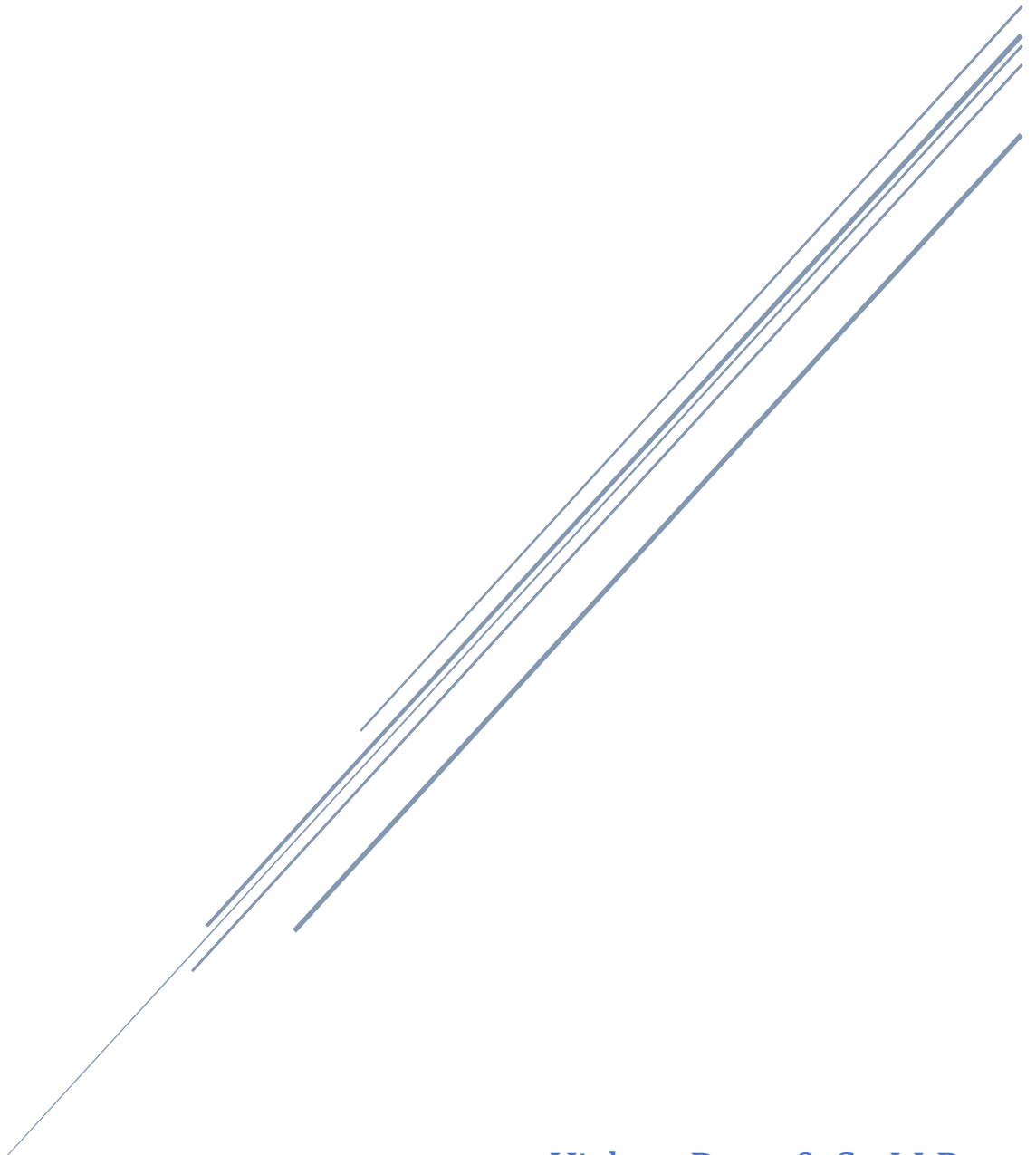


GST UPDATE

Changes Announced in 48th GST Council Meeting



Vishnu Daya & Co LLP
Chartered Accountants

GST Council conducted 48th meeting on 17.12.2022 and announced several changes both in respect of rate of tax and procedures. Relevant notifications and circulars have now been issued. A gist of changes made, or clarifications given is provided below

