

Subject: GSTR-3B disclosure – changes to the existing form – Issues

GSTR 3B - Table 3.1.1 (outward-ECO) active in GST Portal w.e.f 1st August 2022


Goods and Services Tax

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3.1.1 Details of supplies notified under section 9(5) of the CGST Act, 2017 and corresponding provision in IGST/UTGST/SGST Acts
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Description	Total Taxable Value(₹)	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)
(i) Taxable supplies on which electronic commerce operator pays tax u/s 9(5) [to be furnished by electronic commerce operator]	0.00	0.00	0.00	0.00	0.00
(ii) Taxable supplies made by registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax u/s 9(5) [to be furnished by registered person making supplies through electronic commerce operator]	0.00				

CANCEL CONFIRM

GSTR 3B - Table 4 (ITC) active in GST Portal w.e.f 1st Sept 2022

4. Eligible ITC
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Details	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)
(A) ITC Available (whether in full or part)				
(1) Import of goods	0.00			0.00
(2) Import of services	0.00			0.00
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	0.00	0.00	0.00	0.00
(4) Inward supplies from ISD	0.00	0.00	0.00	0.00
(5) All other ITC	0.00	0.00	0.00	0.00
(B) ITC Reversed				
(1) As per rules 38,42 & 43 of CGST Rules and section 17(5)	0.00	0.00	0.00	0.00
(2) Others	0.00	0.00	0.00	0.00
(C) Net ITC Available (A) - (B)	0.00	0.00	0.00	0.00
(D) Other Details				
(1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period	0.00	0.00	0.00	0.00
(2) Ineligible ITC under section 16(4) & ITC restricted due to PoS rules	0.00	0.00	0.00	0.00

Based on the concept paper released by CBIC requesting 'All members of the trade/ stakeholders are requested to kindly furnish their views/comments/suggestions on the Concept Paper latest by 15th September 2022' – we are providing our views, issues and solutions where possible against the GSTR 3B disclosure changes.

The recent changes in the Form GSTR-3B along with the clarificatory circular has left the industry and businesses wondering about the likelihood of compliance and practicality in a mere 5 day period.

The reconciliation methodology has changed from Books reconciled with the GSTR-2B (vendor details) where the business's own books was the base data, to the reconciliation between vendor's details in GSTR-2B viz a viz Books of accounts, placing larger importance on the vendor's data in GSTR-2B. All in all, placing humongous responsibility on the taxpayer to ensure that the tax allocation between Centre/State is done in a smooth manner.

The ability of taxpayers to adapt the newly implemented changes in a short period of time, i.e. in 14 days (data to be filed by 20th September 2022) will be tested!

Few issues are enumerated below, with possible solutions thereof, keeping a balance between the legal provisions and the requirements of the form, which do not appear to be congruous.

Sno	Issues	Legal Dilemma	Solution
1.	Table 3.1.1 – Auto-population of information from GSTR-1 Circular does not clarify upon auto-population of data from GSTR 1 to GSTR 3B w.r.t ECO related transactions	Presently GSTR 1 data is auto populating in GSTR 3B which is a welcome move to enable GSTR 1 = GSTR 3B and reduce manual errors.	<i>In GSTR 1 column for liability under 9(5) – Y/N can be added and then linked to auto-populated in 3.1.1.(i)</i> <i>In GSTR 1 exempt table - column for supplier to 9(5) supplier – Y/N can be added and then linked to auto-populated in 3.1.1.(ii)</i>
2.	Claiming ineligible ITC in Table 4A(5) The circular provides that entire amount of GSTR-2B be claimed in Table 4A and reversed to the extent ineligible in Table 4B. This "claim" would include Ineligible ITC (non-business, blocked credits, ITC exclusively for exempt supplies, invoice not belonging to business but incorrectly disclosed by vendors)	Section 16 of the CGST Act restricts all such ITC which is either for non-business purposes, where invoice and/or goods or services have not been received, ITC not pertaining to the business and debars the "claim of same". However, the circular guides to "claim" all such ITC and subsequently reverse the same.	<i>For the time being, till the new GSTR-3B form is introduced, a practical decision may be taken by taxpayers to follow the methodology mentioned in the circular.</i> <i>Govt. may consider modifying the GST law to the extent that ineligible ITC must be claimed in table 4A(5) for the specific purpose of reversal only.</i>
3.	Reconciliation with GSTR-2B in cases of RCM and Import of Goods	Import of goods – ITC on import of goods is not subject to the availability of the document in GSTR-2B – Section 16 read with Rule 36. In absence	<i>As the legal right to claim ITC arises upon payment of import duty (in case of imports of goods) and discharging RCM</i>

