

### Today's Coverage



- Interest on delayed payment of tax and manner of calculation of interest
- Changes in Form GSTR-3B
- Form GSTR-9 applicable for FY 21-22 with few changes
- Discussion on circulars issued covering critical clarifications on matters of GST
- Changes of rate in tax for GTA
- Inverted duty structure refund and other refund related aspects
- Q&A

Interest on delayed payment of tax and manner of calculation of interest

### Manner of calculation of Interest – Rule 88B



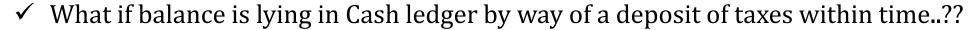
- ✓ Interest payable on net liability only where GSTR-3B has been late filed.
- ✓ Rule 88B (1) and (2) have been notified to clarify on calculation of interest.

	Case	Interest
-	Tax liability for of July – Rs 1,00,000	- Return filed late.
-	Return filed on 30 <sup>th</sup> August 2022 (i.e. 10 days delay)	- Interest @18% on <b>cash</b> portion of liability
-	Tax liability discharged - Rs 1,00,000	i.e. interest on Rs 40,000
-	Rs 40,000 by cash and Rs 60,000 by ITC	
-	Tax liability consequent to proceedings initiated by department i.e. ASMT-10, ADT-02, DRC-01A, DRC-01 etc	- Gross basis
-	Payment of liability through DRC-03	- As above

### Manner of calculation of Interest – Rule 88B



	Case	Interest
- Т	ax liability for of July – Rs 1,00,000	For GSTR-3B of July -
- F	Return filed on 30 <sup>th</sup> August 2022 (i.e. 10 days delay)	- Return filed late.
- Т	'ax liability discharged - Rs 90,000	- Interest @18% on <b>cash</b> portion of liability
- F	Rs 30,000 by cash and Rs 60,000 by ITC	i.e. interest on Rs 30,000
- E	Balance tax liability of Rs 10,000 discharged in GSTR-3B of	For GSTR-3B of December –
Ι	December, filed on due date. There was sufficient balance of ITC	- Interest @18% on 10,000 for 6 months
		(even though there was sufficient ITC)
		(Is it intent?)





✓ Taxes paid other than through returns..??

### Interest only on ITC wrongly availed & utilised



# Manner of calculation of interest in case of ITC "availed and utilised"? [Notification No. 14/2022–Central Tax] – [Effective from Jul 1, 2022]

- Interest @18% on ITC availed and utilised \*
- From date of utilisation \*
- To date of reversal of such credit / payment of tax in respect of such amount

#### "Availed and utilized" (explanation (1) to Rule 88B)

- Where ECL < ITC wrongly availed, shortfall between wrong availment and ECL balance would be "availed and utilized" ITC.
- Eg ITC wrongly availed Rs 10L. ECL balance as on today = Rs 6L. ITC availed and utilized = Rs 4L

#### "Date of utilization" (explanation (2) to Rule 88B)

- Balance falls due to GSTR-3B return earlier of filing date or due date of GSTR-3B.
- Balance falls due to other reasons (DRC-03 payment, refund of ITC etc.) date of debiting in the electronic credit ledger

Changes proposed in Form GSTR-3B

## Changes in Form GSTR-3B (ITC)



	4A. ITC available (whether in part or full)					
4A(1)	Import of goods Import of goods		Auto populated			
4A(2)	Import of services Import of services					
4A(3)	Inward supplies liable to reverse charge (other than 1 &2 above)  Inward supplies liable to reverse charge (other than 1 &2 above)					
4A(4)	Inward supplies from ISD	Inward supplies from ISD	Auto populated			
4A(5)	All other ITC	All other ITC	Auto populated			
	4B. IT(	C Reversed				
4B(1)	(1) As per rules 42 & 43 of CGST Rules As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17					
4B(2)	Others	Others				
	4C. Net ITC (Same as before)					
	4D. <del>Ineligible ITC</del> Other Details					
4D(1)	Ineligible ITC: As per section 17(5)	Other Details: ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period				
4D(2)	Ineligible ITC: Others	Other Details: Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions	Auto populated			



