needs to be suitably modified.

In doing so, the filing of Annual Return in Form GSTR 9 and furnishing of Reconciliation Statement in Form GSTR 9C, along with availment of input tax



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credit will all become coterminous. This being the first year of GST returns, an extension would be most appreciated.

The power to extend such due date can be duly exercised under section 168 of the CGST Act, 2017 as already exercised in the past while prescribing the due dates for filing of monthly/quarterly returns beyond the time limits enshrined in the law under section 39 of the CGST Act, 2017.

Hope you will consider our request sympathetically, importantly considering the practical difficulties that is being faced by the trade and industry. The SME sector depends on the professionals to comply. We shall be glad to provide any further input as may be required and your office may reach us at idt@icai.in or 0120-3045954.

Thanking you.



Yours faithfully,

CA. Naveen N.D. Gupta

Copy to:

- (i) ✓ **Dr. Hasmukh Adhia**, Finance Secretary (R), Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi - 110001.
- (ii) ✓ **Shri S. Ramesh**, Chairman, CBIC, Ministry of Finance, Government of India, North Block, New Delhi -110001.
- (iii) ✓ **CA. Upender Gupta**, Commissioner, GST Policy Wing, CBIC, Department of Revenue, Government of India, North Block, New Delhi -110001.
- (iv) ✓ **Shri Shashank Priya**, Joint Secretary Office of the Goods & Services Tax Council, Tower-II, 5th Floor, Jeevan Bharti Building, New Delhi -110001.