

GSTR-3B Late fee waiver July-2017 to Jan-2020

Emerging Issues

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The 40th GST Council held on 12/06/2020 has recommended the following as trade facilitation:

Reduction in Late Fee for past Returns:

As a measure to clean up pendency in return filing, late fee for non-furnishing FORM GSTR3B for the tax period from July, 2017 to January, 2020 has been reduced / waived as under: -

'NIL' late fee if there is no tax liability; Maximum late fee capped at Rs. 500/- per return if there is any tax liability.

The reduced rate of late fee would apply for all the GSTR-3B returns furnished between 01.07.2020 to 30.09.2020

The recommendation of the Council is to be implemented vide Notification No: 52/2020 – Central Tax dated 24-06- 2020 as per the said notification

"Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01 st day of July, 2020 to 30th day of September, 2020:

*Provided also that where the **total amount of central tax payable in the said return is nil**, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020."*

Indeed, it is a most welcome measure and benefit to large number of Taxpayers who have not filed the returns due to various reasons. However, the implementation is not free from doubt.

Some issues needs clarifications are as under:

As per GSTN portal a **Nil return can be filed by the Tax payer if they have not made any outward supply (commonly known as sale), have NOT received (commonly known as purchase) any goods/services and do not have any tax liability.**

As per the above notification 52/2020 – Central Tax dated 24-06- 2020, the waiver of late fee is **that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act.**

1. Now the question is if the Tax pay does have any liability but has received only the Input Tax credit what is status of the waiver? is it NIL or Rs. 250/= (Each for CGST and SGST/UTGST)?
2. By filing now, the return **can the Tax payer avail input tax credit** for the period July-2017 to September 2019?

Both Central and State Department has canceled the registration as per Section 29 of CGST/SGST Act, read with Rule 22 of CGST /SGST Rules 2017 for non-filing of returns for more than 6 Months. In certain cases, the Department has assessed tax as per the provisions of Section 62 and has created liability by issue of DRC-07?

3. How to file the return for the above class of Tax payers? Whether the liability as determined by the Department or by the Tax payer as per the books of account? It is pertinent to state that in many cases the Officer has assessed tax as NIL based on the previous returns.

The Annual return GSTR-9 is permitted only if all the returns are filed for the tax period of the Financial Year.

4. Now, whether these Tax payers who are permitted for filing returns, has to file GSTR-9 and 9C, if required? If so, are they entitled for waiver of late fee for GSTR-9 and GSTR-9C?

After the amendment of Rule 36(4), there is restriction in availing ITC credit and refund on account of input tax credit is also now being issued based on the CBIC Circular No: 135/05/2020 dated 31/03/2020 by restricting the refund to the extent of ITC available as per GSTR-2A.

5. Does the tax payer is entitle for the additional refund wherever the supplier has now filed the returns as per the provisions of Notification No; 52/2020 CT dated 24/06/2020.

Proper clarification from the CBIC is the need of the hour for smooth implementation of the above trade facilitation measures. Hope the CBIC will issue necessary clarifications at the earliest and GSTN will implement the amendments in the return module.