

M2K Alert

Amendments to GST law based on recommendation of 39th GST Council Meeting

1. Background

The GST Council in its 39th GST Council Meeting held on 14 March 2020 had recommended many measures for facilitation of trade, ease of compliance, etc.

In this regard, the Central Board of Indirect Taxes and Customs (CBIC) has issued multiple notifications and circulars during the period 18 March 2020 till 31 March 2020 to give effect to the recommendations of the Council.

This Alert seeks to summarise the amendments effected through these notifications and clarifications by way of circulars. This Alert does not cover the notifications issued in connection with relaxations given by the Government pursuant to the spread of pandemic of COVID-19 for which have been in a separate alert.

2. Key Highlights of the amendments

2.1 Amendments in GST Rules [notification no. 16/2020 dt. 23 March 2020]

2.1.1 Aadhar Authentication for GST Registration

- Mandatory authentication of Aadhar Number for every new registration on or after 1 April 2020. The authentication shall be as follows:

Type of Person	Whose Authentication
Individual	Sole Proprietor
HUF	Karta
Company	All Authorized Signatory
Partnership Firm	All Managing and Authorized partner(s)
LLP	All Managing and Authorized partner(s)
Others	All Authorized Signatory

Further, Government vide Notification No. 17/2020 – Central Taxes has exempted a person who is not a citizen of India from the requirements of Aadhar authentication.

- If the applicant fails to obtain Aadhar verification of the authorized person, then registration shall be granted only after physical verification of principal place of business by proper officer within 60 days of filing application. The proper officer after satisfying the physical verification shall grant the registration.
- If Aadhaar number is not assigned to the said individual, he shall be offered an alternate and viable means of identification.

2.1.2 Insertion of Proviso to Rule 80(3) – Threshold limit for GSTR 9C increased

- The threshold limit for filing of FORM GSTR 9C for the FY 2018-19 has been increased to Rs. 5 Crores from existing limit of Rs. 2 Crores.

2.1.3 Amendment in Rule 43 – Manner of determination of Input Tax Credit in respect of Capital Goods and reversal thereof in certain cases

- Computation of ITC when capital goods which was earlier used only for providing exempt supplies, are subsequently used for providing both exempt and taxable supplies.
 - If capital goods which were earlier used for exempt supplies or non-business operations are subsequently used for providing both taxable and exempt supplies, then the ITC availed during the tax period in which such capital goods are used for common purpose shall be amount as reflected on the invoice and the same shall be taken as a credit to the electronic credit ledger.
 - Ineligible credit attributable to the period during which such capital goods were used for exempt supplies (calculated at the rate of five percentage points for every quarter or part thereof) shall be added to the output tax liability of the tax period in which such credit is claimed. The computation of the ineligible credit shall be computed separately for CGST, SGST and IGST and declared in Form GSTR 3B accordingly.
 - Earlier, the amount to be credited in electronic credit ledger would be the amount of credit after reducing the ineligible portion of credit (Net basis) which was attributable to exempt supplies.

Illustrations of the impact due to the aforesaid amendment

S. No	Particulars	Existing Rule	New Rule
1	Total ITC as per Invoice of Capital Goods	Rs. 120,000	Rs. 120,000
2	Date of Purchase of Capital Goods	01.04.2019	01.04.2019
3	Date on which asset is used for dual use	01.01.2020	01.01.2020
4	Amount of ITC to be availed at the time of purchase	Nil	Nil
5	Amount of ITC to be availed at the time of using for both taxable and exempt purpose	Rs. 120,000	Rs. 102,000 (120,000 X 17/20)
6	Amount of ITC to be added to the output tax liability (as reversal)	Rs. 18,000 (120,000 X 3/20)	Nil
7	Ratio of turnover of taxable and exempt supplies	50:50	50:50
8	Amount of ITC to be reversed under Rule 43 on monthly basis	Rs. 1,000 (120,000/60 X 0.5)	Rs. 850 (102,000/60 X 0.5)

- For computation of proportionate reversal of ITC under Rule 43, where capital goods which was earlier used only for providing taxable supplies, are subsequently used for providing both exempt and taxable supplies, the credit as reflected on the invoice shall be considered as ITC. Prior to the amendment, the amount considered for computation of proportionate monthly reversal was the credit as reflected on the invoice reduced by credit attributable, arrived based on useful of 60 months, to the period during which such capital goods were used for taxable supplies only. It has been further clarified that useful life of any capital goods shall be considered as five years from the date of invoice.

