



ERGO

Analysing developments impacting business

GST AMENDMENT ACTS RECEIVE PRESIDENTIAL ASSENT

10 September 2018

Recently, the provisions of the Integrated Goods and Services Tax Act, 2017 (IGST Act), the Central Goods and Services Tax Act, 2017 (CGST Act), the Union Territory Goods and Services Tax Act, 2018 (UTGST Act) and the Goods and Services Tax (Compensation to States) Act, 2017 have been amended by the Parliament. The amendment acts of 2018 have received Presidential assent on 29 August 2018. The amendments shall come in force on the date as notified by the Central Government. The notification shall be issued after the amendment of the State Goods and Services Tax Acts (SGST Act) by the respective State Legislatures.

The major amendments are discussed below.

Amendment	Comment
<p>Section 7(1) of the CGST Act:</p> <p>Definition of Supply</p>	<p>The definition of supply has been amended to remove the inference that any activity included in Schedule II of the CGST Act would automatically qualify as a supply.</p> <p>The amendment brings clarity that Schedule II of the CGST Act shall be referred to only to determine whether a supply is supply of goods or services but not whether an activity, <i>per se</i>, is a supply.</p>
<p>Section 9(4) of the CGST Act & Section 5(4) of the IGST Act:</p> <p>Taxability of inward supplies from unregistered dealers</p>	<p>The existing provision has been substituted to provide that the Government shall notify class of persons who shall be liable to pay tax on procurement of specified supplies from the unregistered persons. The existing provisions required payment of tax by all registered persons procuring any kind of supply from an unregistered person.</p> <p>The amendment removes a major irritant which was seen as disincentivising supply by the unregistered suppliers mainly comprising artisans, professionals and tiny and small sectors.</p>
<p>Section 10 of the CGST Act:</p> <p>Composition Levy Scheme</p>	<p>The threshold turnover for eligibility of the composition scheme has been enhanced from INR 10,000,000 to INR 15,000,000. Further, compositions dealers are also allowed to supply services (other than restaurant services) not exceeding ten percent of the total turnover in the state in the previous financial year or INR 500,000, whichever is higher.</p>

Amendment	Comment
	<p>The widening of the eligibility criteria for composition levy was driven by the reason that each registered person who may supply goods may also be providing certain incidental services which would debar them from enjoying the benefit of a composition levy.</p>
<p>Section 16(2) of the CGST Act:</p> <p>Deeming fiction for receipt of supply of goods and service</p>	<p>The existing explanation to Section 16(2)(b) has been substituted to provide that a registered person shall be deemed to have received goods or services where the goods are delivered or the services are provided by a supplier to a person on the direction of the said registered person.</p> <p>The amendment broadens the deeming fiction to include receipt of service by a third person (agent or otherwise). This makes the recipient eligible for input tax credit (ITC) on such services. This will encourage contract manufacturing and job work.</p>
<p>Section 17(3) of the CGST Act:</p> <p>Value of exempt supply for ITC reversal</p>	<p>The definition of value of exempt supply has been revised to exclude value of activities or transactions specified in Schedule III of the CGST Act, except the value of sale of land and /or sale of building for which occupation certificate has been received.</p> <p>The amendment reduces the quantum of ITC to be reversed due to activities which are considered neither as supply of goods not services, for example, the supply of actionable claim.</p>
<p>Section 17(5) of the CGST Act:</p> <p>Blocked ITC</p>	<p>ITC has been allowed for-</p> <ul style="list-style-type: none"> ▪ Motor vehicles with seating capacity of more than thirteen persons without any restrictions. ▪ Motor vehicles with seating capacity of less than thirteen persons provided they are used for making specified outward taxable supplies. ▪ Lease or rent of motor vehicles provided that they have been used for making specified outward taxable supplies. ▪ Supplies that are received by the registered entity in compliance with statutory requirements concerning its employees. <p>Due to the amendments made, a registered person will be entitled to take credit on buses and other motor vehicles which are being used by them for transportation of their employees.</p> <p>The amendment regarding ITC availment on supplies received by an entity while discharging its statutory obligations towards employees, has been effected by way of a proviso which is inserted after sub-clause (iii) of Section 17(5)(b) of the CGST Act which relates to travel benefits extended to employees on vacation. Considering the placement of the proviso, it could be interpreted that ITC would be available only in relation to supplies received by the entity which is required to discharge any statutory obligation in relation to an employee's leave travel benefits. However, if an inference is drawn from the decisions taken in the</p>

