

5% Provisional ITC Removed by CBIC, Only ITC Reflecting in GSTR-2B can be taken from 1st Jan 2022;

The Central Board of Indirect Taxes & Customs [CBIC] released an important **Notification No. 39/2021–Central Tax dated on 21st December 2021** notifies the date from which provisions of Section 108, 109, and 113 to 122 of the said Act shall come into force from 1st Jan 2022.

Section 108 of the Finance Act of 2021 aims to amend section 7 of the CGST Act by inserting a clause after clause (a) in sub-section (1), namely "(aa) the activities or transactions, by a person other than an individual, to its members or constituents or vice versa, for cash, deferred payment, or other valuable consideration, by a person other than an individual." For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;". ***(Retrospective amendment to overcome the effect of SC judgement in Calcutta Club case)***

As per Section 109 of the Finance Act, 2021, clause (aa) is inserted below section 16(2) (a) of the Act, further stipulating that input tax credit on invoice or debit note is available to a recipient only if the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note. U/s. 37 now suppliers have liability to furnish the details of outward suppliers through their returns. By this amendment, for availing ITC by recipients also, the same become mandatory. ***(Amendment to make GSTR 2 A mandatory to avail ITC)***

Section 113 of the Finance Act of 2021 proposes to replace the words and figures "sections 122, 125, 129, and 130" in clause (ii) of section 74 with the words and figures "sections 122 and 125." ***(Deemed conclusion of proceedings will not apply to Section 129 and 130)***

Section 114. Amendment of section 75. — In section 75 of the Central Goods and Services Tax Act, in sub-section (12), the following Explanation shall be inserted, namely: — 'Explanation. — For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.'. ***(Tax declared in GSTR 1 can directly be recovered without issue of any SCN)***

Section 115 of the Finance Act of 2021 seeks to amend section 83, namely "(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV, or Chapter XV, the Commissioner is of the opinion that it is necessary to do so for the purpose of protecting the interest of the Government revenue, he may, by order in writing, attach provisionally any property, including bank accounts, belonging to the taxable person." ***(Applicability of Section 83 extended)***

Section 116 of the Finance Act of 2021 proposes to add a proviso to section 107, sub-section (6), stating: "Provided that no appeal shall be made against an order under sub-section (3) of section 129, unless the appellant has paid an amount equal to twenty-five per cent of the penalty." ***(For appeals against orders passed under Section 125, 25 % of the penalty shall be paid as pre deposit. 129 deals with detention and seizure)***

Section 117 of the Finance Act of 2021 seeks to amend section 129 by substituting the following clauses for clauses (a) and (b) in sub-section (1): "(a) on payment of a penalty equal to two hundred percent of the tax payable on such goods and, in the case of exempted goods, on payment of an amount equal to two percent of the value of the goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment (b) on payment of a penalty equal to fifty percent of the value of the goods or two hundred percent of the tax payable on such goods, whichever is higher, and in the case of exempted goods, on payment of an amount equal to five percent of the value of the goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;"(3) The proper officer detaining or seizing goods or conveyance shall issue a notice specifying the penalty payable within seven days of such detention or seizure, and

thereafter, pass an order for payment of penalty under clause (a) or clause (b) of sub-section (1) within seven days from the date of service of such notice.”; (iv) for sub-section (4), the words “No tax, interest, or penalty” shall be substituted; (v) for sub-section (5), (6) If the person transporting the goods or the owner of the goods fails to pay the penalty under sub-section (1) within fifteen days of receiving a copy of the order passed under sub-section (3), the goods or conveyance so detained or seized may be sold or disposed of in any manner and within such time as may be prescribed in order to recover the penalty payable under sub-section (1). (3). The conveyance shall be freed upon payment of the penalty under sub-section (3) or one lakh rupees, whichever is less, by the transporter. The aforementioned period of fifteen days may be decreased by the proper officer if the detained or seized commodities are perishable or hazardous in nature, or are likely to degrade in value with the passage of time.” **(Various changes in the procedures relating to detention and seizure of goods and conveyances)**

Section 118 of the Finance Act of 2021 proposes the following changes to section 130: (a) in sub-section (1), for the words “Notwithstanding anything contained in this Act, if,” the word “Where” shall be substituted; in sub-section (2), in the second proviso, for the words, brackets, and figures “amount of penalty leviable under sub-section (1) of section 129,” the words “penalty equal to one hundred per cent of the tax payable on such goods” **(Various changes in the procedures relating to confiscation and levy of penalties)**

Section 119 of the Finance Act of 2021 proposes to replace section 151 with a new section that reads, “Power to call for information: The Commissioner or an officer authorized by him may, by order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner as may be specified therein.” **(Scope of the power to call for information widened)**

Section 120. Amendment of section 152. — In section 152 of the Central Goods and Services Tax Act, — (a) in sub-section (1), — (i) the words “of any individual return or part thereof” shall be omitted; (ii) after the words “any proceedings under this Act”, the words “without giving an opportunity of being heard to the person concerned” shall be inserted;

(b) sub-section (2) shall be omitted. **(Procedural changes in the provisions relating to bar on disclosure of information)**

Section 121. Amendment of section 168. — In section 168 of the Central Goods and Services Tax Act, in sub-section (2), —

(i) for the words, brackets and figures “sub-section (1) of section 44”, the word and figures “section 44” shall be substituted;

(ii) the words, brackets and figures “sub-section (1) of section 151,” shall be omitted. **(Consequential amendments relating to Power to issue instructions or directions)**

Section 122. Amendment to Schedule II. — In Schedule II of the Central Goods and Services Tax Act, paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017. **(In view of the retrospective amendment in Sec. 7, this provision is not required and hence deleted)**

Previously CBIC inserted sub-rule (4) under Rule 36 of the CGST Rules, 2017. The rule states that the provisional tax credit (without invoices on GSTR-2B) can be claimed in the GSTR-3B to the extent of 5% of eligible ITC reflected in the GSTR-2B.

With effect from 1st Jan 2021, the total ITC that can be claimed in GSTR-3B is 105% of the eligible ITC appearing in the GSTR-2B of a particular period. The circular 123/2019 clarifying the issues relating to the implementation of original rule 36(4) was released on 11th November 2019.

However, it was 10% between 1st Jan 2020 and 31st Dec 2020 while was earlier restricted to 20% for the period from 9th Oct 2019 up to 31st Dec 2019.

Rule 36. Documentary requirements and conditions for claiming input tax credit

[As per Rule 36(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37, [in FORM GSTR-1 or using the invoice furnishing facility] shall not exceed 5[5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been 6[furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility].

[Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

[Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

.....

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii)]

**Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs**

Notification No. 39/2021 – Central Tax

New Delhi, the 21st December, 2021

S.O.(E).— In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021), the Central Government hereby appoints the 1st day of January, 2022, as the date on which the provisions of sections 108, 109 and 113 to 122 of the said Act shall come into force.

[F. No. CBIC-20006/26/2021-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India