

**BRIEF BY THE TAXATION COMMITTEE DURING THE
2ND MC MEETING AT INDORE ON 2ND MARCH '20****1. Changes in the 2020 Budget:**

In the Indirect Taxes the Finance Minister has announced New slab rates for Individuals and HUF with reduction in tax rates while removing around 70 exemptions.

New sections added in TDS and TCS

Charitable Trusts registered under 12AA will have to register afresh under 12AB or 10(23C)

Details of Donor's PAN and Address to be uploaded by the Donee Trust for the person to avail exemption under 80G or 80GGA.

The amount of donation which can be paid in cash is Rs 2,000/- . Any Donation above Rs 2,000/- will not qualify for deduction under 80G.

Vivaad Se Vishwas Scheme :

Certain, Cases which are pending before various appellate authorities including CIT(A), ITAT, High Courts and Supreme Courts (Appellate Authority) as on 31 January 2020 will be covered.

2. Changes in MCA :

- The Ministry of Corporate affairs recently introduced SPICe form or Form -32 which will help incorporation ETC of a Company with a single application – SPICe

Part A : Application for reservation of a name.

Part B : Incorporation of a new company

Mandatory allotment of DIN number

Mandatory issue of PAN No

Mandatory issue of TAN No

Mandatory issue of EPFO registration

Mandatory issue of ESIC registration

Mandatory issue of Profession Tax registration

(Maharashtra)

Mandatory issue of Bank Account for the Company

Allotment of GSTIN registration if so applied for.

- The MCA has issued a notification on LLP Settlement Scheme 2020 which will benefit LLP's which had defaulted in filing of certain forms and would have been subjected to huge penalties.

The scheme shall come into force from 16th March 2020 and will remain in force up to 13th June 2020.

3. GST Changes from 1st April 2020:

a. New Returns notified from 1st April 2020

GST RET -1 monthly for turnover above 5 Cr or quarterly

GST RET -2 Quarterly

GST RET -3 Quarterly

GST RET -1 consists of ANX -1 and ANX -2

ANX -I: Annexure of Outwards supplies, Transactions on which RCM is payable (Self Invoice to be made by Tax payer) and Imports.

ANX -II: Annexure of Inward supplies based on accepted transactions by the tax payer the ITC will be auto credit in the Electronic credit ledger. Hence regular matching of Inward supplies with the suppliers is essential.

Suppliers opting for GST “SUGAM” or GST RET -2 will be filing the quarterly return and therefore, these transactions will appear only on quarterly basis and ITC will be locked for 2 months, which will have immediate liquidity issue.

Every taxpayer will have to re-visit the supply chain strategy and strategy for selection of suppliers considering above aspects.

b. ***GST LUT***: Option for renewal of LUT for FY 2020-2021 is activated in GSTN. LUT obtained for FY 2019-2020 will expire on 31.3.2020. For executing export transactions (including supplies to SEZ) without payment of GST, LUT is mandatory (LUT to be obtained prior to supply)

c. **‘E’ Invoicing under GST**

1. The e-invoicing will be available from 1st January, 2020 on a voluntary basis. It will be implemented in a phased manner by GSTN.

2. The generation of E-invoice will be mandatory from 1st April, 2020 for businesses having turnover of Rs. 100 crore or more.
3. The Quick Response (QR) code will be mandatory from 1st April, 2020 for B2C invoices issued by suppliers having aggregate turnover in a financial year exceeding Rs. 500 Crore

Standard Operating Procedure (SOP) for Non Filers of GST return:

The GST Council, in its 38th council meeting, decided to issue a Standard Operating Procedure (“SOP”) for the Revenue Authorities to take action against non-filing of respective returns vide Circular No. 129/48/2019-GST dated December 24th 2019 .

GSTR 3B filing dates changes from 1st Feb 2020:

- a. For taxpayers having turnover > 5 Cr – 20th of every month
- b. For tax payers having turnover < 5 Cr - 22nd of every month
15 States/UT’s i.e Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry , Andaman and Nicobar Islands, Telangana and Andhra Pradesh.
- c. For tax payers having turnover < 5 Cr - 24th of every month
22 States/UT’s i.e Jammu and Kashmir, Laddakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal

Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha.

Debit Notes/Credit Notes:

Delinking of the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit- Section 16(4) Time limit for claiming Input tax credit (return of September of subsequent year or annual return, whichever is earlier), in respect of a debit note issued by a supplier shall be reckoned from the date of debit note.

