GST Law - Changes and Clarifications
[Various Notifications, Circulars and Orders issued on 31-12-2018]

The 31st GST Council Meeting was held on 22nd December, 2018 and based on the its recommendations, various Notifications, Removal of Difficulties Orders and Circulars are issued on 31st December, 2018 to give effects to the same. Summary of various changes and clarifications is given below for quick reference.

1 Extention for submitting Return and Statements

Form No.	Period	Due Date	Notification or Order No.
GST-ITC-04	July 17 to December 2018	31-Mar-2019	Notification No.78/2018-Central Tax
[Statement of Goods sent to Job-worker and received back]			
GSTR-9	FY 2017-2018	30-Jun-2019	ROD Order No. 3/2018 - Central Tax
Annual Return for All other than persons opted for Composition Scheme]			
GSTR-9A	FY 2017-2018	30-Jun-2019	ROD Order No. 3/2018 - Central Tax
Annual return for persons opted for Composition Scheme]			
GSTR-9C	FY 2017-2018	30-Jun-2019	ROD Order No. 3/2018 - Central Tax
[Audit Report for person having more than 2 Crore turnover]			
GSTR-8	October to December 2018	31-Jan-2019	ROD Order No. 4/2018 - Central Tax
[Statement by e-commerce companies under Section 52]			

2 Extention for Persons who has not completed Migration

Notification No.31/2018-Central Tax dated 06-08-2018 has given an opportunity to the persons who did not file the complete FORM GST-REG-26 of the Central Goods and Services Tax Rules, 2017 but received only a Provisional Identification Number (PID) till the 31st December, 2017 to apply for Goods and Services Tax Identification Number (GSTIN).

(i) The details such as Provisional ID, Registration Number(s) under earlier laws, contact details such as email and mobile number, etc. are required to be furnished by such taxpayers to the jurisdictional nodal officer of the Central Government or State Government. The period for submission of such details is extended upto 31st January, 2019. [Notification No.67/2018-Central Tax]

(ii) On receipt of an e-mail from the Goods and Services Tax Network (GSTN), taxpayers is required to apply for registration and after due approval of the application by the proper officer, taxpayers receives an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token. Upon receipt of the same, such taxpayer is required to furnish the details to GSTN by email. The period for submission of such details is extended upto 28th February, 2019. [Notification No.67/2018-Central Tax]

3 Extention for submitting Return and Statements for Newly Migrated Taxpayers

Form No.	Period	Due Date	Notification or Order No.
GSTR-3B	July 17 to February 2019	31-Mar-2019	Notification No.68/2018-Central Tax
GSTR-1-Quarterly	July 17 to December 2018	31-Mar-2019	Notification No.71/2018-Central Tax
GSTR-1-Monthly	July 17 to February 2019	31-Mar-2019	Notification No.72/2018-Central Tax

4 Waiver of Late Fee

Late fee payable under section 47 of the CGST Act is waived for the registered persons who failed to furnish the following return for the months of July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22nd December, 2018 to 31st March, 2019.

Return Form	GSTR-3B	GSTR-1	GSTR-4
Notification No.	76/2018-Central Tax	75/2018-Central Tax	77/2018-Central Tax

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5 Claim of ITC and corrections in details of Outward Supplies for the FY 2017-18

Input Tax Credit - Sub-section (4) of Section 16 of the Central Goods and Services Tax Act, 2017 provides that 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 GSTR-3B for the month of September following the end of financial year to which such invoices or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Correction in Details of Outward Supplies - Sub-section (3) of Section 37 of the Central Goods and Services Tax Act, 2017 provides that a supplier, upon discovery of any error or omission in the details of outward supplies already submitted, can rectify such error or omission, however no rectification of error or omission in respect of the details furnished shall be allowed after furnishing of the return Form GSTR-3B for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

The period is extended upto the due date of furnishing of the return Form GSTR-3B for the month of March 2019 or furnishing of the relevant annual return, whichever is earlier by inserting proviso in both sections. **[Removal of Difficulties Order No.02/2018-Central Tax]**

6 Non-Applicability of Tax Deducted at Source provisions of Section 51 of CGST Act

Tax Deducted at Souce provisions of Section 51 of CGST Act will not be applicable to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the CGST Act. **[Notification No. 73/2018 – Central Tax]**

