



## Dhruva Alert – Proposed amendments to GST Law

A draft proposal for amendments to the GST Law has been released by the Government for seeking comments from various stakeholders by July 15, 2018. A total of **46** amendments have been proposed in the draft across various acts under GST [CGST Act, IGST Act and GST (Compensation to the States) Act].

This alert provides an insight into some of the key amendments proposed.

### 1. Amendment to Schedule III of CGST Act – Transactions neither supply of goods nor supply of service

#### Amendment and Dhruva Comments

#### Proposed Amendment

- Following transactions are proposed to be added to Schedule III of CGST Act which prescribes certain transactions as 'no-supply' transactions:
  - Out and out supply by a registered person i.e. supply of goods from non-taxable territory to another place in non-taxable territory without entering into the taxable territory;
  - Supply of warehoused goods to any person before clearance for home consumption;
  - Supply of goods by consignee to any other person, by endorsement of documents of title to goods, after the goods are dispatched from the port of origin located outside India but before clearance for home consumption i.e. High seas sale.

#### Dhruva Comments

- *The insertion of out and out supply by a registered person in Schedule III would clear the ambiguity on taxability of such transactions. Recently, an advance ruling of **M/s Synthite Industries Ltd., Ernakulam**<sup>1</sup> was issued on similar issue which held that such a supply*

<sup>1</sup> CT/2275/18-C3 dated March 26, 2018



is a non-taxable supply. The amendment would remove the uncertainty existing around such transactions and also the parallel amendment proposed to the input tax credit provisions would safeguard the tax payers from any unnecessary input tax credit reversals.

- As regards, High seas sale and sale within customs bonded warehouse, while Circulars have been issued in the past stating that IGST shall be payable only once i.e. by the ultimate importer, there was no clarity on the nature and treatment of such transactions in the hands of the seller. Such an amendment would bring in more clarity for the trade.
- Further, the recent advance ruling in the case of **BASF India Limited<sup>2</sup>** on taxability of High seas sale transaction treating it as an exempt supply leading to ITC reversal may no longer hold good in light of the amendment in ITC provisions – excluding such supplies from the purview of ‘exempt supply’.

## 2. Amendment in the meaning & scope of ‘supply’ - Section 7 of CGST Act

### Amendment and Dhruva Comments

#### Proposed Amendment

- Section 7(1) of CGST Act which explains the meaning of ‘supply’ is divided into four parts. The 4<sup>th</sup> part i.e. clause (d) states that supply includes activities to be treated as supply of goods or supply of services as referred in Schedule II of CGST Act.
- The said clause (d) is proposed to be omitted from Section 7(1) of CGST Act and a new sub-section i.e. Section 7(1A) is proposed to be inserted to state that Certain activities or transactions which qualify as a supply in terms of Section 7(1), shall be treated either as a supply of goods or services as referred in Schedule II.

#### Dhruva Comments

- Presently, any activity specified in Schedule II is regarded as a deemed supply even if it is not in the course or furtherance of business. However, due to such proposed amendment, all activities which are specified in Schedule II would have to first qualify as a supply in terms of Section 7(1) of CGST Act.

## 3. Amendment to input tax credit provisions under Section 16 of CGST Act

### Amendment and Dhruva Comments

#### Proposed Amendment

- The current proviso to Section 16(2) prescribes that non-payment of invoice value to the supplier within 180 days from invoice date would entail addition of availed credit to his output tax liability along with interest – It is proposed to delete the liability to pay interest on such reversal

#### Dhruva Comments

- Deletion of interest liability for reversal of credit in case of non-payment of invoice value to supplier within prescribed time limit is a welcome move. It needs to be ensured that the tax payers track this closely & follow the procedure for taking credit and then, reverse

<sup>2</sup> GST-ARA, Application No. 27 dated February 21, 2018



the same if payment not made within 180 days. It may be noted that once credit is availed and then subsequently reversed, the timelines stipulated regarding the last date of availing credit does not apply.

