

**The various amendments to GST law, through the Finance Bill 2022 are explained below.**

**Clause 99 of the FB, 2022.**

➤ A new clause (ba) is being introduced under sub-section (2) of Section 16, as a condition for availing ITC. The clause reads as,

*(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted.*

Simultaneously, a new Section 38 is being substituted whereby various restrictions on availing of ITC are being introduced.

➤ Clause (c) of Section 16 (2) prescribes payment of tax by the supplier, subject to section 41 of Section 43 A, as a condition for availing ITC by the recipient. Now the words “Section 43 A” is being omitted, as Section 43 A itself is being omitted.

➤ As per sub-section (4) of section 16, any ITC pertaining to a financial year shall be claimed not later than the “due date for filing GSTR 3B for the succeeding September”. This time limit is extended upto succeeding “30<sup>th</sup> November”. As credit can be said to be availed only thorough filing of GSTR 3 B, credit pertaining to a financial year, can be taken maximum upto succeeding October return, if filed upto 30<sup>th</sup> November.

**Clause 100 of the FB, 2022.**

➤ As per Section 29 (2) registration of a taxpayer can be cancelled in various circumstances. One such situation as per clause (b) is a composition tax payer who has not furnished returns for three consecutive periods. As composition taxpayers are liable to file only annual returns, as per Section 39 (2), consequential amendment is made in Sec. 29 (2) (b).

➤ As per clause (c) of Section 29 (2), registration of a taxpayer can be cancelled if he has not furnished returns for a continuous period of six months. This is being amended as “such continuous tax period as may be prescribed”. This will be prescribed later through the rules.

### Clause 101 of the FB, 2022.

➤ As per Section 34 (2), credits notes under specified circumstances can be issued upto the due date for filing GSTR 3 B return for succeeding September. This is being amended permitting time upto succeeding 30<sup>th</sup> November. The Credit Notes pertaining to a financial year can be declared in the GSTR 1 returns filed upto 30<sup>th</sup> November, which means the Credit Notes can be incorporated upto the succeeding October month GSTR 1, if it is filed anytime upto 30<sup>th</sup> November.

### Clause 102 of the FB, 2022.

➤ Section 37 deals with return on outward supply, i.e. GSTR 1. After the words “shall furnish electronically” in sub-section (1), the following is added “subject to such conditions and restrictions and”.

➤ With regard to communication of details of outward supplies to recipients, the words “shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed” is substituted with “shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies”.

➤ The following first proviso under Section 37 (1) is omitted.

*Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period.*

➤ The following sub-section (2) of Section 37 is omitted.

*(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.*

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- Sub-section (3) of Section 37 allows a taxpayer to correct any mistakes or errors in GSTR 1. There is reference to Section 42 and 43 in this sub-section which is being removed, as sections 42 and 43 are being omitted.
- A new sub-section (4) is being added under Section 37, which prohibits a person from filing GSTR 1 for a period, if he has not filed GSTR 1 for any previous period. But this may be relaxed by Government in given cases.

#### **Clause 103 of the FB, 2022.**

- Section 38 deals with filing of return of inward supplies. The whole section is now substituted with a new section. As per the new section, the details of outward supplies furnished by suppliers will be communicated to the recipients (GSTR 2B). GSTR 2 B itself will indicate, which credit may be available to the recipient and which may not be available.

In the below cases, the credit would be indicated as not available. More clarity in this regard could emerge only when the relevant rules are framed.

- Invoices issued for the clearances made before registration, to the extent prescribed.
- Supplier defaulted in payment of tax for specified period.
- Supplier whose difference between GSTR 1 and GSTR 3 B is more than a specified limit.
- Supplier who has availed excess credit.
- Supplier who has defaulted compulsory cash payment requirement.

