

## Amendments in GST law applicable from 01.01.2022

The Finance Act, 2021 made amendments to the CGST Act & IGST Act with a proposition to give effect to certain amendments from a date to be notified in future. Now the Central Government vide **Notification No. 39/2021-CT** dated 21.12.2021 has decided **01.01.2022 as the effective date** on which the following amendments shall come into force:

- ☉ A new clause<sup>1</sup> is inserted to expand the 'scope of supply' with retrospective effect from 01.07.2017. By virtue of said clause, the scope of supply includes even the activities or transactions between clubs/associations and their members for cash, deferred payment or other valuable consideration.
  
- ☉ A new clause<sup>2</sup> is inserted providing that ITC can be taken only if the invoice/debit note has been furnished by the supplier in GSTR-1. (Simultaneously, Rule 36(4) is also amended<sup>3</sup> to restrict the ITC to the extent of amount reported by supplier in GSTR-1 and reflected in GSTR-2B.)
  
- ☉ Amendment in the explanation<sup>4</sup> to Section 74(11) of the CGST Act is made effective from 01.01.2022 providing that even when the proceedings against the main person have been concluded still penalty under Section 129 (Penalty for E- Way Bill Provision violation) of CGST

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<sup>1</sup> Sub-clause (aa) to Section 7(1) of the CGST Act inserted vide Section 108 of Finance Act, 2021

<sup>2</sup> Sub-clause (aa) to Section 16(2) of the CGST Act inserted vide Section 109 of Finance Act, 2021

<sup>3</sup> Vide Notification No. 40/2021-CT dated 29.12.2021

<sup>4</sup> Amended vide Section 113 of Finance Act, 2021

Act and Section 130 (Confiscation of goods or conveyances and Levy of Penalty) of the CGST Act will remain unaffected and continue.

- ⌚ Under Section 75(12) of the CGST Act, an explanation is inserted<sup>5</sup> which implies that self-assessed tax shall also include the tax payable which is declared in GSTR-1 but not included in GSTR-3B.
  
- ⌚ Section 83(1)<sup>6</sup> of the CGST Act has been substituted and widened wherein provisional attachment of any property including bank account can be made:
  - Even on the persons who receives the benefit and at whose instance the following transactions are conducted:
    - Supply of goods/services without issue of invoice/incorrect invoice/false invoice
    - Issue of invoice/bill without making supply of goods/services
    - Utilization of ITC without actual receipt of goods/services
    - Distribution of ITC in contravention of Section 20 of CGST Act (Input Service Distributor provisions)
  
  - Even after initiation of any proceeding with respect to all kinds of assessments, summons, inspection, search, seizure, arrest, tax collected but not paid, tax wrongfully collected, recovery proceedings, default in payment of installment w.e.f. 01.01.2022.

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<sup>5</sup> Inserted vide Section 114 of Finance Act, 2021

<sup>6</sup> Provisional Attachment to protect the interest of revenue

- ⌚ A Proviso<sup>7</sup> has been inserted for a higher pre-deposit of a minimum 25% of the total Penalty for filing an appeal against the violation of the provisions of Section 129(3) of the CGST Act [relating to the movement of goods or conveyance during transit].
  
- ⌚ Section 129<sup>8</sup> of the CGST Act has been overhauled considerably.
  - In order to release the taxable goods or conveyance which are detained under Section 129(1) of the CGST Act (detention or seizure of goods or conveyance which are transported in contravention of the CGST Act or Rules), a person is liable to pay the following amount:
    - Where the owner of taxable goods **comes forward**, penalty is applicable @ 200% of the tax payable
    - Where the owner of taxable goods **does not come forward**, penalty is payable at the higher of: 50% of the value of goods or 200% of the tax
  
  - Section 129(3) of the CGST Act has been amended to fix the time limit of 7 days, from the date of detention or seizure of goods/conveyance, for issuance of notice demanding penalty leviable on detention or seizure of goods or conveyance which are transported in contravention of the CGST Act or Rules. Furthermore, to pass an order under Section 129(3) of the CGST Act, a time limit of 7 days is fixed from the date of service of notice.
  
  - If penalty demanded in order passed under Section 129(3) of the CGST Act is not paid within 15 days of receipt of such order, the proper office is empowered to initiate the recovery proceedings by way of sale/disposal of goods/ conveyance detained/seized. However, the time limit of 15 days may be reduced by the proper officer if the goods are

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<sup>7</sup> Proviso to Sub-section (6) of Section 107 of the CGST Act inserted vide Section 116 of Finance Act, 2021

<sup>8</sup> Amended vide Section 117 of Finance Act, 2021

of perishable or hazardous or depreciable in nature. A transporter can release the conveyance on payment of penalty demanded under Section 129(3) of the CGST Act subject to a cap of Rs. 1,00,000.

- ⊙ The long-drawn anomaly is rested by expressly delinking<sup>9</sup> Section 130 of CGST Act (Confiscation of goods or conveyances and levy of penalty) from Section 129 of CGST Act (Detention, seizure and release of goods and conveyances in transit).
- ⊙ The Commissioner or his authorized officers are empowered<sup>10</sup> to direct any person to furnish information relating to any matter in connection with CGST Act. However, such information cannot be used for any proceedings under CGST Act unless the opportunity of being heard<sup>11</sup> is provided to the concerned person

**Other Amendments effective from 01.01.2022:**

- ⊙ A person is disallowed<sup>12</sup> from furnishing GSTR-1 if such fails to furnish Form GSTR 3B of the preceding month.
- ⊙ Aadhar authentication has been made mandatory<sup>13</sup> for any registered person to file an application for revocation of cancellation registration under Form GST REG-21 as well as for filing application for claiming refund

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<sup>9</sup> Amended vide Section 118 of Finance Act, 2021

<sup>10</sup> Section 151 of CGST Act amended vide Section 119 of Finance Act, 2021

<sup>11</sup> Section 152 of CGST Act amended vide Section 120 of Finance Act, 2021

<sup>12</sup> Rule 59 of CGST Rules amended Notification No 35/2021-CT dated 24.09.2021

<sup>13</sup> Vide Notification No. 38/2021-CT dated 21.12.2021 read with Notification No. 35/2021-CT dated 24.09.2021

- ⌚ Due dates for the filing of the GSTR 9 as well as GSTR 9C for FY 2020-21 has been extended<sup>14</sup> till 28.02.2022.
  
- ⌚ E-Commerce Operators<sup>15</sup> are liable to pay GST on Restaurant Services on Reverse Charge basis.
  
- ⌚ Refund claims filed by the foreign diplomatic missions and embassies in FORM GST RFD-10 in respect of the tax charged on the invoice for their inward supplies shall be supported<sup>16</sup> by the copy of the invoice, duly attested by the authorized representative of the applicant if the said invoice does not bear the Unique Identity Number (UIN) of the applicant.

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<sup>14</sup> Rule 80 of CGST Rules amended vide Notification No. 40/2021-CT dated 29.12.2021

<sup>15</sup> Notification No. 17/2021-CT Rate dated 18.11.2021

<sup>16</sup> Rule 95 of CGST Rules amended vide Notification No. 40/2021-CT dated 29.12.2021

**Abbreviations used:**

<b>GST</b>	: Goods and Services tax
<b>CGST Act</b>	: Central Goods and Services tax Act, 2017
<b>IGST Act</b>	: Integrated Goods and Services tax Act, 2017
<b>CGST Rules</b>	: Central Goods and Services Tax Rules, 2017
<b>ITC</b>	: Input Tax Credit

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