#### 4. Amendment to input tax credit provisions - Section 17 of CGST Act

##### Amendment and Dhruva Comments

##### Proposed Amendment

- Amendments are proposed in the input tax credit provisions as under:
  - Section 17(3) enlists specified transactions as exempt supply for credit reversal – It is proposed to exclude the non-supply transactions covered by Schedule III (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building) from the ambit of exempt supply;
  - Following amendments are proposed in Section 17(5) which deals with restrictions on availment of input tax credit:

##### **Amendment in Clause (a):**

- ITC to be restricted only on Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), vessels and aircraft;
- However, credit on aforesaid motor vehicles, vessels & aircraft is allowed for specified use which is now proposed to also include transportation of money for or by a banking company or a financial institution;
- Further, 'other conveyances' in clause (a) is replaced with 'vessels & aircraft'.

##### **Insertion of Clause (aa):**

- Services of general insurance, servicing, repair and maintenance in relation to motor vehicles, vessels and aircraft specified in clause (a) above.

##### **Amendment in Clause (b):**

- Rent-a-cab, life insurance and health insurance proposed to be replaced with "renting or hiring of motor vehicles, vessels and aircraft referred to in clause (a), life insurance and health insurance" and also to be shifted to sub-clause (i) from existing clause (iii);
- Further, it is proposed to allow input tax credit in respect of goods or services or both specified in all sub-clauses under clause (b) (viz. food and beverages, outdoor catering, life insurance, renting / hiring of motor vehicle, health service, etc.) instead of earlier sub-clause (iii) only (viz. only for rent-a-cab, life insurance and health insurance service), where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.



## Dhruva Comments

- *Any Schedule III transaction (current & proposed) i.e. non-supply transactions such as High Seas sale, sale of bonded goods, out & out sale etc. (other than sale of land and building) would not be subject to credit reversal.*
- *Amendments in ITC provisions would be positive for various industries such as construction, banking sector as credit would now be allowed on all motor vehicles (except passenger vehicles upto 13 persons) & conveyances for any business use, passenger motor vehicles, vessel & aircrafts for specified uses, subject to other restrictions as specified in the CENVAT Rules, or restrictions arising out of any exemption notification e.g. GTA services. Further, credit on insurance, servicing & repairs would also be allowed on all motor vehicles except on specified motor vehicles (carrying upto 13 persons), vessels & aircraft.*
- *Credit on rent-a-cab restricted only to renting of passenger motor vehicle (upto 13 persons), vessels & aircraft, thereby allowing credit on hiring of buses for transportation of employees.*
- *Earlier credit was allowed only for rent-a-cab, life and health insurance when it was obligatory for the employer to provide such services to employees, this has been expanded to include supply of all goods & services specified in clause (b) of Section 17(5) of CGST Act.*
- *Certain other amendments that need to be brought in to mitigate the litigations on the following points:*
  - *Specific provision should be introduced for availing part credit in case of part payment of invoices;*
  - *Credit should be allowed on GST paid on advances;*
  - *Definition of 'immovable property' to be introduced;*
  - *Credit to be allowed for Construction related activities which are carried out for the purposes of business and used for providing taxable supply;*
  - *Enabling provision to avail credit by importer on record (not being owner of goods);*
  - *Clarification of the term 'gifts' & 'free samples' as currently very wide connotation has led to debates around whether credit on sales/ business promotion items would be restricted. A monetary limit for 'gifts & free samples' should be prescribed, as in the case of gifts to employees;*
  - *Enabling provision to avail credit on goods taken out of premises for service rendition;*
  - *Specific provision for no reversal of credit when goods are removed for provision of service (as existing in the erstwhile regime);*
  - *Provision to allow credit on inputs supplied for use in warranty;*
  - *Provision should be specifically introduced for no reversal of credit in case of sale of business. To this end, the definition of exempt services could be amended.*



## 5. Amendment to conditions for availing input tax credit on services under Section 16(2) of CGST Act

### Amendment and Dhruva Comments

#### Proposed Amendment

- Section 16(2) prescribes various conditions for availment of input tax credit (ITC) (viz. receipt of goods / services, furnishing of returns, etc.). An amendment is proposed in the Explanation to the said Sub-Section in respect of the condition of receipt of services. The proposed amendment deems the services to be received by a person in cases where the services are provided by supplier to any person on the direction of and on account of such registered person.