#### **Clause 104 of the FB, 2022**

- Various amendments are proposed in Section 39, which deals with filing of monthly return (GSTR 3B).
- The due date for filing return by non-resident taxable person is preponed to 13<sup>th</sup> of succeeding month from 20<sup>th</sup> of succeeding month.
- New proviso substituted under sub-section (7), enabling Government to prescribe the manner of payment of tax by those who opt for quarterly return.
- The time limit for carrying out any corrections in GSTR 3 B is extended from 20<sup>th</sup> October to 30<sup>th</sup> November of succeeding year.
- As per sub-section (10) GSTR 3 B for a period cannot be filed, if GSTR 3B for any preceding period has not been filed. Now, additionally, it is proposed that if GSTR 1 is not filed for any tax period, then GSTR 3B also cannot be filed for the said period.

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### **Clause 105 of the FB, 2022**

- Section 41 deals with provisional claim of ITC. This section is substituted with a new provision.
- There is a stipulation that if the supplier has not paid the tax, the recipient has to reverse ITC. It is not known whether any functionality in this regard to enable the recipient to know whether the supplier has paid tax for the supply or not, would be introduced in due course.

### **Clause 106 of the FB, 2022**

- Sections, 42, 43 and 43 A have been omitted. Section 42 and 43 were dealing with the matching provisions, which were never implemented. Section 43 A has not come into effect at all.

### **Clause 107 of the FB, 2022.**

- Section 47 deals with levy of late fee for delay in filing various returns. From this section inward supply return is omitted, as Section 38 is now amended and there would be no inward return. Further, late fee is also prescribed for delay in filing returns by those tax payers who are liable to collect tax at source, under section 52.

### **Clause 108 of the FB, 2022.**

- Section 48 deals with the role of GST Practitioners. Reference to Section 38 is removed from this section.

### **Clause 109 of the FB, 2022.**

- Various amendments are proposed in Section 49 of the Act dealing with payment of tax.
- At present any amount lying in Electronic Cash Ledger of a registerer person can be transferred between various heads. Now transfer is to be allowed between all registrations (distinct persons) of the same entity.
- Rule 86 B of CGST Rules, 2017 prescribes that certain clauses of tax payers can utilise ITC for payment of tax only to an extent of 99 %. An enabling provision in this regard is created by inserting sub-section (12) to Section 49.

### **Clause 110 of the FB, 2022**

- A new sub-section (3) to Section 50 is being substituted, with retrospective effect from 01.07.2017, which clearly provides that interest on wrongly availed ITC would be applicable only when such wrongly availed ITC is utilised. Further, all the notifications, prescribing 24 % rate of interest under the erstwhile Section 50 (3) are retrospectively amended vide clauses 115, 118 and 121 of the FB, 2022 and the rate is reduced to 18 % with effect from 01.07.2017.

### **Clause 111 of the FB, 2022.**

- The time limit for filing of returns by the taxpayers who are liable to collect tax at source under section 52 of the Act is extended to succeeding 30<sup>th</sup> November, from the due date for filing September month return by such persons.

### **Clause 112 of the FB, 2022.**

- Section 54 deals with refund. Now any excess amount lying in Electronic Cash Ledger can be claimed as refund through GSTR 3B. This provision is being amended to provide that a separate refund application is required to be made in this regard.
- The time limit for claiming refund by United Nations Organisations and other notified agencies is extended from six months to two years.
- As per sub-section (10) when refund is sanctioned under sub-section (3) [ refund on account of zero rated supplies and on account of inverted rate structure), the said refund can be adjusted towards recovery of any liability payable by the person. Now, the scope of this provision is widened by removing the reference to sub-section (3) and all refunds would now subjected to sub-section (10).

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- There was no specific provision as to what is the “relevant date” for claiming refund on account of supplies to SEZ units / SEZ developers, from which the two years time limit has to be computed. Now it is being prescribed that the relevant date shall be date of filing GSTR 3B by the supplier.

**Clause 113 of the FB, 2022.**

- Section 168 of the CGST Act, empowers the Board to issue various instructions. The reference to Section 38 is removed from Section 168.