Sno	Issues	Legal Dilemma	Solution
	Circular clarifies that the new methodology of claiming ITC would be applicable on all amounts auto populating in Table 4A of GSTR-3B, including import of goods and RCM ITC.	of same, the indirect requirement laid down by the circular to claim only that ITC which is available in GSTR-2B may not be tenable. Reverse charge – Discharging RCM liability is based on separate time of supply provisions which may or may not arise in the same month of auto population in GSTR-2B. Hence, reconciliation of liability which is self-paid with the details available in GSTR-2B may be an unnecessary and tedious task, without any meaningful result.	<i>liability (in case of RCM), ITC would be available. Reconciliation with GSTR-2B is not be required.</i>
4.	Ineligible ITC disclosure in Table 4D(1) The Circular does not clarify a scenario where ITC reflects in GSTR 2B but taxpayer has not obtained invoice. He maintains ITC in 4.B.2 for the period, but upon receipt must consider these as ITC permanent reversal. To do this he would have to disclose in 4A(5) & 4B(1). Whether 4D(1) disclosure is also required?	Law is silent on these grounds as maybe such instances were not considered.	<i>To ensure that Adjusted 4A(5), i.e., 4A(5) (-) 4D(1) for a tax period matches to GSTR 2B auto-populated values I feel this disclosure is required. To display a single ineligible ITC, 5 disclosures are now required.</i> Note - the system is not conducive and user friendly anymore.
5.	ITC claimed and reversed – relevancy of Section 16(4)	Once ITC has been claimed in Table 4A(5) and reversed in “4B(2) - other reversals”, the condition under Section 16(4) to “claim” ITC till September of subsequent FY would be considered to be fulfilled. Therefore, allowing taxpayers no time limit to re-claim ITC for past periods.	<i>Section 16(4) may be redundant with introduction of new methodology for disclosure in GSTR-3B. Modification of the GST law may be in order.</i>
6.	Tracking suppliers' GSTR-3B status Specific mention in the circular w.r.t. reversal of ITC where supplier has not furnished their GSTR-3B.	ITC may only be claimed when tax has actually been paid to the Govt – Section 16(2)(c). The GSTR-3B status does not get updated in GSTR-2B presently. Another herculean task given to registered person to reconcile whether the return has been	<i>The same may only be possible if previous month 3B filing status and GSTR-1 to GSTR 3B ratio to be computed and discrepancies must be provided separately to Recipient claiming ITC.</i> <i>Section 38 as per the Finance Act 2022 also enforces certain</i>