CHANGES RELATED TO RULES, REGULATIONS, RATE OF TAX AND EXEMPTION:

CHANGES TO THE GST RULES:

The following changes have been done to the GST Rules¹:

1. Registration related changes:

- (a) Rule 8 of CGST Rules has been amended to the effect that now registration can be taken only based on Mobile Number and Email ID linked to PAN.
- (b) Process of registration has been made more stringent. Aadhar verification is made compulsory. Verification of original documents at Facilitation Centres to be carried out. However, this process is to be implemented at present on test basis only in the state of Gujarat. For other territories, this change is not effective².
- (c) Rule 12 has been amended to provide machinery provisions to cancel registration even in cases where assessee applies for cancellation of registration.

2. Reversal of ITC on non-payment to supplier within 180 days will only be proportional to the amount remaining to be paid:

Rule 37 has been amended to prescribe that reversal of ITC will apply wherein the consideration towards any invoice is not paid to supplier within 180 days from the date of invoice, whether the invoice is not paid fully or partially. However, it is also prescribed that where the non-payment is partial, reversal of ITC shall also be proportionate to the amount not paid.

¹Notification No. 26/2022 – Central Tax dated 26.12.2022

²Notification No. 27/2022 – Central Tax dated 27.12.2022

3. ITC on invoices uploaded by supplier is to be reversed if the supplier subsequently fails to file GSTR-3B:

New Rule 37A has been inserted to prescribe reversal of ITC when supplier files GSTR-1 but subsequently fails to file GSTR-3B to pay tax declared in GSTR-1. In such scenarios it is prescribed that if the supplier doesn't file GSTR-3B within 30th day of September of following Financial Year, then ITC availed by recipient has to be reversed before 30th day of November of following Financial Year in GSTR-3B return. If such reversal is not made on or before 30th day of November of following FY, ITC would be payable with interest. It has also been provided that, when the supplier subsequently furnishes the GSTR-3B, already reversed credit can be re-availed.

Our comments: This new rule necessitates that even after matching the ITC with GSTR-2B, recipients will now have to track the status of filing of GSTR-3B by the suppliers.

4. Amendment to invoice contents:

- (a) A proviso has been added to Rule 46(f). Earlier, in case of supplies to unregistered persons where value of supply was less than fifty thousand rupees, mentioning name and address of the recipient and the address of delivery, along with the name of the State and its code was required only when recipient requests for mentioning such details. However, with the insertion of proviso to Rule 46(f), mentioning name and address of the recipient along with its PIN code and the name of the State has been made compulsory in case of supply of taxable service by or through electronic commerce operators or by a supplier of OIDAR Service, irrespective of the value of supply.
- (b) A proviso has been inserted to Rule 46A to provide that "invoice-cum-bill of supply" shall contain the details mentioned in Rule 46 or Rule 54 or Rule 49.

5. Changes related to deposit of tax in Electronic Cash Ledger:

A proviso has been added to Rule 87(8) to provide for rule to update Electronic Cash Ledger on the basis of e-scroll of RBI in cases where the bank fails to communicate CIN to GST Common Portal.

6. Tax to be recovered directly, without adjudication, in case of difference between GSTR-1 and GSTR-3B; GSTR-1 to be disabled if action is not taken on intimation of difference:

(a) New Rule 88C has been inserted. As per this Rule, if there is any difference between GSTR-1 and GSTR-3B exceeding such amount or such % as may be notified, intimation shall be issued in Part A of FORM GST DRC-01B through GST Portal and email ID registered with portal. Within 7 days of receiving this notice/intimation, assessee has to either pay the tax with interest using DRC-03 (and intimate such payment through Part B of FORM GST DRC-01B) or file clarification explaining the difference through Part B of FORM GST DRC-01B. Where neither the differential tax is paid nor the reply is filed OR the reply filed is not accepted by the proper officer, differential tax amount will directly be recovered in accordance with Section 79 without any adjudication.

(b) Rule 59 has been amended to prescribe that GSTR-1 will not be allowed to be filed for subsequent periods where the assessee has neither paid tax against intimation issued under Rule 88C in Form GST DRC-01B nor filed explanation against such notice.