GSTR -9/9C filing dates for financial year 2018-19:

The last date for filing GSTR 9/9C for the financial year 2018-19 is 31st March 2020.

A. Income Tax

New slab rates without claiming exemptions (Optional).

Taxable Income	Existing	New
a. 0 - 2.5 L	NIL	NIL
b. 2.5 – 5.0 L	NIL	NIL
c. 5.0 – 7.5 L	20.80%	10.40%
d. 7.5 – 10.0 L	20.80%	15.60%
e. 10.0 – 12.5 L	31.20%	20.80%
f. 12.5 – 15.0 L	31.20%	26.00%

g. > 15 L the tax rates would be the same as earlier.

- Rs 12,500 rebate for income upto RS 5.0 L
- 4 % Health and Education Cess for all slabs.
- Surcharge on slabs above 50 L remains as earlier.

Exemptions which will be phased Out for those opting for New rates :

1. Sec 80 C Investments (EPF contribution is excluded)
2. HRA
3. Housing Loan interest
4. LTA, Medical Insurance, Standard Deduction,
5. Savings Bank Interest, Educational Loan Interest.

Exemptions which will remain:

1. Standard Deduction on rent
2. Agricultural Income, Income from Life Insurance, VRS proceeds
3. Retrenchment Compensation, Leave encashment on retirement.

B. Dividend Income:

DDT Abolished

Dividend Income to be charged in the hands of the shareholder.

C. Employer's Provident Fund etc:

Combined upper limit on Employers contribution towards EPF, NPS and Super Annuation Fund @Rs 7.50 L.

D. Dividend, Interest and Capital Gains of Sovereign Wealth funds procured from Indian Infrastructure Investments made upto 31st March 2024 would be exempt from Income tax.

E. Additional deduction of Rs 1.5 L for interest paid on Loans taken for purchase of affordable homes extended till March 31st 2021.

F. Capital Gains: For LTCG on sale of Property, earlier if the consideration value was less than the circle rate by more than 5 % the same was counted as Income in the hands of both the seller and the buyer.

The limit has been increased to 10%.

G. TDS/TCS :

TCS of 5 % for remittances of over Rs 7.0 L under the Liberalized Remittance Scheme by banks or from a seller of a Tour package.

The TCS paid can be adjusted against your Income Tax liability.
TCS of .1%: A seller of goods is liable to collect TCS at the rate of .1% on consideration received from a buyer in a previous year

in excess of Rs 50 lakh rupees. In Non Pan/Aadhar cases the rate will be 1%.

Only those sellers whose Sales, gross receipts or turnover from the business carried by it exceeds 10 Cr during the financial year immediately preceding the financial year shall be liable to collect such TCS.

H. General Changes:

- a. No Tax Audit for turnover upto Rs 5.00 Cr (up from Rs 1 Cr) subject to conditions
- b. Insurance on deposits with banks raised from 1 L to Rs 5 L.
- c. TDS of 1% on the receipts on selling goods/services on online platforms like Amazon, Flipkart etc.
- d. Instant PAN on basis of Aadhar.
- e. Tax Charter (rights of the tax payer) to be introduced as a part of the statute.
- f. Interest subvention scheme of 2 % on all Incremental Loans is already in place.
- g. NRI definition changed: Stay period in India increased from 182 days to 245 days.
- h. Date for filing of returns for companies under Tax Audit -Oct 31st provided Tax Audit report filed by 30th September.
- i. Some changes done in the CGST Act will be dealt with separately in the GST update.
- j. We may add that in case of individuals TDS will be deducted by online suppliers so that members may make a note of the same and show the same as drawings in their books.
- k. Further, fake invoices penalty may be covered

Applicability of Vivad Se Vishwas scheme

Certain, Cases which are pending before various appellate authorities including CIT(A), ITAT, High Courts and Supreme Courts (Appellate Authority) as on 31 January 2020 will be covered.