Illustrations of the impact due to the aforesaid amendment

S. No	Particulars	Existing Rule	New Rule
1	Total ITC as per Invoice of Capital Goods	Rs. 120,000	Rs. 120,000
2	Date of purchase of Capital Goods	01.04.2019	01.04.2019
3	Date on which asset is used for dual use	01.01.2020	01.01.2020
4	Amount of ITC to be availed at the time of purchase	Rs. 120,000	Rs. 120,000
5	Ratio of turnover of taxable and exempt supplies	50:50	50:50
6	Amount of ITC to be reversed under Rule 43 on monthly basis	Rs. 1,000 (120,000/60 X 0.5)	Rs. 850 [(120,000 - 18,000) / 60 X 0.5]

2.1.4 Amendment to definition of Turnover of Zero-Rated supply of Goods in Rule 89(4)

- The definition of "Turnover of Zero-rated Supply of goods" has been substituted in clause (C) of Rule 89(4) as follows,

"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;"

- At the time of the submission of refund application, the exporter would have to declare that the value of goods exported is not more than 1.5 times of the value of similar goods domestically supplied by the supplier or similarly placed supplier.
- In case value of goods exported is more than 1.5 times of value of goods sold in domestic value, then for the purpose of refund, the excess value of goods over and above 1.5 times, would have to be excluded for computation of refund amount.
- Impact to the refund claim on account of aforesaid rule is illustrated below

S. No	Particulars	Existing Rule (Rs.)	New Rule (Rs.)
1	Value of export supplies for 100 qty (export turnover)	500,000	500,000
2	Value of domestic supplies for 100 Qty (domestic turnover)	250,000	250,000
3	Total ITC for the Period	100,000	100,000
4	Export Turnover for refund purpose	500,000	375,000
5	Adjusted Total Turnover for refund purpose *	750,000	625,000
6	Eligible refund amount (3 X 4 / 5)	66,667	60,000

* Though, no specific amendment has been made to the definition of Adjusted Total Turnover in this regard, relying on judicial precedents¹ available on such issues, a view can be taken that any adjustment made to turnover in the numerator shall have to be made to denominator as well.

¹ CIT v HCL Technologies Limited (SC); CIT v Tata Elxsi Limited (Kar HC) 349 ITR 98,

2.1.5 Insertion of new rule 96B - Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods, where export proceeds not realised

- Where any refund of unutilised ITC on export of goods or of IGST paid on export of goods has been paid to an applicant but the sale proceed in respect of such export of goods have not been realised, in full or in part, within the period allowed under The Foreign Exchange Management Act, 1999 ("FEMA") (9 / 15 months), including any extension of such period allowed under FEMA regulations, the exporter shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within 30 days of the expiry period of the said period.
- If the amount is subsequently recovered from the customer, the exporter shall submit an application to the proper officer within a period of 3 months from the date of realization and refund shall be granted by the proper officer to the exporter to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India ("RBI").
- However, if RBI writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.
- In our view the approval of extension / write off by AD Category 1 Bank as per the Master Directions on export of goods and services issued by RBI, shall be considered as approval of RBI in this regard. However, clarification from department in this regard shall be useful to avoid any interpretation issues.
- Changes has been made in the refund application Form RFD-01, whereby a new undertaking is required to be furnished by applicant with regard to realization of export proceeds.

2.1.6 Retrospective insertion of explanation in Rule 96(10) to clarify on the applicability of the rule.

- It has been clarified that If the importer has paid IGST / Compensation Cess on imports of goods, then rule 96(10) shall not be applicable to them and it shall choose the option of claiming refund by way of Rebate Model (Payment of IGST on export of goods and claiming the refund of the same). In other words, the benefit of the notifications mentioned therein shall not be considered to have been availed where the registered person has paid IGST and Compensation Cess on imported inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

2.1.7 New sub Rule 92(2) – Refund of excess payment of tax

- The amount of refund (excluding export refunds) to be paid in cash shall be proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, and for remaining refund amount shall be given by way of re-credit of ITC in electronic credit ledger.
- Further, adjustment of outstanding demand under the Act or under any existing law (excise, service tax etc.) against the refund order, shall be against the cash portion of the refund.

2.1.8 Power to Dispose seized goods

- The power to dispose the seized goods or things, under rule 141(2), has now been given to the proper officer. Earlier, it could be done only by the commissioner.

