

RETURN FILING UNDER GST – ISSUES AND CHALLENGES

TEAM TRD



The Institute of Cost Accountants of India
(Statutory Body under an Act of Parliament)

Annexure - A

Points of discussion with the Group of Ministers on 17th April 2018 on "Return filing under GST-Issues and Challenges"

A) Jurisdiction of Tax Payer.

1. Distribution of Taxpayers between Central and State is not being informed to many tax payers who migrated from Service Tax. The Website is not showing the correct Jurisdictional Authority.
2. Since there is a confusion about jurisdiction, neither Central nor State GST department accept any correspondence including Refund Claim of such Tax Payers who have claimed refund for excess cash balance available in Electronic Cash Ledger. Same is the case with Export Refund Claims and submission of Undertaking.

B) Payments

1. Debit Note/Credit Note for Unregistered Taxpayers (Box No. 7 of GSTR-1) is taking only for B2B Taxpayers. The 'Type of Supply' is confined to "Inter-state" supply only. Though a Tax Payer can adjust Credit Note by showing it as negative balance in B2C-Others, details of Debit Note/Credit Note are not captured in GSTR-1 for Unregistered Taxpayers which creates difficulty in reconciliation with accounts.
2. Though there is provision to pay tax by using Debit Card or Credit Card it is yet to be allowed.

C) Input Tax Credit Matching

1. Currently there are only two returns in place one is GSTR - 1 and another on self- assessment for payment of taxes and availing ITC on provisional basis- GSTR3B. Matching of ITC is on hold . Following are few suggestions in this regards.
2. The scope of Reverse Charge may be enhanced to services and goods covered in Sec 17 of the CGST Act 2017 (Blocked Credit) received from unregistered suppliers so that the registered tax payers will pay GST on the services availed from unregistered suppliers, shall not avail Input Tax Credit and Government revenue will be protected.
3. GSTR 2 may be modified to incorporate details of payment of GST under reverse charge and IGST on import of goods and services. This will help the revenue department to have complete details of GST paid by tax payers. Matching of ITC will be easier with minimum data uploading. This will certainly provide relief to tax payers.
4. As per Section 41 of the CGST Act 2017, the ITC taken is on provisional basis till matching is done, there should be a process for matching immediately or the relevant provisions should be changed accordingly. Else it will be a challenge for the taxpayers to furnish their financial statements for 31st March 2018.

D) Returns

1. Provision in GSTR 3B needs to be made for reversal of credit wrongly taken. Presently once an entry is made in the column of CGST, the Return format automatically displays SGST liability of the equal amount.
2. Some of the exporters carried forward unutilized balances of Cenvat Credit through TRANS 1but now they cannot claim the refund of old credit and also they cannot revise the TRANS -1 Hence it advisable to give some option. Suitable modifications are required in TRANS 1.
3. Even though Returns are filed in time, many taxpayers received notices for not filing Returns and invoking penal provisions. Proper training should be given to Tax Officers to co relate the Returns and avoid sending unwarranted notices to tax payers.

4. The GSTN system has by default considered quarterly filing of GSTR1 filing inspite of the Companies having turnover of more than 3-5 crores per month. Now the users are having no option to change the filing from Quarterly to Monthly even if request is made to GSTN. Immediate action is required to provide option to change from quarterly to monthly filing of returns where the turnover is more than Rs. 1.5 crores per annum.

Three Instances which can only be made by revising 3B are:

- ❖ Assessee by mistake instead of availing the credit, deposited the tax under Reverse Charge Mechanism. In this case credit has been foregone, as it was not availed, also refund cannot be claimed, as there is no such provision.
 - ❖ Assessee claimed less credit in GSTR-3B, as invoices are received later on from different branches. The credit is showing under GSTR 2A, but it is not confirmed whether the balance credit will be accumulated in total Credit or not after filing of GSTR -2.
 - ❖ Certain amount as output tax has been shown under GSTR - 3B, but while filing GSTR-1, output tax liability increased. The assessee cannot adjust this liability from credit as it is not possible in GSTR -1. Only way is to pay the extra liability by cash to avoid interest & penalty. Even then any one cannot adjust it, only payment has been made, but the balance will remain in cash ledger and assessee have to keep account of it.
5. Interest is payable for delayed payment of taxes. Interest should be applicable only to the extent on which the taxpayer is paying taxes by cash and not on the utilization of the ITC for payment of cash. Due to this condition, the taxpayers are forced to pay tax on the ITC portion which can be used by them for payment of taxes. Suitable clarification may be issued in this regards.
 6. IN case of delay in filing Returns the late fee amount is not being computed correctly. Late fee is being computed by the system and users do not have any control on it. Whatever is the amount computed, the same should be explained with breakup or assessee should be allowed to compute late fee and pay.
 7. Filing of Trans-1 should be allowed once again for the assesses who has not filed it. Deemed credit was allowed to specified assesses, with certain conditions, only. There are cases where batch number, product code, packing date etc can be verified but no benefit of deemed credit is given. For instance: Fertilizer, Pharma etc. It is suggested to allow them also due credit based upon Credit Transfer Document (CTD) to do justice for such class in line with the spirit of the law.
 8. If return for previous month is not filed then portal does not provide an option for filing the return of next month, it may so happen that the earlier period return could not be filed due to technical issues or otherwise but assessee should not be deprived from filing Returns for the subsequent months .
 9. Return once submitted, then changes cannot be made to the same at a later point of time. Provision for filing revised returns may be made.