**Clauses 114 to 123 of the FB, 2002.**

These clauses provide for various retrospective amendments, the details of which are tabulated below.

Clause in the Finance Bill	Details	Remarks
114	Giving retrospective effect to the GST portal, viz., “www.gst.gov.in” for all purposes. Earlier it was notified as the common portal only for certain specified purposes, viz., “furnishing of returns and computation and settlement of Integrated tax”. Now it is notified for all purposes, except for E-invoicing purposes, for which separate portals are notified 69/2019 C.T. Dt. 13.12.2019	Originally, <a href="http://www.gst.gov.in">www.gst.gov.in</a> was notified as the common portal, vide Notification 4/2017 C.T. Dt. 19.06.2017, w.e.f. 22.06.2017. Later this notification was superseded vide Notification 9/2018 C.T. Dt. 23.01.2018, whereby Eway Bill portal was also separately notified.
115	Vide Notification 13/2017 C.T. Dt. 28.06.2017 the rate of interest for the purposes of Sec.50 (3) was notified as 24%, which is now being retrospectively amended to 18%, w.e.f 01.07.2017.	Similar retrospective amendment is being made in respect of Notification 6/2017 I.T. Dt. 28.06.2017, vide clause 118 of the Finance Bill.  Similar retrospective amendment is being made in respect of Notification 10/2017 U.T.T Dt. 30.06.2017, vide clause 121 of the Finance Bill.

116	This clause seeks to provide that notwithstanding anything contained in Notification No.01/2017-CT (Rate) dated 28.06.2017 no CGST should be levied or collected in respect of supply of unintended waste generated during the production of fish meal, for the period from 01.07.2017 to 30.09.2019.	Similar retrospective amendment is being made in respect of Notification 1/2017 I.T (Rate) Dt. 28.06.2017, vide clause 119 of the Finance Bill.  Similar retrospective amendment is being made in respect of Notification 1/2017 U.T.T (Rate) Dt. 28.06.2017, vide clause 122 of the Finance Bill.
117	This clause provides that Notification No.25/2019- CT (Rate) dated 30.09.2019 shall have retrospective effect from 01.07.2017.  The said Notification No.25/2019-CT (Rate) dated 30.09.2019 declares that “Services by way of grant of alcoholic liquor license against consideration in the form of license fee or application fee or by whatever name it is called” shall neither be treated as supply of goods or supply of services.	Similar retrospective amendment is being made in respect of Notification 24/2019 I.T (Rate) Dt. 30.09.2019, vide clause 120 of the Finance Bill.  Similar retrospective amendment is being made in respect of Notification 25/2019 U.T.T (Rate) Dt. 30.09.2019, vide clause 123 of the Finance Bill.

### Restriction in filing returns - summarised.

Under Rule 59 (6) of the CGST Rules, as amended by Notification 35/2021 C.T. Dt. 24.09.2021, w.e.f. 01.01.2022, if GSTR 3B for preceding tax period is not filed, GSTR 1 for current tax period cannot be filed.

The FB 2022 proposes to add sub-section (4) to Section 37, whereby if GSTR 1 for any preceding month is not filed, GSTR 1 for any subsequent period cannot be filed. As per Section 39 (10) if GSTR 3 B for any previous tax period is not filed, GSTR 3 B for any subsequent period cannot be filed. This provision is further proposed to be amended through FB 2022, in Section 39 (10), to the effect that in addition to the above, if GSTR 1 for the period is not filed, GSTR 3 B also cannot be filed.

After the FB is enacted, the position will be as below.

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- If GSTR 3 B is not filed for the previous month, GSTR 1 for current month cannot be filed [Rule 59 (6)].
- If GSTR 1 is not filed for any month, GSTR 1 cannot be filed for any succeeding month [Sec.37(4)].
- If GSTR 3B is not filed for any previous month, GSTR 3B cannot be filed for any subsequent month [Sec.39(10)].
- If GSTR 1 for the period is not filed, GSTR 3B cannot be filed for the same period [Sec. 39 (10)].