## 6. Amendment to Schedule I of CGST Act – Activities to be regarded as supply even if made without consideration

### Amendment and Dhruva Comments

#### Proposed Amendment

- Clause 4 of Schedule I which earlier covered only ‘import of services by a taxable person...’ is now proposed to be amended to state – ‘import of services by a person...’

#### Dhruva Comments

- *This proposed amendment is intended to increase the scope of supplies to be covered in Schedule I. Earlier, only imports by a taxable person as prescribed in Schedule I was covered, thereby excluding the persons not registered under GST, but still undertaking import of services.*
- *Such an amendment would make an unregistered person undertaking such import of services in terms of Schedule I, liable for mandatory registration under GST.*

## 7. Amendment to Section 9(4) of CGST Act – Reverse charge on supplies from unregistered persons

### Amendment and Dhruva Comments

#### Proposed Amendment

- Section 9(4) of CGST Act, providing for reverse charge on the supplies received from unregistered persons, is proposed to be amended so that it applies to only such class of persons as may be notified.

#### Dhruva Comments

- *At present, the aforesaid provision has been deferred till September 30, 2018. The proposed amendment would restrict application of the said provision to a select class of persons and thereby, would substantially reduce compliances in terms of payment of taxes, claiming input tax credit, raising self-invoices, disclosure in returns, etc.*

## 8. Amendment to definition of ‘Export of Services’ – Section 2(6)(iv) of IGST Act

### Amendment and Dhruva Comments

#### Proposed Amendment

- One of the conditions for a transaction to qualify as export of services is receipt of payment by the service provider in convertible foreign exchange. Amendment in the



definition has been proposed to allow receipt of payment in Indian Rupees ('INR') in cases permitted by the Reserve Bank of India ('RBI').

#### **Dhruva Comments**

- *Receipt of payment in INR for services provided to Nepal and Bhutan is a permissible payment mechanism as per RBI and thus, such services should qualify as an export pursuant to the proposed amendment.*
- *Consequential amendment needs to be carried out to Notification No. 9/2017- Integrated Tax (Rate), dated the 28 June 2017 to remove the entry no. 10D from the exemption notification, namely, 'supply of services having place of supply in Nepal or Bhutan, against payment in INR'.*

### **9. Amendment to Place of Supply – Section 12(8) of IGST Act**

#### **Amendment and Dhruva Comments**

#### **Proposed Amendment**

- It has been proposed that place of supply in case of transport of goods from India to a place outside India shall be the place of destination of such goods.

#### **Dhruva Comments**

- *By virtue of the said proposed amendment, transport of goods from India to a place outside India should not be liable to GST as the place of supply will be outside India, provided the transaction satisfies all the conditions under export of services.*

### **10. Amendment to Place of Supply – Section 13(3)(a) of IGST Act**

#### **Amendment and Dhruva Comments**

#### **Proposed Amendment**

- Presently, the place of supply in case of services supplied in respect of goods required to be made physically available to the supplier of services is the location where the services are actually performed. However, the second proviso to the sub-section (a) carved an exception for goods temporarily imported in India for repairs and exported post performance of such repairs. It has been proposed to amend the said proviso to include goods which are temporarily imported for any other treatment or process and exported post such treatment or process.

