

RECENT CHANGES IN FORM GSTR-3B



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Introduction:

The presence of FORM GSTR-3B was challenged by the trade several times before the judiciary. A promising enactment in a vague field of taxation will have many teething troubles and FORM GSTR-3B is seen as result of such teething trouble. GST law was introduced with intention to revamp the filing system of returns. FORM GSTR-3B was never the part of GST legislations. Return filing mechanism in the GST law was designed to incorporate uploading of invoices on the GST portal and auto population of such invoices in FORM GSTR-2A in order to avail input tax credit in FORM GSTR-2 from the information filed by the supplier to the recipient. FORM GSTR-3 was nominated as the monthly return to be filed under Section 39 of CGST Act, 2017 and figures in such return were supposed to flow from the details of outward supplies furnished in FORM GSTR-1 and the details of inward supplies in FORM GSTR-2. Due to non preparedness of requisite IT infrastructure and hue & cry created by real time filing of returns, filing of FORM GSTR-2 and FORM GSTR-3 had been deferred for first two months and later on for indefinite period. FORM GSTR-3B was introduced vide Notification No 17/2017 Central Tax dt 27th July 2017. FORM GSTR-3B was introduced as a time gap

arrangement to collect the tax amount from the taxpayer. As a result of deferment of dates for filing of FORM GSTR-2 and FORM GSTR-3, the temporary return was accepted by the Government as the permanent tool for collection of tax from the taxpayer. However, the drafting of FORM GSTR-3B is full of deficiencies and form was not introduced keeping in mind the requirements of law and availability of suitable IT infrastructure at taxpayer's end. The proposal to review the FORM GSTR 3B was placed before the GST Council in its 47th GST Council meeting and certain changes in FORM GSTR-3B were suggested by the Council. Concept paper on the proposed changes in FORM GSTR-3B as recommended by the GST council is already placed in the public domain and a step towards proposed changes have been notified by the CBIC vide Notification No 14/2022 (Central Tax) dt. 05th July 2022. The amendments have inclusion of separate table for declaration of liability where supply is made through E-commerce operator and changes in nomenclature of Table 4 i.e., Eligible ITC. CBIC has also issued a circular to clarify the reporting of interstate supplies and amount of In-eligible/blocked input tax credit in FORM GSTR-3B [Circular No. 170/02/2022-GST dt. 06th July, 2022]. W.e.f. 01st September 2022 all such changes are incorporated into



FORM GSTR-3B on GST portal. Key changes which taxpayer needs to understand before filing of FORM GSTR-3B from August 2022 onwards are as under-

1. Table 3.1.1 inserted for reporting supplies notified under Section 9(5) of the CGST Act, 2017:

Section 9(5) of the CGST Act, 2017 specifies a category of services, the tax on which shall be paid by the E-commerce operator, where such services are supplied through E-commerce operator. GST Council in its 45th Meeting recommended to notify “Restaurant Service” under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators was required to be paid by the e-commerce operator vide Notification No. 17/2021 dated 18.11.2021. However,

reporting of such transactions in FORM GSTR-3B was not separately identifiable. Hence, a clarification was issued by the CBIC vide Circular No. 167/23/2021- GST dt 17th December, 2021 and GSTN vide press release dt 04th January, 2022 specifying the manner in which said transactions were to be reported in FORM GSTR-3B. Now a separate Table 3.1.1 is inserted to report the details of supplies made under Section 9(5) of CGST Act through E-commerce operator as under-

3.1.1 Details of supplies notified under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/Union Territory Goods and Services Tax/State Goods and Services Tax Acts

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
i) Taxable supplies on which electronic commerce operator pays tax under sub-section (5) of section 9 <i>[to be furnished by the electronic commerce operator]</i>					
ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of section 9 <i>[to be furnished by the registered person making supplies through electronic commerce operator.]</i>					

An E-commerce operator must report details of supplies made by him under Section 9(5) in Table 3.1.1. (i) of FORM GSTR-3B and is not supposed to consider such supplies in Table 3.1. (a). On the other hand, a registered person who is supplying through E-commerce operator must report figures of such supply in Table 3.1.1 (ii). A registered person who is making supply through E-commerce operator does not have to mention such supply and in table 3.1 (a) and consequently, he is not required to pay such amount as liability to pay

tax on such transaction is on E-commerce operator. Disclosure of such supply along with supply reported in Table 3.1. as far as related to interstate supply to unregistered person, composition person and UIN holder is required to be reported in Table No 3.2 of FORM GSTR-3B. Though a separate table is notified by CBIC, it is not clear whether figures in Table 3.1.1 will be auto populated from the details of outward supply filed in FORM GSTR-1 or not.