E) Construction related Services.

1. In the case of Transfer of Development rights and Redevelopment activities, the valuation of the reconstructed property is required to be done as per the open market rate or the selling price of the property in the same scheme. This does not seem to be proper because in the redevelopment activities the existing flat owner gets only construction services. He holds the portion of share of the undivided land, which is given for redevelopment. If the present provision continues, the existing flat-owners will have to pay exorbitant undue taxes on the value of the new flats.
2. The deduction of one third part from the rate of tax towards land cost seems to be incorrect as the land prices in the cities like Mumbai, Pune, Bangalore, Hyderabad, Ahmedabad etc the land prices are much more that construction cost. (on reconstructed property , GST is payable @ 12 % as per the explanation to Notification No. 11/2017- Central Tax (rate)). It is suggested that in the case of redevelopment activities, the GST should be charged only on the 110% of the cost of construction cost. A suitable clarification may be issued to this effect.

F) Refunds

1. Refund for excess Cash balance available in Electronic Cash Ledger should be made on- line and manual process to be avoided at least for this refund.

G) Others

1. To avail the concessional rate of tax (0.1 %) in the case of merchant exporter, exporter has to sell the goods within three months. The time period is appears to be less and may be extended upto 6 months.
2. There is considerable delay in updating of the details in the GSTN portal , even after entering the data in the GSTN portal either through manual entry or using the offline tools provided by GSTN. It is persistent problem that the details of HSN summary and Document details updated in the GSTN tool is not uploaded in the GSTN portal in majority of the cases.
3. If assesses have deposited cash in Electronic Cash ledger, he should be allowed to utilize the same for any purpose i.e CGST, SGST, IGST, Late fee, Penalty etc. No separate Electronic Cash ledger for each account should be maintained. Only one or common Electronic Cash ledger should be permitted.



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**Points of discussion with the Group of Ministers on 24th April 2018 on
"Return filing under GST-Issues and Challenges"**

Sl No	Issues	Comments
1	Continuous facility to add invoice by Seller and Continuous viewing of invoices by Recipient who can lock the invoice after which seller can't edit/delete (it becomes confirmed liability of seller)	<p>Import data based on Bill of Entry may be automatically moved from Customs Portal to the Taxpayer's Portal.</p> <p>B2C invoices may also be allowed to be uploaded by Supplier on regular basis.</p> <p>Batch wise processing through offline tools may be provided.</p> <p>Edit option may be given to Supplier/Recipient to deal with errors found before confirming and before filing the monthly return. Any changes in the details may be permitted by way of Debit / Credit Note in subsequent months.</p>
2	Return design: System will draft Monthly return based on supply data uploaded and inward supply accepted. Annexures will contain these details along with data on B2C, CN/DN, Reverse Charge purchases etc. fed by taxpayer.	<p>Clarification required on Credit and Debit note – Whether the CN/DN should be linked to respective invoice and at item level. In case of supplementary invoice/DN/CN for price revision at a later date will be very tedious to enter at item level. Similarly credit note issued for volume discounts will be difficult to link to item level matching.</p> <p>What happens in the current situation where the supplier does not file the return on time? Receiver should have option to upload the invoices of supplies received and payments made.</p> <p>Uploading of data should be may be made available to the extent of outward supplies, debit / credit notes and inward supplies to the extent of tax liability under reverse charge and import of goods / services.</p>
3	Input tax credit: Input tax credit will be given on the basis of acceptance of invoice. However, Credit linkage to payment of tax by Supplier be retained.	<p>Input credit should be allowed on provisional basis as proposed in Model A. The buyer in general will go as per his books of accounts to claim the input tax credit and hence the entry in books of accounts of the buyer should be the basis for claiming the provisional credit. If no accounting entry is found in buyers books of accounts and if notional credit is claimed, the buyer can be penalized. The buyer may be allowed to upload the details of invoices on which he his claiming the input tax credit provisionally. This will ensure that the seller is obligatory to upload the missing invoices and also safeguard the revenue interest.</p> <p>How come the recipient is penalised for non-payment of tax by the supplier? Let us continue to have the system of notices received by supplier and recipient to justify their</p>