#### **Dhruva Comments**

- *The proposed amendment seeks to exclude the import and re-export of goods after conducting any treatment or process on the same from the tax net. Thus, service in relation to goods imported for job work should not be liable to GST.*





## 11. Amendment in Section 12(2) and 13(2) of CGST Act – Time of supply in relation to goods and services respectively

### Amendment and Dhruva Comments

#### Proposed Amendment

- Currently, Section 12(2) which prescribes time of supply of goods states that, it shall be earlier of date of issue of invoice or last date on which invoice is required to be issued under Section 31(1) of CGST Act or date of receipt of payment. An amendment is proposed to delete the reference to sub-section 1 of Section 31, thereby making a reference to entire Section 31.
- Similar amendment is proposed in Section 13(2) by deletion of sub-section 2 to Section 31, so as to make reference to entire Section 31.

#### Dhruva Comments

- *The said amendment would remove the anomaly which currently exists by referring only to Section 31(1) and 31(2), as the case may be. Pursuant to the proposed amendment, even the time limit to raise invoice in case of continuous supply of goods / services shall also be covered.*

## 12. Amendment in the definition of 'service' – Section 2(102) of CGST Act

### Amendment and Dhruva Comments

#### Proposed Amendment

- An explanation is being proposed to be added in the definition of service to clarify that services would also include facilitating or arranging transactions in securities.

#### Dhruva Comments

- *This amendment is more of a clarification in nature to avoid any disputes in future. Only transaction in securities is excluded from 'goods' as well as 'services' and any activity in relation to transaction in securities was always covered under the purview of GST.*

## 13. Amendment to Section 24(x) of CGST Act – Registration for e-commerce operator

### Amendment and Dhruva Comments

#### Proposed Amendment

- Clause (x) of Section 24 states that every e-commerce operator is required to take registration. Now it is proposed that the registration is required only for those e-commerce operators who are required to deduct TCS under Section 52.

#### Dhruva Comments

- *The TCS provisions are currently suspended till September 30, 2018. Accordingly, at present the registration would be required to be taken by the e-commerce operator only if their threshold limit exceeds ₹20 lakhs.*



#### 14. Amendment to Section 29(1) & (2) of CGST Act – Registration for e-commerce operator

##### Amendment and Dhruva Comments

##### Proposed Amendment

- It is proposed that once a person has applied for cancellation of the registration then the proper officer may suspend such registration subject to certain conditions and limitations as may be prescribed.

##### Dhruva Comments

- *The said amendment aims to reduce the compliance burden till the procedural formalities for cancellation are completed.*

#### 15. Amendment to Section 25(2) of CGST Act – Separate registration for place of business and units / developer of SEZ

##### Amendment and Dhruva Comments

##### Proposed Amendment

- The following provisos are proposed to be added to Clause (2) of Section 25:
  - A person having multiple places of business in a State / Union territory may be granted separate registration for each such place;
  - A person having a Unit in SEZ or a developer of SEZ, shall be granted separate registration distinct from its units located in the DTA;
  - A person shall be granted a separate registration for its each unit, in a SEZ.

##### Dhruva Comments

- *The amendment for separate registration for each place of business is on the same lines as existed under the erstwhile Service Tax and Excise laws.*
- *Currently, only one registration can be taken for multiple place of business in a State/Union territory, except, when there is a separate business vertical. This will enable companies for take separate registration for different lines of business, even in a situation where there is no separate vertical. However, this will also lead to credit fungibility issues, as credit of one registration may not be utilisable against credit of other registration.*
- *Rule 8 of CGST Rules required that the SEZ unit / Developer should make a separate application for registration as a business vertical distinct from its other units located outside the SEZ. The Section is now being amended to align the same with the Rules.*

#### 16. Insertion of Explanation to Section 143(1) of CGST Act – Time limit to bring back or supply inputs or capital goods, after completion of job work

##### Amendment and Dhruva Comments

##### Proposed Amendment

- Section 143(1) of CGST Act provides for a time limit of one year and three years to bring back or supply inputs or capital goods (other than moulds and dies, jigs and fixtures, or tools), respectively, after completion of the job work.





- The proposed Explanation provides for extension of such time limit of one year or three years by a further period of one year and two years, respectively, by the Commissioner upon sufficient cause being shown.