The persons covered under Section 51 of CGST Act are -

- **(i)** a department or establishment of the Central Government or State Government [Clause (a)]
- **(ii)** local authority [Clause (b)]
- **(iii)** Governmental agencies [Clause (c)]
- **(iv)** such persons or category of persons as may be notified by the Government on the recommendations of the Council [Clause (d)] - **[Notification No. 50/2018 – Central Tax]**
  - **(a)** an authority or a board or any other body, -
    - set up by an Act of Parliament or a State Legislature; or
    - established by any Government

    with 51% or more participation by way of equity or control, to carry out any function;
  - **(b)** Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
  - **(c)** public sector undertakings

7 Restriction on Furnishing PART-A of Form GST-EWB-01 [effective date to be notified later]

It is proposed that any person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall not be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—

- **(i)** being a person paying tax under composition, has not furnished the returns for two consecutive tax periods; or
- **(ii)** being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

[Insertion of Rule 138E of CGST Rules vide Notification No. 74/2018-Central Tax]

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8 Details to be furnished in Statement GST-ITC-04

Now details of the challans in respect of goods sent from one job worker to another during a quarter not required to be included in FORM GST ITC-04furnished for that period. **[Modification in sub-rule (3) of Rule 45 of CGST Rules vide Notification No. 74/2018-Central Tax]**

9 Audit by Tax Authorities under Section 65

The Commissioner or any officer authorised by him, by way of a general or a specific order, may now undertake audit of any registered person for part of financial year also. **[Modification in sub-rule (1) of Rule 101 of CGST Rules vide Notification No. 74/2018-Central Tax]**

10 Rivision

Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority is required to serve on him a notice in FORM GST-RVN-01 and shall give him a reasonable opportunity of being heard amd the Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in FORM GST-APL-04 clearly indicating the final amount of demand confirmed. **[Insertion of Rule 109B of CGST Rules vide Notification No. 74/2018-Central Tax]**

11 Substitution of Refund, Annual Return and Audit Report Forms

The following Forms are substituted vide **Notification No.74/2018-Central Tax**.

- **(i)** FORM-GST-RFD-01 and GST-RFD-01 A - Application for Refund and Application for Refund (Manual)
- **(ii)** FORM GSTR-9 and GSTR-9A - Annual Return and Annual Return (for Composition Taxpayer)
- **(iii)** FORM GSTR-9C - Reconciliation Statement and Certification (Audit Report)

12 Place of Supply where the supply of services attributable to different States or Union territories [Notification No.04 /2018 – Integrated Tax]

- **(i)** In the case of advertisements over internet to the Central Government, a State Government, a statutory body or a local authority, under sub section (14) of section 12 of the Integrated Goods and Services Tax Act, 2017, **the service shall be deemed to have been provided all over India**. **[Amendment in clause (h) of Rule 3 of Integrated Goods and Services Tax Rules, 2017]**
- **(ii)** in the case of The supply of services directly in relation to an immovable property, by way of lodging accommodation, by way of accommodation in any immovable property for organising any function, any services ancillary to the services referred earlier etc. referred under sub section (3) of section 12 of the Integrated Goods and Services Tax Act, 2017 attributable to different States or Union territories, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be -
  - **(a)** in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property;
  - **(b)** in case of all other services in relation to immovable property including supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both (except services provided by way of lodging accommodation by a house boat or any other vessel), and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory;

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12 Place of Supply where the supply of services attributable to different States or Union territories [Notification No.04 /2018 – Integrated Tax] (continued...)

(ii) (c) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, which shall be determined on the basis of a declaration made to the effect by the service provider.

[Insertion of Rule 4 in Integrated Goods and Services Tax Rules, 2017]

(iii) Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of The supply of services directly in relation to an immovable property, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property etc. referred under sub section (4) of section 13 of the Integrated Goods and Services Tax Act, 2017 attributable to different States or Union territories, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by by applying the provisions of rule 4, mutatis mutandis, as mentioned above.

[Insertion of Rule 8 in Integrated Goods and Services Tax Rules, 2017]

(iv) in the case of The supply of services by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or services ancillary to organisation of any of the events or services referred earlier or assigning of sponsorship to such events etc. referred under sub section (7) of section 12 of the Integrated Goods and Services Tax Act, 2017 attributable to different States or Union territories, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by application of the generally accepted accounting principles.