Amendment	Comment
	<p>28th GST Council Meeting (held on 21 July 2018) it is clear that the intention was to allow ITC in relation to all supplies received by the employer while discharging its statutory obligations towards its employee. It is to be seen that in case of a dispute regarding availment of ITC, which of the two views, presented above, will be taken by the authorities as this is now reduced to a question of interpretation.</p>
<p>Section 24(x) of the CGST Act:</p> <p>Registration of e-commerce players</p>	<p>Requirement of compulsory registration of e-commerce players has been relaxed to the extent that only such e-commerce players, who are required to comply with Tax collected at source (TCS) provisions under Section 52 of the CGST Act, are compulsorily required to take registration even if they do not cross the minimum threshold in terms of their turnover.</p> <p>This amendment provides the much needed relief to e-commerce players who operate on a small scale.</p>
<p>Sections 2(18), 25(2) of the CGST Act & Section 8 of the IGST Act:</p> <p>Business vertical and registration of multiple units</p>	<p>The definition of "business vertical" under the IGST and CGST Acts have been deleted. Further, the reference to business vertical, under the provisions relating to registration under the CGST Act has also been deleted.</p> <p>This will allow an entity to have multiple GST registrations within the same state even if they do not qualify as separate business verticals.</p>
<p>Section 43A of the CGST Act:</p> <p>Revision of returns</p>	<p>A new provision under Section 43A has been introduced to allow amendment of the section relating to inward supplies in the returns filed. Further there is also a mechanism involved for availment of credit up to a certain limit even in cases where the supplier does not supply adequate details in its returns.</p> <p>This provision will provide persons an option to amend the portion relating to inward supplies which did not exist before. Further, the proposal of a mechanism to allow availment of ITC even when the supplier does not discharge its reporting obligations, alleviates the concerns of the trade to a large extent.</p>
<p>Section 54(2) of the CGST Act:</p> <p>Period for filing of refund claim</p>	<p>The due date for filing of refund claims for accumulated ITC has been revised to the date on which the monthly return has to be filed.</p> <p>This is a step towards ensuring that the working capital of eligible entities does not get tied up till the end of the year.</p>
<p>Section 140 of the CGST Act:</p> <p>Transition of CENVAT Credit</p>	<p>Section 140 of the CGST Act has been amended to state that only CENVAT credit of eligible duties will be allowed to be carried forward to the GST regime.</p> <p>This amendment has retrospective operation since it is made effective from 1 July 2017. The registered persons who have availed the credit of Education Cess (EC),</p>

Amendment	Comment
	<p>Secondary and Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC), may now receive show cause notices / demand notices asking them to pay an amount equivalent to the amount of EC, SHEC and KKC that has been availed (through the GSTR TRAN-1) along with interest. However, it is to be seen if such demand of interest on the amount of credit availed in relation to such Cess is appropriate considering that it is only this retrospective amendment which makes such availment / utilisation of credit illegal. Further, there are a plethora of decisions wherein the courts have ruled that no assessee can be penalized in case of retrospective amendments to the taxing statutes.</p>
<p>Schedule III of the CGST Act:</p> <p>Activities / transactions not considered as a supply under GST</p>	<p>The scope of the Schedule has been increased to include-</p> <ul style="list-style-type: none"> ▪ Supply of goods from a place in a non-taxable territory to another place in the non-taxable territory without such goods entering into India. ▪ Supply of goods to any person in a customs bonded warehouse before effecting clearance for home consumption; ▪ High seas sale. <p>All such amendments have been made to put an end to the confusion created by a slew of contradictory circulars that were issued. In Circular No 46 /2017 - Customs dated 24 November 2017 a supply made in a customs bonded warehouse was said to be subject to IGST and payable at the time when it is made. Subsequently Circular No 3/1/2018-IGST dated 25 May 2018 clarified that the IGST on the such supply will be collected only once at the time of clearance of the goods and this was to be made effective from 1 April 2018.</p>
<p>Section 12(8) of the IGST Act:</p> <p>Place of supply of services in case of transportation of goods to a place outside India</p>	<p>A proviso has been inserted to clarify that the place of supply in case where services were being provided in relation to transportation of goods to a place outside India shall be the destination of the goods even if supplier and recipient are located in India.</p> <p>This amendment is in line with the erstwhile service tax provisions.</p>
<p>Section 13(3)(a) of the IGST Act:</p> <p>Place of supply in case of other processes / treatments being administered on goods temporarily imported into India</p>	<p>By way of amendment the place of supply in case of goods which are temporarily imported into India for treatment or process other than repairs and maintenance and are exported without being put to any use in India has been fixed to be outside India.</p> <p>This amendment has been made in recognition of the fact that repair and maintenance services performed on goods temporarily imported cannot be distinguished from other processes and treatments.</p>

Another interesting point to be noted is that during the 28th GST Council Meeting (held on 21 July 2018) while approving the amendments to be made to the GST laws, certain decisions were taken and amendments mirroring all but one of the decisions have been made. There has been no amendment made to put into effect the decision to do away with the interest that would be payable at the time of reversing the ITC availed by the

recipient in respect of services, when payment has not been made within 180 days from the date of issue of invoice. It is to be seen if this relaxation will be brought about by way of a notification under the general powers given to the Government under the CGST Act in the absence of an express provision therein.

- *By Dinesh Agrawal (Executive Director), Anjali Krishnan (Associate) and Divya Gupta (Associate)*

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2018 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com