#### Table 4A

- Eligible as well as eligible ITC needs to be reported here.
- Figures auto populated from GSTR-2B would not change, except in case of example #

#### Table 4B(1) – concept of permanent reversal

Type of ITC which cannot be claimed –

- Rule 42 / 43 (common ITC, for wholly exempt or for non-business purposes)
- Section 17(5)
- Financial institutions

#### Table 4B(2) – concept of temporary reversal

ITC which is coming in GSTR-2B of current period, but cannot be claimed in current month / needs to be reversed. These can be claimed in later month(s), subject to fulfilment of conditions.

- Goods / services not received
- Invoice not received (not in circular)
- Supplier has not filed their return
- 180 day Reversal



#### • Table 4D(1)

- ITC which was reversed earlier (temporary nature) in Table 4B(2) and claimed in current period is to be disclosed here
- This table is only for disclosure this amount would not be credited to ECL

#### • Table 4D(2)

- ITC which appears in ineligible portion of GSTR-2B would be required to be disclosed here.
- This includes
  - ITC which is time barred in terms of Section 16(4) i.e. vendor has disclosed invoice after



Supplier	Tax Amount	Nature	GSTR-2B Month	<b>Books - Month</b>
Mr A	50,000	Eligible	July	July
XYZ limited	20,000	Eligible (in August)	July	August
Construction limited	25,000	Ineligible	July	July
PQR limited	15,000	Eligible	August	July

GSTR-3B OI JULY					
ITC Table	Before circular Tax amount (Rs)	After circular Tax amount (Rs)	Comments		
Table 4A (ITC available)	50,000	95,000	GSTR-2B invoices (Mr A, XYZ, Construction invoices), whether eligible or ineligible		
Table 4B(1) – permanent reversal	0	25,000	Invoice from construction limited, ineligible u/s 17(5) to be disclosed here		
Table 4B(2) –temporary reversal	0	20,000	Invoice of XYZ limited not yet booked but coming in 2B – this is a temporary reversal		
NET ITC	50,000	50,000	4A – [ 4B(1) + 4B(2) ]		
Table 4D(1)	25,000	0	17(5) was to be <b>disclosed</b> in Table 4D(1) before.		



Supplier	Tax Amount	Nature	GSTR-2B Month	Books - Month
Mr A	50,000	Eligible	July	July
XYZ limited	20,000	Eligible (in August)	July	August
Construction limited	25,000	Ineligible	July	July
PQR limited	15,000	Eligible	August	July

GSTR-3B of August (assuming no other invoices of August month)				
ITC Table	Before circular <b>Tax amount (Rs)</b>	After circular Tax amount (Rs)	Comments	
Table 4A (ITC available)	35,000	35,000	PQR limited invoice coming in Aug GSTR-2B Invoice of XYZ limited recorded in Aug in Books	
Table 4B(1) -permanent reversal	0	0	No reversal in current month	
Table 4B(2) –temporary reversal	0	0	No reversal in current month	
NET ITC	35,000	35,000	4A – [ 4B(1) + 4B(2) ]	
Table 4D(1)	0	20,000	ITC reversed in earlier months but actual claim in current month	

### Changes in Form GSTR-3B and clarifications



#### **Changes with respect to disclosures Form GSTR 3B (ECO related disclosures)**

- Table 3.1.1 added
- Table 3.1.1 (i) Separate disclosure of tax paid by Electronic Commerce Operators for tax paid u/s 9(5);
- Table 3.1.1 (ii) Separate disclosure of supplies made by the registered persons through Electronic Commerce Operators on which the tax is paid by Electronic Commerce Operators u/s 9(5);

# <u>Disclosure of B2C supplies, supplies to composition taxpayers and UIN holders in Table 3.2 of GSTR-3B - [Circular No. 170/02/2022-GST]</u>

Details of supplies made to the following category of persons shall be reported place of supply-wise, in Table 3.2 of FORM GSTR-3B:

- To the unregistered persons,
- To the registered persons who are composition taxpayers, and
- o to the UIN holders.