2.2 Due date of Annual Return

- The due date for Filing of Annual Return in FORM GSTR 9 along with reconciliation statement in FORM GSTR 9C for the FY 2018-19 has been extended from 31 March 2020 to 30 June 2020.

2.3 **Waiver from filing of Form GSTR 1 for certain class of persons**

- The requirement for furnishing FORM GSTR-1 for FY 2019-20 for taxpayers who could not opt for availing the option of special composition scheme has been waived off, provided they have filed GSTR 3B or GST CMP-08 for all the tax period.

2.4 **Deferment of date of implementation of E-Invoicing and Q-Code process [Notification no. 13/2020 & 14/2020 dt 21 March 2020]**

- The date of implementation of E-invoicing and QR code has been deferred to 1 October 2020 from existing date of 1 April 2020.
- The following class of person has been exempted from implementation of E-invoicing and QR code.
 - Insurance companies
 - Banking companies, including Non-Banking Financial Companies
 - Goods Transport Agency
 - Passenger Transport Service provider and
 - Cinemas in multiplex screens.

Further, supply of online information and database access or retrieval ("OIDAR") services by registered persons located outside India to unregistered persons located in India have been exempted from the requirement of QR Code.

2.5 **Notifications for prescribing due dates for filings certain Forms**

The due dates for filing of various forms has been prescribed as follows:

Notification No.	Form	Period	Due Date	Applicable for
20/2020 – Central Taxes dt. 23 March 2020	GSTR 7	July 2019 to October 2019	24 March 2020	Registered person whose principal place of business is in erstwhile state of Jammu and Kashmir ("State of J&K")
	GSTR 7	November 2019 to February 2020	24 March 2020	Registered person whose principal place of business is in <u>Union territory of Jammu & Kashmir or the Union territory of Ladakh ("UT of JK & L")</u>
21/2020 – Central Taxes dt. 23 March 2020	GSTR 1 (Quarterly)	October 2019 to December 2019	24 March 2020	Registered person whose aggregate turnover is up to <u>1.5 Crore</u> and whose principal place of business is in the <u>state of J&K or UT of JK & L</u>
22/2020 – Central Taxes dt. 23 March 2020	GSTR 1	October 2019	24 March 2020	Registered person whose aggregate turnover is <u>more than Rs. 1.5 Crore</u> and principal place of business is in the <u>state of J&K.</u>

Notification No.	Form	Period	Due Date	Applicable for
		November 2019 to February 2020	24 March 2020	Registered person whose aggregate turnover is <u>more than Rs. 1.5 Crore</u> and principal place of business is in the <u>UT of JK & L.</u>
23/2020 – Central Taxes dt. 23 March 2020	GSTR 1	July 2019 to September 2019	24 March 2020	Registered person whose aggregate turnover is <u>more than Rs. 1.5 Crore</u> and principal place of business is in the <u>state of J&K</u>
24/2020 – Central Taxes dt. 23 March 2020	GSTR 1 (Quarterly)	July 2019 to September 2019	24 March 2020	Registered person whose aggregate turnover is up to Rs. 1.5 Crore and principal place of business is in the <u>state of J&K.</u>
25/2020 – Central Taxes dt. 23 March 2020	GSTR 3B	October 2019	24 March 2020	Registered person whose principal place of business is in the <u>state of J&K</u>
	GSTR 3B	November 2019 to February 2020	24 March 2020	Registered persons whose principal place of business is in the <u>UT of JK & L.</u>
26/2020 – Central Taxes dt. 23 March 2020	GSTR 3B	July 2019 to September 2019	24 March 2020	Registered persons whose principal place of business is in the <u>state of J&K.</u>
27/2020 – Central Taxes dt. 23 March 2020	GSTR 1 (Quarterly)	April 2020 to June 2020	31 July 2020	All Registered persons having turnover of less than Rs. 1.5 Crore
		July 2020 to September 2020	31 October 2020	
28/2020 – Central Taxes – dt 23 March 2020	GSTR 1	April 2020 to September 2020	11 th day of subsequent month	All Registered persons having turnover of more than Rs. 1.5 Crore
29/2020 – Central Taxes – dt 23 March 2020	GSTR 3B	April 2020 to September 2020	22 nd or 24 th of the subsequent month	All Registered persons having turnover of less than Rs. 5 Crore depending on states in which registration has been obtained
			20 th of the subsequent month	Registered persons having turnover of more than Rs. 5 Crore