2. Furnishing of information regarding the inter-state supplies:

It is clarified by the CBIC vide Circular No. 170/02/2022-GST dt. 06th July, 2022 that reporting of information regarding inter-state supply made to unregistered person, composition taxable person and UIN holder

is made mandatory in Table No 3.2. of FORM GSTR-3B.

3. Changes in Table 4 of FORM GSTR-3B:

Table 4 of FORM GSTR-3B contains the details of Eligible ITC. Table is divided into four parts. Format of Table 4 before and after amendment is as under-

Before Amendments	After Amendments
(A) ITC Available (whether in full or part)	(A) ITC Available (whether in full or part)
(1) Import of goods	(1) Import of goods
(2) Import of services	(2) Import of services
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	(3) Inward supplies liable to reverse charge (other than 1 & 2 above)
(4) Inward supplies from ISD	(4) Inward supplies from ISD
(5) All other ITC	(5) All other ITC
(B) ITC Reversed	(B) ITC Reversed
(1) As per rules 42 & 43 of CGST Rules	(1) As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17
(2) Others	(2) Others
(C) Net ITC Available (A) – (B)	(C) Net ITC Available (A) – (B)
(D) Ineligible ITC	(D) Other Details
(1) As per section 17(5)	(1) "ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period
(2) Others	(2) Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions

Surprisingly, there is no change in the instructions attached to FORM GSTR-3B so far as input tax credit is concerned. However, cognizance of changes made in FORM GSTR-3B vide Notification No 14/2022 (Central Tax) dt. 05th July 2022 can be understood by examining Circular No. 170/02/2022-GST dt. 06th July, 2022. The circular is issued in order to clarify the treatment of input tax credit to be given by a registered person while furnishing details of input tax credit. However, nothing contained in said circular is expected according to the instructions appended to FORM GSTR-3B. Therefore, the validity of circular may

be challenged as enforceable right created through rules cannot be taken away by issuing executive instructions. Earlier to the amendment, a registered person was availing credit according to the books of accounts to the extent it is matching with the FORM GSTR-2B. However, post amendment in the FORM GSTR-3B and based on the clarification given by the CBIC, it seems that a registered person is required to consider all the figures of FORM GSTR-2B irrespective whether they are booked in the books or not in ITC available table and is required to reverse such credit in requisite field of Table 4B. Following are the key



changes in reporting of ITC in FORM GSTR-3B-

a. A registered person is required to show the eligible as well as ineligible credit in Table 4A of FORM GSTR-3B as auto populated from FORM GSTR-2B. This will make in-eligible ITC becomes the part of ITC available as per Table 4A. This is going to create huge mess in near future as the desired outcome of the said adjustment is just to identify the in-eligible credit and certainly this will create a lot of difficulty for the taxpayer as he requires to make necessary changes in his accounting system to incorporate the effect of ineligible ITC which he otherwise used to charge to P & L account directly.

b. Reversal of ITC which is permanent in nature and not reclaimable, such as reversal on account of Rule-38(reversal of credit by a banking company or a financial institution), Rule-42 (reversal on input and input services on account of supply of exempted goods or services), Rule-43 (reversal on capital goods on account of supply of exempted goods or services) of the CGST Rules and ineligible ITC under section 17(5) of the CGST Act, will be reported in Table-4(B)(1) of FORM GSTR-3B. Reversal of ITC which is temporary and reversal which is required because of non fulfilment of any condition as specified under the GST Act should be shown in Table 4B(2) of FORM GSTR-3B.

Earlier reversal of credit on account of Rule 42 & 43 only had to be reported in Table 4(B)(1). A registered person must take proper care while reporting any figure in this row as it amounts to permanent reversal of the ITC. Requirement of reporting in-eligible credit in Table 4D (1) is no more required with amendments in Table 4B (1)

c. ITC which was reversed earlier and shown in Table 4B (2) of FORM GSTR-3B can be reclaimed subsequently on fulfillment of certain conditions and should be shown in Table 4A and in Table

4D (1) of FORM GSTR-3B. This is going to be challenging for a registered person in terms of manner of accounting of said transactions and reconciliation of such details with books as well as GSTR-2B

d. ITC which is not available on account of Section 16 (4) i.e. maximum time limit to avail the credit or on account of different place of supply should be shown in Table 4D (2) of FORM GSTR-3B. The disclosure is just for reporting purpose, and it will not affect the entitlement of the ITC as said ITC is separately shown in FORM GSTR-2B.