[Insertion of Rule 5 in Integrated Goods and Services Tax Rules, 2017]

(v) Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation etc. referred under sub section (5) of section 13 of the Integrated Goods and Services Tax Act, 2017 attributable to different States or Union territories, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by by applying the provisions of rule 5, mutatis mutandis, as mentioned above.

[Insertion of Rule 9 in Integrated Goods and Services Tax Rules, 2017]

(vi) in the case of the supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services referred under sub section (11) of section 12 of the Integrated Goods and Services Tax Act, 2017 attributable to different States or Union territories, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be

(a) be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Unionterritory.

12 Place of Supply where the supply of services attributable to different States or Union territories [Notification No.04 /2018 – Integrated Tax] (continued...)

(vi) (b) The number of points in a circuit shall be determined in the followterritory.

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute twoterritory.

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediateterritory.

[Insertion of Rule 6 in Integrated Goods and Services Tax Rules, 2017]

(vii) Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services in respect of goods which are required to be made physically available, services supplied to an individual which require the physical presence, etc. covered by sub section (3) of section 13 of the Integrated Goods and Services Tax Act, 2017 attributable to different States or Union territories, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be

(a) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed

(b) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory

(c) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

[Insertion of Rule 7 in Integrated Goods and Services Tax Rules, 2017]

13 Clarification on effective date in the case of Withdrawal from or Denial of Composition Scheme

(i) Where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation or application filed in FORM GST-CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation or application for withdrawal is being filed.

(ii) In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

[Circular No.77/51/2018-GST]

14 Clarification on calculation of refund of accumulated ITC on account of inverted duty structure

Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term Net ITC covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

[Circular No.79/53/2018-GST]

15 Clarification on Export of Services where part service is outsourcd outside India

Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, it involves two supplies as -

(i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value; and

(ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

15 Clarification on Export of Services where part service is outsourcd outside India (continued...)

The GST applicability on the above two transactions will be -

(a) supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India and the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid.

(b) the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the Integrated Goods and Services Tax Act, 2017 read with section 13(2) of the IGST Act are satisfied.

Even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, if

(i) integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India; and

(ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

[Circular No.78/52/2018-GST]

16 Clarification on modification in procedure to file Refund Applications

Due to the non-availability of the complete electronic refund module, a procedure was prescribed vide Circular No.17/17/2017-GST dated 15-11-2017 and Circular No.24/24/2017-GST dated 21-12-2017. The following partial modification in the procedure prescribed in the said Circulars is done.

(i) All documents, undertaking and statements to be submitted along with the claim for refund in FORM GST-RFD-01A shall be uploaded on the common portal at the time of filing of the refund application.

(ii) A statement of invoices in a prescribed format and copies of only those invoices the details of which are not found in FORM GSTR-2A for the relevant period as specified in Circular No.59/33/2018-GST dated 04-09-2018 shall be electronically uploaded on the common portal at the time of filing the claim of refund in FORM GST RFD-01A.

(iii) The taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in FORM GST RFD-01A, along with supporting documents, if he so chooses.

(iv) A taxpayer who still remains unallocated to the Central or State Tax Authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or

(v) The ARN will be generated only after the claimant has completed the process of filing the refund application in FORM GST-RFD-01A, and has completed uploading of all the supporting documents, undertaking, statements and invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

(vi) The application shall be deemed to have been filed under rule 90(2) of the Central Goods and Services Tax Rules, 2017 on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date.

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16 Clarification on modification in procedure to file Refund Applications (continued...)

(vii) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under rule 90(2) of the CGST Rules only after it has been so reassigned.

(viii) However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being. Similarly, other stages of processing of a refund claim submitted in FORM GST RFD-01A by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

(ix) It mentioned in Circular No.70/44/2018-GST dated 26-10-2018 after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only and the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer.

[Circular No.79/53/2018-GST]

17 Clarification on amount on which TCS is applicable [Require Re-consideration]

Taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act as Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier".

[Circular No.76/50/2018-GST]

As per Section 206C of the Income Tax Act, 1961, TCS is collected from buyer of item and it is not a tax, duty, cess, fee or charged levied on supply.

18 Clarification on levy of penalty under section 73 (11) of the CGST Act for delayed filing of GSTR-3B

The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid. However, since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

[Circular No.76/50/2018-GST]

Thank You