2.6 Special Procedure for Taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to merger of the two Union Territory [Notification No. 10/2020 – Central Taxes dt. 21 March 2020]

- Special procedures has been prescribed for the registered person whose principal place of business was in Union territory of Daman and Diu or in Dadra and Nagar Haveli (erstwhile UT) till 26 January 2020 and thereafter is in the merged Union territory of Daman and Diu and Dadar and Nagar Haveli ("New UT") and these special procedures would be required to be followed till 31 May 2020 (Transition date).
- The tax period for filing of returns of January 2020 and February 2020 shall be as follows:

Month	Period
January 2020	1 January 2020 to 25 January 2020
February 2020	26 January 2020 to 29 February 2020

- The registered person having GST registration in both the erstwhile UT's till 25 January 2020 shall have an option to transfer the balance of input tax credit after filing return of January 2020 to the registered GSTIN of the new UT. In this regard following procedures would need to be followed.
 - Intimate the Jurisdictional Tax Officer of both transferor and transferee regarding the transfer within one month of obtaining registration of New UT.
 - The transfer shall be done through GSTR 3B return for the tax period before 31 May 2020. The transferor GSTIN shall debit the ITC in Table 4(B)(2) (i.e. ITC Reverse – others), the transferee GSTIN shall credit the equal amount of ITC in Table 4(A)(5) (i.e. All other ITC).
 - ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile UT of Daman and Diu for the tax period before transition date.
- The balance of Union Territory taxes in the electronic credit ledger of the registered person whose principle place of business lies in the erstwhile UT of Daman and Diu as on 25 January 2020 shall be transferred as balance of Union territory tax in the electronic tax ledger of New UT.

2.7 Special procedure for corporate debtors undergoing the corporate insolvency resolution process ("CIRP") under the Insolvency and Bankruptcy Code, 2016 [Notification No. 11/2020 – Central Taxes dt 21 March 2020]

- Special Procedures have been prescribed for the registered persons ("erstwhile person"), who are corporate debtors under the provision of the Insolvency and Bankruptcy Code, 2016 ("IBC 2016") and undergoing the corporate insolvency and the management of whose affairs are being undertaken by Interim Resolution Professional (IRP) or Resolution Professionals (RP), and such erstwhile person shall follow the special procedure from the date of appointment of IRP/RP till the period they undergo the corporate insolvency resolution process.
- Erstwhile person upon appointment of the IRP/RP shall be considered as distinct person under the GST Laws and IRP / RP shall be liable to take new GST registration within 30 days of appointment of IPR / RP in each of the states / UT's where the Erstwhile RP is registered. The existing registration will also continue parallelly.
- In cases where the IRP/RP is appointed before issue of this notification (i.e. 21 March 2020), registration to be taken within 30 days from 21 March 2020.
- The IRP/RP shall file the first return under section 40 as follows:

Outward supplies	Pay tax on the supplies made from the date on which he becomes liable for registration (appointment of IRP / RP) till the date on which registration is granted.
Input Tax Credit	Avail eligible input tax credit on invoices covering the supplies of goods or services or both, after appointment of IRP/RP but bearing the GSTIN of the erstwhile persons. The time limit of availing ITC as given section 16(4) and provision of reconciliation with GSTR 2A under Rule 36(4) shall not be applicable.
Amount deposited in electronic cash ledger of Erstwhile RP	Amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration shall be available for refund to the erstwhile registration

- Persons who have received supplies from the erstwhile persons from the date of appointment of IRP / RP till the date of receipt of new registration (or within 30 days of this notification) shall be eligible to avail input tax credit on invoices issued using the GSTIN of the Erstwhile RP.

2.8 Change in Place of Supply for cross border transaction for specified services.

- The place of supply under section 13(3) of the IGST Act, 2017 for supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts, supplied to a person for use in the course or furtherance of business by recipient, shall be place of recipient of services. Accordingly, such services provided to person located outside India shall be considered as export of services.

