

# ***TAX ALERT***

*Notifications in relation to 39<sup>th</sup> GST Council Meeting –  
Changes in GST laws (March, 2020)*

## PROCEDURE FOR PERSONS UNDERGOING CIRP UNDER IBC, 2016

Notification no. (NN) 11/2020-CT dated 23.03.2020 prescribes a special procedure applicable to corporate debtors registered under GST and undergoing corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016.

Accordingly, upon appointment of the Interim Resolution Professional (IRP)/ Resolution Professional (RP), the **corporate debtor would be required to obtain fresh registration** in each of the States or Union territories where the corporate debtor was registered earlier, **within 30 days of appointment of the IRP/RP**. In cases where the IRP/RP has already been appointed at an earlier date, the corporate debtor is liable to take fresh registration within 30 days of the date of the notification i.e. 21.03.2020. Such registration would be effective from the date of appointment of the IRP/RP.

The notification also provides for **availability of ITC in respect of supplies received since appointment of the IRP/RP**, notwithstanding that the last date for availment of such credit under section 16(4) of the CGST Act, 2017 has lapsed or whether such invoice is reflected against the corporate debtor's GSTR-2A in terms of rule 36(4) of the CGST Rules, 2017. **Circular No.134/04/2020-GST dated 23.03.2020 clarifies that this relaxation is available only for the first return filed by the corporate debtor.**

As a corollary, persons receiving supplies from the corporate debtor after appointment of the IRP/RP using the erstwhile GSTIN may avail ITC against the same, notwithstanding rule 36(4) of the CGST Rules, 2017.

## EXEMPTIONS FROM E-INVOICING AND QR CODES

- NN 13/2020-CT dated 23.03.2020 **exempts the following persons** whose aggregate turnover in a financial year exceeds INR 100 Crores **from provisions of issuance of an e-invoice** in terms of rule 48(4) of the CGST Rules, 2017 –
  - i. an insurer or a banking company or a financial institution, including a non-banking financial company;
  - ii. goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;
  - iii. persons supplying passenger transportation service; and
  - iv. person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.

This notification is to take effect from 01.10.2020 (envisaged date of roll out of e-invoicing).

- NN 14/2020-CT dated 23.03.2020 **exempts the following persons** whose aggregate turnover in a financial year exceeds INR 500 Crores **from provision of a dynamic Quick Response (QR) code** in terms of rule 46 of the CGST Rules, 2017 –
  - i. an insurer or a banking company or a financial institution, including a non-banking financial company;
  - ii. goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;
  - iii. persons supplying passenger transportation service;
  - iv. person supplying services by way of admission to exhibition of cinematograph films in multiplex screens;
  - v. supplier of online information and database access or retrieval services located in a non-taxable territory.

This notification is to take effect from 01.10.2020 (envisaged date of effect of QR code invoices).

## AADHAAR AUTHENTICATION

Rule 8 (4A) and Rule 9(1) of the CGST Rules, 2017 are amended by NN 16/2020-CT and read with NN 17/2020-CT, NN 18/2020-CT and NN 19/2020-CT, all dated 23.03.2020, imposing requirement of **Aadhaar authentication at the time of registration of the following persons being citizens of India –**

- i. Individual;
- ii. Authorised signatory of all types;
- iii. Managing and Authorised partners of a partnership firm; and
- iv. Karta of an Hindu undivided family.

Failing such Aadhaar authentication, physical verification of the principal place of business would be undertaken.

These changes are to take effect from **01.04.2020**.

## CHANGES TO DISBURSAL OF REFUNDS ON ACCOUNT OF ZERO-RATED SUPPLIES

- Rule 89(4) is amended by NN 16/2020-CT dated 23.03.2020. Accordingly, in calculating the amount of **refund of ITC on zero-rated supplies** of goods/services without payment of GST, the **turnover of zero-rated supplies of goods** is capped to 1.5 times the value of like goods domestically supplied by the same or similarly-placed supplier.
- Rule 96B is inserted to provide for **recovery of disbursed refund where sale proceeds in respect of exported goods have not been realised**, in full or in part, within the period allowed under the Foreign Exchange Management Act, 1999. The person receiving such refund shall be liable to deposit the refund amount, to the extent of non-realization of export proceeds, **within 30 days of expiry of the statutory period along with interest**.

Such recovery is exempted where the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits. The amount so recovered may be refunded to the person upon extension of the period for realization of proceeds by the Reserve Bank of India and upon submission of proof of such realization within 3 months thereof.