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		filed or not by the supplier after matching invoices in GSTR-2B . The same is not practically possible and therefore, expecting taxpayers to perform this task may not be upheld in the court of law.	<i>restrictions on ITC claim based on supplier conduct. Without a recourse mechanism and supplier conduct data it would be incorrect to penalise the recipient.</i>
7.	Annual re-computation of ITC under Rule 42 & ITC claimed and reversed under protest Reversal u/r 42 is required to be done in Table 4B(1) – termed as “permanent reversal” in the circular. No methodology provided in law for reclaim of such ITC.	<p>Law permits a taxpayer to re-calculate the amount reversible u/r 42 (common ITC reversal) for the entire FY and reverse any additional amount or re-claim any amount excessively reversed.</p> <p>These ITC may be reclaimed only in Table 4A(5), creating a difference from auto populated GSTR-2B.</p> <p>If such amount is disclosed in Table 4D(1) – ITC reclaim disclosure, this may create a difference with temporary ITC reversed for the year in 4B(2) and may lead to notices.</p>	<i>Separate ITC rows in table 4 may be created for annual r42 re-computation claim and reversal.</i>
8.	Credit Note considered automatically in 4B(1) Until July 2022 returns, the credit note values reflecting in GSTR 2B auto-populated in Table 4B. How should the corrections/deferred concept be applied here?	<p>In India, it is well known that vendors do not raise credit note in time, nor do they raise it appropriately. Sometimes, it is delayed. Alternative practice is for the recipient to raise tax invoice which is incorrect as it is not a ‘supply’.</p> <p>If CN value is incorrectly updated, once table 4B(1) is edited, internal track must be maintained to ensure vendor makes corrections in his returns.</p>	<p><i>The ability to track, verify, approve, reject, keep on hold such CN is a time taking activity.</i></p> <p><i>Considering such ITC as permanent reversal in 4B(1) could result in business relationship hampering and impact the MSME & unorganised sector to a large extent. Clarification with illustrations may help taxpayers.</i></p>

In the aim to ensure clear bifurcation of taxes between States, the taxpayer seems to be required to make multiple disclosures, sometimes for a single transaction!

Some issues provided above do not seem to have a clear solution, although, the consequences/impact has been provided.

Other GSTR 3B issues which do not have a clear solution:

- Restrictions under Section 38 impractical** (*Finance Act 2022 sections yet to be notified*) – Verifying vendor GSTR 3B = GSTR 1, verifying vendor ITC claim, ensuring vendor tax compliance – these are the activities that must be ensured by the govt. Restricting recipient

ITC and shifting the burden of vendor compliance on the customer restricts one's right to business and would be contradictory to the Constitution of India.

GSTN may see how the above compliances could be managed by the vendor himself, if not make all the required tools available to the recipient in a user-friendly manner wherein it would not affect his business functions.

2. **Would credit restricted u/s 38 be subject to time limit u/s 16(4) on subsequent rectification by the supplier?** – This is still a grey area. Clarity from the department is requested on these grounds. Presently only Rule 37 allows re-claim of reversed ITC.
3. **Section 16(4) applicability on Bill of Entry** – The section only refers to 'tax invoice' and 'debit notes' and under Rule 36 bill of entry is clearly established as a separate document on which ITC can be claimed. Would this imply there is no time limit to claim ITC on Bill of Entry (import of goods)? Circular clarifying the same would be welcome.
4. **Section 16(4)-time limit not linked to GSTR 2B** – Whether credit claim before time limit mentioned under s16(4) can be performed irrespective of GSTR 2B reflection. In the event the supplier files the returns after the time limit, as tax has been paid to the govt. why isn't the ITC benefit being extended. Upon vendor filing, if credit was claimed before time limit Section 16(1) & (2) would be satisfied and the activity would only remain a procedural lapse which would stand the judiciary process. To avoid burden on Indian judicial system, clarity in this area can be brought forward.
5. **ITC on registered RCM transactions** – Whether GSTR 2B reflection is mandatory to claim ITC? Ideally as tax is paid by recipient, ITC must be eligible without GSTR 2B reflection although this can be made clear through a Circular.
6. **Other outward disclosure issues** –
 - a. SEZ goods supply to DTA. Where must this be disclosed in table 3 of GSTR 3B? Would the same would also be disclosed by DTA as import of goods in table 4 of GSTR 3B as he would file the Bill of Entry?
 - b. Supplies liable under RCM – Where must this be disclosed by supplier in table 3 of GSTR 3B? (ideally table 3.1.c – but the same is not reflecting in user manual or circulars)

Keeping in mind the aim of CBIC and the present govt. we are sure that we could work towards building a stronger, more user-friendly GST portal which will benefit the Indian nation in the coming years!

Disclaimer – This document has been prepared for knowledge dissemination and is not to be considered as solicitation of work! The views expressed herein are the authors views.

We would welcome and feedback or assistance requirement – feel free to reach us at akshay@hiregange.com or nikita@hiregange.com.