2.9 Notification for changes in GST Rates effective from 1 April 2020

S. No	Description of Goods / Services	Existing Rate	New Rate
1	Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts.	18%	5%
2	Handmade safety matches	5%	12%
3	Matches (Other than handmade safety matches)	18%	12%
4	Mobile Phones and parts for manufacture of mobile phones	12%	18%

3. Important aspects of CBIC circulars issued

3.1 Apportionment of ITC in respect in case of business reorganization [Circular No.133/03/2020-GST dt. 23 March 2020]

- The CBIC vide this circular has provided certain clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ ownership of business (in the context of business reorganization).
- Value of Asset for apportionment of ITC in case of demerger as per Rule 41(1)
 - The **value of assets** of the new units, for the apportionment of ITC pursuant to demerger, is to be taken at **the State level** (at the level of distinct person) and not at the all-India level.
 - The value of assets means the full of assets of the business (Whether the input tax credit has been availed or not)

- The FORM GST ITC-02 is required to be filed only in states where both transferor and transferee is registered and not in all states where the transferor is registered. In other words, if IATAC pertains to a state, where the demerged business does not exist, then ITC 02 is not required to be filed in such states.
- The formula for apportionment based on value of assets will be applicable for all forms of business re-organization, that results in partial transfer of business asset along with liabilities. (e.g. business sale on going concern basis).
- Determination of ITC amount to be transferred under respective heads.
 - The ratio of value of assets, shall be applied to the **total amount of unutilized input tax credit (ITC)** of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The formula should not be applied separately in respect of each heads of ITC (CGST/SGST/IGST).
 - The transferor has the liberty to transfer the determined amount of input tax to be transferred under each head within the total amount eligible for transfer and subject to available balance in the electronic credit ledger.
 - The apportionment of input tax credit shall be done as on the date of filing FORM GST ITC -02 by the transferor.
 - However, the value of assets should be taken as on the "appointed date of demerger as per the Companies Act", and the said ratio shall be applied on the balance of input tax credit as on date of filing of Form GST ITC 02.

3.2 Clarification on certain issues for companies under IBC process [Circular No. 134/03/2020-GST]

- No coercive action can be taken against the corporate debtor with respect to recovery of GST dues for the period prior to insolvency commencement date.
- GST dues prior to commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT.
- The registration of the Erstwhile Persons cannot be cancelled. The proper officer may, if need be, suspend the registration. In case the registration of Erstwhile Persons has already been cancelled and it is within the period of revocation of cancellation of registration, then such cancellation may be revoked.
- IRP /RP is not liable to file returns of pre-CIRP period. He is only liable to comply with legal requirements **for period after Insolvency Commencement Date i.e. for new GST registrations as per Point No. 2.7 above.**

3.3 Clarification of certain refund related issues [Circular No.135/03/2020-GST]

- The refund of accumulated ITC shall **be restricted to ITC** as per those invoices the details of which are uploaded by the supplier in Form GSTR-1 and are **reflected in FORM GSTR-2A** of the applicant. However, this is not in line with the Rule36(4) which allows a variance up to 10% of amount of eligible ITC which is reflected in GSTR 2A. Hence, one will have to wait to see how the system is enabled for claiming the differential 10% of the ITC which is not reflected in the GSTR 2A.
- Applicant will have to furnish details of **HSN/SAC in the Annexure B – Details of Input Tax Credit**, submitted along with the refund application, to enable the officer to identify whether the inward supply is in nature of capital goods / ineligible services. Further, in respect of ITC where

the supplier is not required to mention the HSN code on the invoice, then HSN/SAC code for such invoices need not be given in the Annexure B.

- Refund shall not be allowed under inverted duty structure where the inversion is due to change in the GST rate. In other words, where ITC accumulation is on account of reduction in the GST rate after the date of purchase (Old higher rate say 18%) but before the date of sale (lower GST rate say 12%), then differential tax of 6% cannot be claimed as refund.
- The refund on account of excess payment, tax paid in wrong head, on account of assessment/ provisional assessment/ appeal or any other head shall be refunded in proportion to the amount of original payment mode i.e. if tax to be refunded has been paid by debiting both electronic cash and credit ledgers, the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability.
- The clubbed refund application can be submitted for tax period, i.e. different months, across successive financial years.

Contact us at:

M2K Advisors Pvt Ltd

1st Floor, No. 62, 3rd Street,

Abhiramapuram, Alwarpet,

Chennai – 600 018

Email: knowledge@m2k.co.in

Website: www.m2kadvisors.com

The views contained in this article are intended for general guidance only and should not be considered as an advice or opinion. We do not accept any responsibility for loss occasioned to any person acting as a result of any material in this note. Please refer to your advisors for specific advice.