		<p>individual stand and penalty and interest or reversal should be done based upon the justification.</p> <p>It was primary duty of the registered person to take the eligible input credit. The system Credit Linkage to payment is will create hardship to buyer. Once the supplier uploads the invoice, files monthly returns and accepts the liability, credit to the buyer should be allowed. It is the function of the revenue department to recover tax from the supplier. By linking credit with payment by supplier, the buyer should not be penalised. If linkage to payment is made, buyer will have double loss i.e. he pays the tax amount to supplier and once again the credit is denied. Therefore linkage to payment should not be kept. should be make a defaulter list of registered persons not filing of the return, so that the supplier/receiver will not make any transaction between the defaulter registered person to avoid the minimum loss of valid input credit.</p>
4	<p>A semi-automatic process of ITC reversal through administrative order: System will track and generate a list of supplier defaults. Cases from this list may be presented to assessing officer based on configurable rules (all or based on quantum of difference). System issues notice to the selected cases. If the rectification is not satisfactory, officer may issue a reversal order at the click of a button.</p>	<p>More details required on how the system is going to track the list of supplier defaults. It should not restrict to only to dealers who have uploaded the supply invoice and not paying the taxes. The system should also track the dealers who have not declared the actual outward supplies.</p> <p>This is acceptable based on justification for rectification or Non rectification of both suppliers or recipients.</p> <p>Principle of natural justice should be followed. Buyer should not be penalised for suppliers default.</p>
5	<p>Safeguards: Starting right from preventing fraudulent registrations to limiting the credit flow from defaulting suppliers after a certain threshold to making RC inactive for non-filing of return by defaulting sellers.</p>	<p>Registrations are now issued based on the data submitted in the online portal, but no physical verification of the premises is undertaken which has resulted in many fraudulent registrations. Inspection of the premises may be undertaken.</p> <p>The system reconciliation is the only safeguard in this regard along with other departmental coordination. Like exchange of information between various departments like Income Tax (For TDS and TCS aspects), Customs, STPI, Bank etc. Random and rigorous desk reviews by departments like Surveys, periodical audits etc. can to some extent mitigate the frauds. Actions and consequence of serious nature can be contemplated as per ACT. Surveys before registration like the way we used to have in Excise and VAT and asking the vendors (in case of suspicion) to provide surety or security in the form of FD will hamper to some extent the gullible registrations.</p>
6	<p>Any other issue (please add more rows, if required. Please write one issue in one row)</p>	<p>Clarification required on the invoice matching till the new system is in operation. Suggested system should be tested by the end users (Professionals, Domain Experts, Trade and Industry, Department Officers, Researchers etc.), before the software is released for general use. The time line for implementation of the new system should not be beyond 1.7.2018.</p> <p>Rather than having import of data only through Json file which is the main cause of all issues, assessee should be allowed to upload the data in xml, csv, xls files also.</p> <p>Provision for reversal of wrongly availed input tax credit should be made in the Return. Presently the systems should equal liability of CGST and SGST in the return even if taxpayer intends to reverse only CGST or SGST credit.</p>

Decisions Taken at the 27th GST Council Meeting

RETURN SIMPLIFICATION:

Key principles of new return as approved by the Council are as under:

1. **One monthly Return:**

All taxpayers excluding a few exceptions like composition dealer shall file one monthly return. Return filing dates shall be staggered based on the turnover of the registered person to manage load on the IT system. Composition dealers and dealers having nil transaction shall have facility to file quarterly return.

2. **Unidirectional Flow of invoices:**

There shall be unidirectional flow of invoices uploaded by the seller on anytime basis during the month which would be the valid document to avail input tax credit by the buyer. Buyer would also be able to continuously see the uploaded invoices during the month. There shall not be any need to upload the purchase invoices also. Invoices for B2B transaction shall need to use HSN at four digit levels or more to achieve uniformity in the reporting system.

3. **Simple Return design and easy IT interface:**

The B2Bdealers will have to fill invoice-wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his sellers. Taxpayer shall be also given user friendly IT interface and offline IT tool to upload the invoices.

4. **No automatic reversal of credit:**

There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

5. **Due process for recovery and reversal:**

Recovery of tax or reversal of input tax credit shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.

6. **Supplier side control:**

Unloading of invoices by the seller to pass input tax credit who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of input tax credit facility. Similar safeguards would be built with regard to newly registered dealers also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.

7. **Transition:**

There will be a three stage transition to the new system. Stage I shall be the present system of filing of return GSTR 3B and GSTR 1. GSTR 2 and GSTR 3 shall continue to remain suspended. Stage I will continue for a period not exceeding 6 months by which time new return software would be ready. In stage 2, the new return will have facility for invoice-wise data upload and also facility for claiming input tax credit on self-declaration basis, as in case of GSTR 3B now.

During this stage 2, the dealer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their sellers and the provisional credit being claimed by them. After 6 months of this phase 2, the facility of provisional credit will get withdrawn and input tax credit will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods.

8. **Content of the return and implementation:**

Return shall be simplified also by reducing the content/information required to be filled in the return. The details of the design of the return form, business process and legal changes would be worked out by the law committee based on these principles. Government is keen to introduce the simplified return design at the earliest to reduce the compliance burden on the trade in keeping with the philosophy of ease of doing business.