GSTR-9 and 9C for FY 21-22 and other changes

### Streamlining of compliances



#### • Changes in Form GSTR 9 & GSTR 9C:

- ✓ Non-GST supply shall be separately reported. exempted / nil can be consolidated.
- ✓ Table 10 and 11 is mandatory and contains- any additions or amendments to supplies made in FY 21-22 but shown in GSTR-1 in amendment table in Apr 22 to Sep 22
- ✓ Outward HSN details shall be mandatory furnished as per the following criteria:
  - o AT in PFY above ₹ 5.00 Cr 6 digit level,
  - AT in PFY upto ₹ 5.00 Cr 4 digit level for all B2B supplies
- ✓ All the existing relaxations that were available for earlier financial years in Form GSTR 9 & Form GSTR 9C have been extended for the financial year FY-2021-22 as well.
- ✓ Exemption from filing annual return in **FORM GSTR-9/9A** for FY 2021-22 for persons having AATO upto Rs. 2 crores [Notification No. 10/2022–Central Tax]

[Notification No. 14/2022-Central Tax]

### Streamlining of compliances



- Amendment to provide for transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person. There must not be any unpaid liability in the electronic liability register [Notification No. 14/2022–Central Tax]
- Explanation 1 after rule 43 of CGST Rules to be amended to provide that there is no requirement of reversal of input tax credit for exempted supply of Duty Credit Scrips by the exporters. [Notification No. 14/2022–Central Tax]
- Specific declaration for non-applicability of e-invoicing provisions to be given on the Tax Invoice, if aggregate turnover exceeds the E-invoicing threshold. [Notification No. 14/2022–Central Tax]
- Limitation under section 73 for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, to be extended till 30th September, 2023.

Circulars covering critical clarifications on GST matters

### Important circulars



- Clarification on the issue of perquisites provided by employer to the employees as per contractual agreement. *Initianally, a press release was issued to clarify perquisites under employment agreement are not taxable.* 
  - ✓ Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.
- Clarification on various issues relating to interpretation of section 17(5) of the CGST Act.
  - ✓ All employee related services (for example food & beverage, outdoor catering, health service, membership of club etc.) are eligible for ITC when obligatory on employer under any law.
- Amount in Electronic credit ledger can be utilised for payment towards output tax (Other than RCM)
  as under:,
  - ✓ whether self-assessed in the return or
  - ✓ payable as a consequence of any proceeding instituted under the provisions of GST Laws.
- Amount in the Electronic Credit ledger cannot be used for the following:
  - ✓ Payment of any interest, penalty, fees or any other amount payable;
  - ✓ Payment of erroneous refund sanctioned to taxpayer, where such refund was sanctioned in cash.

### Clarification regarding fake invoicing



Registered Person 'A'

Only invoice issued without any actual supply

Registered person 'B' do not avail ITC

#### Liability

- A No demand u/s 73 or 74 Liability for penalty for issuing tax invoice without actual supply u/s 122(1)(ii)
- B No demand of interest and penalty as ITC is not utilised. ITC unutilised needs to be reversed

### Clarification regarding fake invoicing





- A No demand u/s 73 or 74 Liability for penalty for issuing tax invoice without actual supply u/s 122(1)(ii)
- B Demand of fraudulent ITC with interest and penalty u/s 74 Benefit of 75(13) by not levying penalty under any other provisions
- Buyer 'C' No liability

### Clarification regarding fake invoicing



Registered Person 'A' Only invoice issued without any actual supply

Registered person 'B' avail ITC

Only invoice issued with no actual supply and ITC utilised

Registered person 'C'