#### **Dhruva Comments**

- *Certain job work processes such as fabrication/manufacture of huge machineries or vessels, etc. require more than a year for completion. It is Government's initiative towards ease of doing business.*

### **17. Amendment to Section 34 of CGST Act – Issuance of credit / debit note(s) against tax invoice(s)**

#### **Amendment and Dhruva Comments**

#### **Proposed Amendment**

- Amendment is proposed to be made to sub-section (1) and (3) of section 34 to permit registered person to issue consolidated credit / debit notes in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices

#### **Dhruva Comments**

- *Issuance of a single credit note against one invoice and linkage has been creating a lot of compliance burden on tax payers, including accounting challenges. This is a very welcome step.*
- *While it is proposed to allow issuance of consolidated credit notes / debit notes against multiple invoices, which is in line with the best international practices, it needs to be seen how the Form GSTR-1 return format is amended.*

### **18. Amendment to Section 39(9) of CGST Act – Amendment of returns for inadvertent mistakes**

#### **Amendment and Dhruva Comments**

#### **Proposed Amendment**

- It is proposed to allow tax payers to amend the returns to rectify inadvertent mistakes / omissions done in the returns filed.

#### **Dhruva Comments**

- *The time-limit for filing such an amendment return as well as the number of times such amendment can be done also needs to be specifically provided for in the law, as currently, though the system allows certain amendments in subsequent returns, amendments can be done for only a particular month, which is in clear contradiction to the provisions of the law. Further, the manner in which input tax credit mismatch mechanism will function in light of the amendment of the return will also need to be thought through. Nevertheless, the much-awaited proposal for allowing filing of amendment return will be a welcome move.*
- *It also needs to be evaluated whether the amendment return will also enable taxpayers to offset (pay) any tax liability from the electronic cash ledger or electronic credit ledger or both, which currently is possible only through GSTR-3B.*



## 19. Introduction of Section 43A – Revised procedure for furnishing return and availing input tax credit

### Amendment and Dhruva Comments

#### Proposed Amendment

- A new return filing procedure alongwith revised mechanism for mismatch and availment of input tax credit is being proposed. The new section is inserted to enable the machinery procedures, safeguards and threshold of tax amounts in the invoices, which are to be notified in the CGST Rules, to allow tax payers to amend the returns to rectify inadvertent mistakes / omissions done in the original returns.

#### Dhruva Comments

- *The new return filing procedure as proposed by the Returns Committee and approved by GST Council is expected to be introduced from December 2018.*
- *It is expected that under the revised procedure, input tax credit will be allowed to the recipient only to the extent of invoices disclosed by the supplier in his outward returns. The specific details regarding such revised procedure are yet to be notified.*
- *With the revised procedure proposed to be introduced, corporates will have to be more particular on the timelines for receiving the invoices as well as booking them in the system, so that in case of mis-match, they can take timely action. Else, this could result in cash blockage, or in some cases, even loss of credit.*

## 20. Amendment to Explanation (2)(e) to Section 54 of CGST Act – ‘Relevant date’ while claiming refund of unutilised input tax credit

### Amendment and Dhruva Comments

#### Proposed Amendment

- Explanation (2)(e) to Section 54 of CGST Act provides for the ‘relevant date’ to be the end of the financial year in which refund claim arises with respect to the unutilized input tax credit pertaining to the following cases:
  - zero rated supplies made without payment of tax;
  - inverted rate structure.
- The said explanation is proposed to be amended to provide for the relevant date as the due date of furnishing return under Section 39 (i.e., 20<sup>th</sup> of the succeeding month). Further, such proposed amendment would apply only to the refund claims pertaining to the unutilized input tax credit, arising out of the inverted rate structure.