Cases when Vivad Se Vishwas scheme not applicable

1. Where, Disputed tax arising out of search or seizure proceedings;
2. Where, the prosecution has been initiated before filing of the declaration;
3. Where, Tax arrears is in relation to undisclosed foreign source income
4. Where an addition is based on the information received from a foreign country as part of an exchange of information u/s 90 or 90A;
5. Where enhancement proposed by the CIT(A);
6. Where any person who has been detained under The Conservation of Foreign Exchange and Prevention Of Smuggling Activities Act, 1974, before the filing of a declaration;
7. Where, Any person, in whose case the prosecution has been initiated prior to the filing of a declaration under any of the specified acts; and
8. Any person notified under Special Court (Trial of Offences Relating to Securities) Act, 1992, before the filing of a declaration

Last date to file declaration under Vivad Se Vishwas scheme:

As per the scheme, the taxpayer should opt and deposit the disputed dues by 31.03.2020, in order to get 100% relief from interest, penalty and fees.

Scheme also contain an extension period for opting the scheme of three months i.e. upto 30.06.2020, however, in extended period scenario, the taxpayer has to pay additional 10% of the disputed tax amount.

Amount payable under Vivad Se Vishwas scheme and relief allowed:

The amount payable and relief under the scheme is as under:

a. Where the amount paid on or before 31st March 2020.

Nature of tax arrears	Amount payable on or before 31st March 2020	Relief
i. Where tax arrears include disputed tax, disputed interest and disputed penalty	Amount of the disputed tax from	100% relief from disputed interest and penalty
ii. Where tax arrears relates to disputed interest or disputed penalty or disputed fee	25% of disputed interest or disputed penalty or disputed fee or disputed fee	75% of the disputed interest, penalty and fees

b. Where amount paid after 31.03.2020 but before 30.06.2020

Nature of tax arrears	Amount payable thereafter but up to 30.06.2020	Relief
i. Where tax arrears	Amount of disputed	

include disputed tax, tax plus 10% thereof		
disputed interest and disputed penalty	The additional 10% will be restricted to the amount of interest and penalty	100% relief from disputed interest and penalty
ii. Where tax arrears relate to disputed interest or disputed penalty and fees	30% of disputed interest or disputed penalty or fees	70% of the disputed interest, penalty and fees.

Other Important points related to Vivad Se Vishwas scheme

- For availing the scheme, taxpayer shall file declaration before the designated tax authority.
- Designated tax authority shall within 15 days of receipt of the declaration, pass an order determining the amount payable by the taxpayer and issue a certificate.
- The taxpayer within 15 days from the date of receipt of the certificate will pay an amount to the designated authority.
- On receipt of the amount, the designated authority shall pass an order in writing, stating that the due amount has been paid.
- The order passed by the designated authority shall be final, and as a result, the Appellate Authority or arbitrators or mediator shall be barred from proceeding with the appeal.
- It is pertinent to note that upon the filing of the declaration, Where the appeal pending before the CIT(A) or ITAT shall be deemed to have been withdrawn.

- Where the appeal is pending before the High Court (in a writ or appeal) or in Supreme Court, the taxpayer will have to withdraw the said appeal/ writ and furnish the proof along with the declaration to be filed with designated authority.
- Where, the taxpayer is in any arbitration under any law or tax treaties, the taxpayer has to withdraw it and furnish the proof along with the declaration.
- The taxpayer is also required to waive his right that may be available to him under any law or any tax treaty with respect to the tax arrears.
- In case where the taxpayer makes any false statement or violates any condition, the declaration filed by him will be deemed to have never been made and the pending dispute will get revived.
- The Scheme does covered litigation which are pending before disputes resolution panel

Standard Operating Procedure (SOP) for Non Filers of GST return:

The GST Council, in its 38th council meeting, decided to issue a Standard Operating Procedure ('SOP') for the Revenue Authorities to take action against non-filing of respective returns vide Circular No. 129/48/2019-GST dated December 24th 2019 .

- a. A system generated message would be sent to all registered persons 3 days before the due date of filing returns.
- b. Once the due date for filing GSTR-3B passes, a system generated email or message would be sent to all defaulters (i.e. to all the authorized persons as well as the director / partner / proprietor, etc.).
- c. 5 days after the due date of furnishing the return, a notice in GSTR-3A shall be issued electronically to all the defaulters asking them to furnish such return within 15 days.
- d. If the said return is not filed within 15 days, the Revenue Authorities may start to assess the tax liability on best judgement basis taking into account the information available / gathered and issue order in GST ASMT-13. The Revenue Authorities would then be required to upload the summary in GST DRC-07.
- e. In order to assess the aforesaid tax liability, the Revenue Authorities may take into account the details of outward supplies as per GSTR-1, details of inward supplies auto-populated in GSTR-2A, information available from e-way bills, or any other information available from any other source including inspection at business premises.
- f. If a valid return is furnished within 30 days of the service of aforesaid assessment order, the said assessment order shall be

deemed to have been withdrawn. Else, recovery proceedings could be initiated.