Our comments: This new rule necessitates that utmost caution is exercised while filing GST Returns. It also necessitates that the online portal and email ID is frequently monitored for any notices. In case any action is missed out to be taken with 7 days against this notice, officers are empowered to take action of recover in the form of Bank Attachments, Garnishee Proceedings. Also, since the filing of GSTR-1 is disabled, passing on the ITC to buyers will also become difficult.

7. Unregistered persons can now claim refund:

Modalities of filing refund applications to unregistered persons have now been implemented in GST Portal. Rule 89 has been amended to prescribe the list of documents to be produced for claiming refund of tax paid in cases where the unregistered recipient of supply is claiming the refund of taxes after cancellation of contract. Following documents have been prescribed:

- (a) Statement containing details of invoices – number, date, value tax paid and details of payment against such invoices, on which refund is being claimed
- (b) Copies of such invoices
- (c) Proof of making payment to supplier
- (d) Copy of agreement or contract
- (e) A letter issued by supplier for cancellation of agreement
- (f) Details of payment received from the supplier against cancellation and proof thereof
- (g) A certificate from supplier that he has paid tax on such invoices to Government and he has not adjusted such tax liability by issuing any credit note and he has not claimed or will not claim any refund towards these invoices.

It has also been prescribed that certificate from CA with respect to unjust enrichment is not required when the refund application is filed by unregistered person who has borne the incidence of tax.

Our comments: These steps taken enable the unregistered persons to claim refund in cases of cancellation of contracts wherein the time limit to issue credit note has expired. This will be a relief to persons like home buyers in case of cancellation of bookings.

8. Changes in procedure of filing appeal; Withdrawal of the appeal has also been enabled:

- (a) Rule 108 and Rule 109 have been amended. Now, in cases where order is served through GST Portal, no certified copy of order is required to be given while filing appeal. Also, in cases where order is not served through GST Portal, only self-certified copy of the order is to be produced.

(b) New Rule 109C has been inserted to provide for withdrawal of appeal filed.

9. E-way bill is required for transporting Imitation Jewellery:

Rule 138 has been amended. Earlier e-way bill was not required to be generated for Jewellery covered by Chapter 71. However, such exclusion from e-way bill generation has been withdrawn in relation to Imitation Jewellery covered by heading 7117. As such, now e-way bill needs to be generated for Imitation Jewellery covered by heading 7117 also.

CHANGES TO RATE OF TAX AND EXEMPTION:

1. The following changes have been done to Rate of Tax and Exemption related to Goods³:

Entry No.	Entry before amendment	Amended Entry	VD Comment
Schedule I – 5% of Notification No. 1/2017-Central Tax (Rate)			
102A	Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol)	Ethyl alcohol supplied to Oil Marketing Companies or Petroleum refineries for blending with motor spirit (petrol)	Now Ethyl alcohol will be taxed at 5% even when it is supplied to Petroleum refineries for blending with petrol. Entry No. 25 of Schedule III has also been suitably modified to exclude Ethyl Alcohol supplier to petroleum refineries from 18% rate.
103A	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or	Additives, Chilka of pulses, Chuni or Churi and Khanda have now been excluded this entry and have been exempted.

	leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and additives , husk of pulses including chilka , concentrates including chuni or churi, khanda , wheat bran, de-oiled cake]	Entry No. 102 of Notification No. 2/2017-Central Tax (Rate) has been modified suitably and new Entry No 102C has been added to said Notification No. 2/2017-Central Tax (Rate) to provide for exemption.
Schedule II – 12% of Notification No. 1/2017-Central Tax (Rate)			
48	Fruit pulp or fruit juice-based drinks	Fruit pulp or fruit juice based drinks [other than Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice]	This entry has been amended to provide more clarity by excluding Carbonated Beverages of fruit drink or containing fruit juice. Both of these are taxable at 28% under Schedule IV.
180	Mathematical boxes, geometry boxes and colour boxes, pencil sharpeners	Mathematical boxes, geometry boxes and colour boxes	Pencil sharpeners have been excluded from this entry. They will now be taxed at 18% as per Entry No. 302A of Schedule III.

2. The following changes have been done to RCM Applicability on goods⁴:

Purchase of Essential OIL - Mentha Arvensis (HSN 3301 25 90) from Unregistered Persons has been subjected to RCM with effect from 01.01.2023.