#### Dhruva Comments

- *In order to resolve the overlapping provisions to determine relevant date, the proposed amendment restricts the applicability of Explanation (2)(e) to determine relevant date for refund of unutilized input tax credit, pertaining to inverted rate structure only.*



## 21. Amendment to Section 54(8)(a) of CGST Act – Refund of tax paid on zero rated supplies or on inputs / input services used in making such zero-rated supplies

### Amendment and Dhruva Comments

#### Proposed Amendment

- Section 54(8) of CGST Act provides for the list of situations where refund can be claimed, wherein the clause (a) provides for refund of tax paid on zero rated supplies or on inputs / input services used in making such zero-rated supplies.
- Said clause (a) is proposed to be amended to provide for refund of tax paid on export of goods / services or both or on inputs / input services used in making such exports.

#### Dhruva Comments

- *Section 54(8)(e) of CGST Act provides for refund of tax, interest or any other amount, if the incidence such amounts have not passed. Whereas, no such test for unjust enrichment is provided under clause (a) i.e., refund of tax paid on zero rated supplies or on inputs / input services used for making such zero-rated supplies.*
- *As per Section 16 of IGST Act, zero-rated supplies include export of goods or services and supply of goods or services to an SEZ developer or an SEZ unit.*
- *Hence, in order to apply principle of unjust enrichment to supplies made to SEZ developers/units, the aforesaid clause (a) is proposed to restrict its application to refund of tax paid on exports or on inputs or input services used for making such exports.*

## 22. Insertion of Explanations to Section 79(1) of CGST Act – Recovery of tax

### Amendment and Dhruva Comments

#### Proposed Amendment

- The following two Explanations to Section 79(1) of CGST Act (pertaining to recovery of taxes) have been proposed to be inserted:
  - The word 'person' shall include 'distinct persons'
  - Collection means Collector of a revenue district and includes a Deputy Commissioner or a district magistrate or head of the revenue administration in a revenue district.

#### Dhruva Comments

- *The proposed amendments would result in recovery of taxes not only from the said person but also from the distinct persons i.e., branches located in the same or the other States / Union Territories.*

## 23. Amendment to Section 107(6)(b) and 112(8)(b) of CGST Act – Pre-deposit for filing Appeal before the Appellate Authority and Appellate Tribunal

### Amendment and Dhruva Comments

#### Proposed Amendment

- Section 107(6)(b) of CGST Act provides for payment of pre-deposit amounting to 10% of the tax in dispute before filing an appeal to an appellate authority. Such pre-deposit is proposed to be restricted to ₹25 crore.



- Section 112(8)(b) of CGST Act provides for payment of pre-deposit amounting to 20% of the tax in dispute (in addition to amount paid under Section 107(6) of CGST Act) before filing an appeal to the Appellant Tribunal. Such pre-deposit is proposed to be restricted to ₹50 crore.

#### **Dhruva Comments**

- *The proposed amendments would provide relief in cases involving huge tax litigations / controversies.*

### **24. Amendment to section 49(5)(c) and 49(5)(d) of CGST Act – Amendment to the provisions relating to order of utilization of input tax credit relating to State tax / Union Territory tax**

#### **Amendment and Dhruva Comments**

#### **Proposed Amendment**

- Amendment is proposed to the said sub-clauses, to align the order of utilization of input tax credit relating to State tax / Union Territory tax with the restrictions placed on the GST common portal to provide that the credit of State tax/ Union territory tax can be utilized for payment of integrated tax only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax.

### **25. Introduction of new sub-section 49(5A) of CGST Act – Enabling powers to Government to prescribe any specific order of utilization of input tax credit**

#### **Amendment and Dhruva Comments**

#### **Proposed Amendment**

- A new sub-section 49(5A) has been introduced to enable the Government, on the recommendations of the GST Council to prescribe any specific order of utilization of input tax credit of any of the taxes viz., integrated tax, central tax, State tax or Union territory tax for the payment of the said taxes.

#### **Dhruva Comments**

- *The manner of utilization (which credit can be used for payment of what output taxes) is currently prescribed by the GST law. However, the law currently does not restrict the order of utilization. Amendment to Section 49(5)(c) and Section 49(5)(d) (stated aforesaid) is one such example of prescribing the order of utilization.*



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