Following are the common situations with respect to availment and reversal of ITC and its likely effects in FORM GSTR-3B-

✳ Imported goods cleared for home consumption but in transit or not received at place of business:

Where goods have reached India and bill of entry for home consumption is filed. But goods have not been received at the place of business. Hence, credit against such bill of entry is not availed by a registered person in books of accounts. But credit against such bill of entry is reflecting in Table IV of Part A of GSTR-2B and auto populated in Table 4A (1) of FORM GSTR-3B. In such scenario, a registered person is supposed to report such credit in Table 4A (1) of FORM GSTR-3B and since, goods are not received, a registered person must reverse such credit in Table 4B (2) of FORM GSTR-3B. Subsequently, on receipt of such goods a registered person is eligible to take credit in Table 4A (1) and he is required to report such figure in Table 4(D)(1).

✳ Inward services liable to reverse charge auto populated in Table 4A(3) but payment in respect of such supply is not made:

According to the provisions of Section 13, a registered person is required to pay tax under reverse charge mechanism on receipt of notified services at time of making payment or within sixty days from date of issue of invoice or other document in lieu of invoice whichever is earlier. In such cases a

registered person must show such amount in Table 4A (3) and is required to reverse such amount in Table 4B (2). Subsequently, after making payment or sixty days from date of issue of invoice whichever is earlier, he can show such amount in Table 4A (3) and Table 4D (1) of FORM GSTR-3B.

★ **Goods purchased within India and are in transit:** Where goods are supplied by the supplier but are in transit or not received at place of business, a registered person is required to show such amount in Table 4A (5) and would be required to reverse such amount in Table 4B (2) as it is a temporary reversal. A registered person is eligible to claim such credit on receipt of the goods. He shall report such amount in Table 4A (5) of FORM GSTR-3B and Table 4D (1) after receipt of such goods.

★ **Credit in respect of which tax is not paid by the supplier:** Where a tax in respect of any supply is not paid by the supplier to Government, a registered recipient shall reverse such credit in Table 4B (2). After the payment of tax by a supplier to Government, recipient is eligible to reclaim such credit in Table 4A (5). A registered person must also report such amount in Table 4D (1).

★ **Credit in respect of supplies where payment to supplier is not made within 180 days:** Where a payment in respect of any supply is not made to the supplier within a period of 180 days from the date of invoice, recipient of such supply must reverse the credit in respect of such supply in table 4B (2). Subsequent, to payment to such supplier, a registered person is eligible to reclaim the credit in Table 4A (5). Disclosure in Table 4(D)(1) is also needed.

★ **Treatment of credit where goods received in lots/ installments and last lot is received in next month:** Where goods are received in lots/installment, a registered person is eligible for the credit only after the receipt of last lot/installment. In case where all the lots are not received in same month, a registered person is required to report such amount in Table 4A (5)

or 4A (1) as the case may be and would be required to reverse such credit in Table 4B (2). On receipt of such goods, a registered person is eligible for the credit, and he can claim such credit in Table 4A (1) or 4A (5) as the case may be. In addition to that disclosure in Table 4D (1) would be needed.

★ **Treatment of credit where documentary evidence is not available:** Where documentary evidence is not available with a registered person and he is meeting the other conditions to claim the credit, he shall report such credit in Table 4A (1) or 4A (5) as the case may be and reverse such credit in Table 4B (2). He may reclaim such credit on availability of tax paying document as stated in Rule 36 of CGST Rules.

Conclusion:

FORM GSTR-3B was introduced with an intention to minimize the cumbersome activity of filing of FORM GSTR-2 with reconciliation with GSTR-2A and to further simplify the return process keeping in mind the compliance burden on the taxpayer. However, the way Government is asking mandatory information to be furnished by a registered person in FORM GSTR-3B, it will defeat the basic intent of GST law to make it taxpayer friendly. It is well understood that non-compliance such reporting may attract the penalty under Section 125 of the CGST Act, 2017. This will certainly rise the dispute between the tax authorities and taxpayer on account of reporting figures in FORM GSTR-3B vis-a-vis FORM GSTR-2B and will defeat the very purpose of ease of doing business. There is still need a clarity on certain issues like credit of previous year taken in current year, repercussions in case minor mistakes in reporting of input tax credit in FORM GSTR-3B, rectifications of errors committed in FORM GSTR-3B etc. It will be really challenging for the taxpayer to follow the reporting requirements of new FORM GSTR-3B.

Note: Views expressed are personal. Readers are recommended to take professional advice before applying text of the above article. TB