³ Notification No. 12/2022 – Central Tax (Rate) & Notification No. 13/2022-Central Tax (Rate) both dated 30.12.2022

⁴ Notification No. 14/2022-Central Tax (Rate) dated 30.12.2022

3. Following changes are done to Exemption related to Services⁵

- (a) In Entry 12 of Notification No. 12/2017-Central Tax (Rate) – which relates to renting of residential dwelling for use as residence, Explanation has been inserted to provide that if the residential premise is rented to a registered person being proprietor of proprietary concern exemption is still applicable if the premise is taken on rent by him in his personal capacity for use as residence.
- (b) Entry 23A has been omitted. As such, the exemption on “Service by way of access to a road or a bridge on payment of annuity” has been withdrawn with effect from 01.01.2023.

⁵ Notification No. 15/2022 – Central Tax (Rate) dated 30.12.2022

CLARIFICATIONS ISSUED BY CBIC:

1. Eligibility of ITC on transportation of goods service where the destination of goods is outside Taxable Territory, but supplier and recipient are within Taxable Territory:

Vide this circular ITC eligibility on Transportation of Goods service has been discussed wherein both supplier and recipient are in Taxable Territory (India) and the place of supply is outside India. Circular clarifies those services to be Inter-state service. It also clarifies that the recipient in India can avail ITC on such services since there is no restriction on availment of ITC where place of supply is outside India. It has also been prescribed that the supplier/transporter should upload those supplies in GSTR-1 by selecting ‘96-Foreign Country’ as State Code.

Circular No. 184/16/2022-GST

2. Clarification on manner of re-assessment of tax under Section 73 in cases where Section 74 is held inapplicable in appeals:

Vide this circular mechanism has been prescribed to reassess the tax under Section 73 in cases where assessment was originally done in Section 74 and such assessment under Section 74 has been set aside by appellate authorities (or tribunal or courts, as the case may be) on a finding that charge of suppression, misrepresentation or fraud is not established. It is prescribed that such re-assessment under Section 73 can be made within 2 years from the date of receipt of appellate order for all the periods for which SCN was issued within the due date prescribed under Section 73.

Circular No. 185/17/2022-GST

3. GST on no claim bonus and applicability of e-invoicing:

This circular clarifies the following:

- (a) No claim bonus cannot be treated as a consideration for 'agreeing to the obligation to refrain from the act'. As such, there is no GST on no claim bonus.
- (b) No claim bonus is in the nature of discount and hence is a permissible deduction from value of supply as per Section 15.
- (c) It is also clarified that exemption from generating e-invoice given vide Notification 13/2020-Central Tax is applicable to entity as a whole and not restricted to any particular type of supply. As such, the entities covered by said Notification are not required to generate e-invoice for any of the supplies made by them.

Circular No. 186/18/2022-GST

4. Manner of filing refund application by unregistered persons:

This circular prescribes the manner of filing refund application by Unregistered Persons. Gist of the circular is as below:

- (a) Unregistered person has to take a temporary registration.
- (b) In the said temporary registration refund application has to be filed online along with the documents prescribed.

- (c) Separate applications have to be filed with respect to each of the suppliers in case refund is being claimed in respect of more than one supplier
- (d) Refund claim can be filed by recipient only in cases where time limit to issue credit has not been expired
- (e) Refund application shall be filed within 2 years from date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier
- (f) If amount refunded by the supplier on cancellation is less than the amount paid by the recipient to supplier, refund shall be given proportionately.

Circular No. 188/20/2022-GST

CONTACTS:

www.vishnudaya.com

Vishnu Daya & Co LLP
Chartered Accountants

For further information please contact:
vinayaka@vishnudaya.com
daya@vishnudaya.com

Bangalore:

GF 7 & 3rd Floor, Karuna Complex, No. 337,
Sampige Road, Malleswaram, Bangalore-
560003
Phone: +91-80-23312779 | +91-80-
23560633

Chennai:

Flat No 3A, 3rd Floor, Amber Crest
Apartment, No 37, Pantheon Road, Egmore,
Chennai - 600 008. (Next to Mercury Hospital
- Near Ashoka Hotel)
Phone: +91-044-28554447