#### Liability

- A No demand u/s 73 or 74 Liability for penalty for issuing tax invoice without actual supply u/s 122(1)(ii)
- B No demand of tax with interest and penalty u/s 74 as no actual supply involved
- Liability for penalty for issuing tax invoice without actual supply u/s 122(1)(ii)
- Liability of penalty for utilising/taking ITC without actual receipt of goods u/s 122(1)(i)
- C Depends on the availment of ITC

Changes in Renting / transportation related activities

### Logistics – renting of vehicles



- Transactions where the vehicle is taken (with operator) for transportation of goods **on time basis** is classifiable under Heading 9966 rental services of transport of vehicles with operators. In these cases, the vehicles are at **disposal** of recipient as per their requirement during the contract period
- Differentiating factors from GTO
  - Specified time instead of trip basis
  - Control over route, usage exercised by the recipient
  - Generally the vehicle is at disposal of recipient.
- It has been clarified in press release that these supplies would be
  - Classified in 9966
  - Taxable at 12% if cost of fuel is included. ITC would be available to the supplier
  - Taxable at 18% if cost of fuel is not included. ITC would be available to supplier.
- With this, transportation of goods has also been kept *pari materia* to the transportation of passengers with or without fuel, presently taxable at 12 and 18%.

### Logistics – GTA



- GTA is given option to pay GST at 5% (without ITC) or 12% (with ITC) under Forward charge.
- RCM option (@5%) to continue.
- Recipient eligible for ITC in all cases.
- Option to be exercised at the beginning of Financial Year.

#### From business perspective

- Connect with transporter for their decision
- Decision making?
- Declaration to be taken from supplier at beginning of year regarding their treatment
- Closely monitor invoices and GSTR-2B to check whether any supplies made incorrectly

#### From GTA supplier perspective -

Rule 42 and 43 compliance to be made corresponding to 5% FCM turnover.

### Logistics – passenger transport services



- Passenger transport services are generally classifiable under 9964. however, when vehicle is taken
  on rent (whether for goods or passenger transport), classification in 9966.
- Entry in RCM notification
  - Services provided by way of **renting of any motor vehicle** designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate
- Renting of motor vehicles for transport of passengers to a body corporate for a **period (time)** is taxable in the hands of body corporate under RCM
- No RCM liability in 9964 cases.
- RCM applicable vehicles (bus, cars) etc taken on rent under control of recipient etc
- RCM not applicable Employee transportation, guest transportation, pick & drop facility etc.

Refund of inverted duty structure & other refund related changes

### Refund - Inverted Rate Structure



- No refund of ITC on input services in inverted duty structure refund
- SC observation in VKC Footsteps There is aberration in formula:
  - ✓ The formula makes a presumption that the output tax payable on supplies has been entirely discharged from the ITC accumulated on account of input goods and there has been no utilisation of the ITC on input services.
  - ✓ However, given the anomalies pointed out by the assessees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same.
- Amendment in formula of Rule 89(5) to take into account output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period.

#### Refund - Inverted Rate Structure



- **Existing formula:** Maximum Refund Amount = {(Turnover of inverted rated supply) x Net ITC÷ Adjusted Total Turnover} tax payable on such inverted rated supply of goods and services.
- Proposed change: Maximum Refund Amount = {(Turnover of inverted rated supply) x Net ITC÷
   Adjusted Total Turnover} [output tax on inverted rated supply\*Net ITC/Total ITC on goods &
   services] [Notification No. 14/2022-Central Tax]

Particulars	Amount	Total
ITC on inputs	60	
ITC on input Services	40	Total ITC 100
Turnover of inverted duty structure	500	
Non inverted turnover	1000	Total turnover – 1500
Output tax on inverted turnover	25	
Refund	Existing= (60*500/1500)-25 = Rs -5	New: (60*500/1500)- (25*60/100)= Rs 5

### Refund - Inverted Rate Structure



- Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.
- **Background:** Circular No. 135/05/2020-GST clarified refund of unutilized ITC owing to inverted rate structure would not be allowed if input and the output supplies are the same and they attract different GST rate at different point in time.
- Confusion that arose was whether goods leviable to GST at concessional rate be disqualified from refund owing to above clarification?
- Guwahati High Court in **BMG Informatics** held that refund of ITC owing to inverted rate structure is allowed even if goods leviable to GST at concessional rate
- Refund of past periods may be claimed as time limits are also extended [Circular No. 173/05/2022-GST]