## CLARIFICATION ON ITC APPORTIONMENT FOR DEMERGERS

Circular No.133/03/2020-GST dated 23.03.2020 has been issued on the matter of apportionment and transfer of utilised ITC in cases of demerger as prescribed by Rule 41(1) of the CGST Rules, 2017. The following clarifications have been provided –

- i. The proviso to Rule 41(1) prescribing apportionment in the ratio of value of assets transferred is **applicable to all forms of business re-organization that results in partial transfer of business assets along with liabilities** and not merely demergers.
- ii. The apportionment of ITC is to be done with regard to **ratio of transferred assets on a State-wise basis**, and not on the basis of an all-India ratio of assets. The value of assets for apportionment is to be taken as on the **“appointed date of the demerger”** as per section 232(6) of the Companies Act, 2013.
- iii. The **ratio need not be separately applied to the balance of CGST, SGST and IGST**. The transferor is at liberty to determine the ITC transferred under individual tax heads provided that the total amount cumulatively does not exceed the ratio applied to all unutilized ITC.
- iv. The unutilized ITC to be considered is the balance ITC in the credit ledger **as on the date of filing of FORM GST ITC – 02 by the transferor**. The form is only to be filed in those states where both transferor and transferee are registered.

## MISCELLANEOUS CHANGES

- i. Rule 80(3) of the CGST Rules, 2017 is amended by which audit under section 35(5) of the CGST Act, 2017 and reconciliation statement in **Form GSTR-9C specifically for FY 2018-19 is mandated for persons whose aggregate turnover during FY 2018-19 exceeds INR 5 Crores** instead of INR 2 Crores.
- ii. Rules 89 and 92 of the CGST Rules, 2017 are amended whereby in case refund of any amount paid as tax is claimed, procedure has been prescribed for **proportionate refund in cash and re-credit of utilized credit** in discharging such liability.
- iii. The rate of **GST on handmade matches** under HS code 3605 00 10 is raised from 5% to **12%** *vide* NN 3/2020-CT(Rate) dated 25.03.2020.
- iv. *Vide* NN 3/2020-CT(Rate) dated 25.03.2020, the rate of **GST on mobile phones** under HS code 8517 has been raised from 12% to **18%**. Likewise, parts used in the manufacture thereof under chapter 85 previously taxable at 12% will now be taxable per its four-digit HS code, primarily under the 18% bracket.
- v. The rate of **GST on maintenance, repair or overhaul services in respect of aircrafts and aircraft components** is reduced from 18% to **5% without any conditions** *vide* NN 2/2020-CT(Rate) dated 26.03.2020.

## MISCELLANEOUS CHANGES (CONTD.)

- vi. NN 16/2020-Cus dated 24.03.2020 continues exemption from IGST and compensation cess on imports made under the Foreign Trade Policy schemes of Advance Authorization/EPCG/EOU up to 31.03.2021.
- vii. **Present return filing forms** are to continue up to September, 2020 and due dates therefor have been prescribed as under –
- Form GSTR-1 (quarterly for taxpayers having aggregate turnover up to INR 1.5 Crores): 31<sup>st</sup> day of the succeeding month following the end of the quarter. [NN 27/2020-CT dated 23.03.2020]
  - Form GSTR-1 (monthly): 11<sup>th</sup> day of the succeeding month. [NN 28/2020-CT dated 23.03.2020]
  - Form GSTR-3B (for taxpayers having aggregate turnover up to INR 5 Crores): Staggered filing by 22<sup>nd</sup> or 24<sup>th</sup> day of the succeeding month depending on the State. [NN 29/2020-CT dated 23.03.2020]
  - Form GSTR-3B (for taxpayers having aggregate turnover exceeding INR 5 Crores): 20<sup>th</sup> day of the succeeding month. [NN 29/2020-CT dated 23.03.2020]



## MISCELLANEOUS CHANGES (CONTD.)

- viii. NN 10/2020-CT dated 23.03.2020 prescribes a special procedure of transition for registered persons situated in the erstwhile Union territories of Daman and Diu or of Dadra and Nagar Haveli prior to 27.01.2020 and lying within the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from such date onwards. The notification makes provision for special return filing periods, type of tax payable and transfer of ITC. The special procedure is to be followed up to 31.05.2020.
- ix. The amendment to section 50 of the CGST Act, 2017 imposing interest liability for delay in payment of GST only on the net cash tax liability is proposed to be made effective retrospectively from 01.07.2017. Statutory amendment in this regard is awaited.

## DISCLAIMER

*The alert has been prepared on the basis of certain presumptions, which are subject to change as per amendments in taxation laws from time to time. The material contained in this alert does not constitute/substitute professional advice that may be required before acting on any matter. It should not be copied or disclosed to any third party, in whole or in part, without our prior written consent.*

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