### Refund with payment of IGST to be dealt u/r 89



- For mismatch between the data furnished in Shipping Bill & GSTR-1 Application for refund of integrated tax paid shall be deemed to have been filed when such mismatch is rectified;
- Commissioner/ Officer Authorised by the Board, based on data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC is essential before grant of refund, or
- If refund withheld due to proper officer of Customs passing an order that goods have been exported in violation of the provisions of the Customs Act, then following needs to be done:
  - Claim shall be transmitted to the proper officer electronically through the common portal in a system generated FORM GST RFD-01,
  - Intimation of such transmission shall be sent to the exporter electronically through the common portal,
  - Such system generated form shall be deemed to be the application for refund,
  - o Refund shall be deemed to have been filed on the date of such transmission,
  - The application for refund in FORM GST RFD-01 transmitted electronically shall be dealt in accordance with the provisions of rule 89. [Notification No. 14/2022 w.e.f. 01.07.2017]



- Re-credit of amount in credit ledger in cases where erroneous refund is sanctioned on account of accumulated ITC OR on account of IGST paid on zero rated supply. A new FORM GST PMT-03A is introduced for the same. [Notification No. 14/2022–Central Tax]
- Procedure is cumbersome:
  - ✓ No automated functionality in place to re-credit based on GST PMT 03A;
  - ✓ Manual written request to be made to the jurisdictional officer;
  - ✓ Officer to pass an order FORM GST PMT-03A, preferably within a period of 30 days.
- For refunds pertaining to SEZ Developer/Unit, an Explanation in Rule 89(1) to clarify that "specified officer" shall mean "specified officer" or "authorized officer" as per SEZ Rules, 2006.

[Notification No. 14/2022-Central Tax]



- Supplies from DFS to outgoing international passengers to be treated as exports and refund benefit to be available M/s Flemingo Travel Retail Limited & Ors vs UoI (W.P. Nos. 1511/2019 and 1535/2019) [Notification No. 14/2022–Central Tax]
- Rule 95A & Circular No. 106/25/2019-GST withdrawn Effective from 01.07.2019
- Amendment in CGST Rules to provide for refund of unutilized Input Tax Credit on account of Export of Electricity. [Notification No. 14/2022–Central Tax]
- Manner of filing refund of unutilized ITC on account of export of electricity is clarified vide [Circular No. 175/07/2022-GST]
- The value of goods exported out of India shall be taken as
  - (i) the Free on Board (FOB) value declared; or
  - (ii) the value declared in tax invoice or bill of supply, whichever is less."

[Notification No. 14/2022-Central Tax]



- Time period from 01.03.2020 to 28.02.2022 to be excluded from calculation of the limitation period for filing refund claim by an applicant under section 54 and 55 [Notification No. 13/2022–Central Tax Effective from 01.03.2020]
- The above time limit also to be extended for issuance of demand/order (by proper officer) in respect of erroneous refunds under section 73 of CGST Act. Presently, various high court allowed refund applications in light of Supreme Court's Suo Moto extension order. [Notification No. 13/2022–Central Tax Effective from 01.03.2020]



- Clarification on the issues pertaining to refund claimed by the recipients of supplies regarded as deemed export:
  - ✓ Whether ITC availed by the recipient of deemed export for claiming refund of tax paid as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017?
  - ✓ Whether ITC availed by the recipient of deemed export supply for claiming refund as deemed exports is to be included in the "Net ITC" for computation of refund under rule 89(4) & rule 89 (5) of the CGST Rules, 2017. [Circular No. 172/04/2022-GST]
- Refund of accumulated ITC not to be allowed on Edible oils and Coal;
- Present exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued and E-wallet scheme not to be pursued further;





#### For any clarification, please contact us



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