- g. In certain cases, the Commissioner may resort to provisional attachment of property to protect revenue, before issuance of order in GST ASMT -13. He/she may also proceed to cancel the GST registration of the taxpayer from such dates He/she considers fit.

Debit Notes/Credit Notes:

Delinking of the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit- Section 16(4) Time limit for claiming Input tax credit (return of September of subsequent year or annual return, whichever is earlier), in respect of a debit note issued by a supplier shall be reckoned from the date of debit note.

For instance, let's assume that a taxpayer has ITC for Rs. 10,000 in invoice dated 20 August 2019 and a debit note issued for the said invoice on 10 April 2020 bearing ITC Rs. 4,500.

Time limit for availing credit in this case:

- a) For Invoice with ITC Rs. 10,000 – Return for September 2020 or date of filing of annual return of FY 2019-20 whichever is earlier
- b) For Debit note with ITC Rs. 4,500 – Return for September 2021 or date of filing of annual return of FY 2020-21 whichever is earlier. Earlier, the time limit for such debit note was also reckoned as per date of corresponding invoice.

23. Penalty for Fake Invoice

- Proposed to insert section 271AAD
- Many persons are found to be indulged in providing / receiving fake invoices to take benefits of the input tax credit under GST etc
- Now, if it is found that that in the books of account maintained by any person there is (i) a false entry; or (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the AO may direct that such person shall pay by way of penalty a **sum equal to the aggregate amount of such false or omitted entry.**
- Further, any other person who cause / assist others in above default, then such other persons shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry
 - “false entry” includes use or intention to use –
 - (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
 - (b) invoice in respect of supply or receipt of goods or services or **both issued by the person or any other person without actual supply or receipt of such goods or services or both;** or
 - (c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

Case Laws related to GST:**LEVY OF INTEREST ON LATE PAYMENTS UNDER GST**

Section 50 of **CGST Act, 2017** articulates that every person who is liable to pay tax in accordance with the provisions of GST shall remit tax on or before scheduled dates, but fails to pay tax or any part thereof to the Government shall pay on his own interest at such rate not exceeding 18 percent on the tax or part thereof remains unpaid.

The said provision was very ambiguous about whether the interest to be charged on Net of GST (i.e. Output GST –Input GST) or Gross GST (i.e. Output GST). Based on this ambiguous Tax Mans were insisting Tax payers to remit the interest on Output Tax which is unjustified to the trade.

In the Case of M/s. Megha Engineering & Infrastructure Ltd and GST Department, High Court of Telangana dismissed the writ petition filed against the Interest demand raised by the revenue and held that in case of delay in filing returns the payment of tax liability, partly in cash and partly in form of claim of Input tax credit happens belatedly.

Hence interest arises automatically on the gross amount i.e. output Tax. GST Council during its meeting held on 22 Dec 2018 recommended **levy of interest on Net tax** i.e. after deducting the eligible input tax credit and amendment to that effect was pronounced in section 100 of The Finance (No.2) Act,2019 and has come into force from 01 of January 2020 vide **Notification No. 01/2020 – Central Tax dated 01-01-2020**. From 1 of January 2020, Provision to Sub Section 1 of Section 50 of **CGST Act, 2017** shall be in force and it will read as:

“50. (1) Every Person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which tax or any part thereof remains unpaid, pay, on his own interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the council. Provided that the interest on the Tax payable in respect of supplies made during a Tax period and declared in the return for the said period

furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

Consequent to the delay in filing returns and payment of tax from 01-01-2020, tax payers shall pay the Interest on the Net of Taxes who fails to discharge his tax liability with in the due date.

On the one hand Govt. has cleared the ambiguity and on the other hand Govt. has to clear the ambiguity on the following:

1. What is the faith of the tax payers who have discharged interest on Gross tax prior to 01-01-2020, whether Government will refund the interest which is paid in excess?
2. What about the faith of the taxpayer who has failed to pay tax before 01-01-2020, whether he has to pay on Gross tax or Net of tax. In the erstwhile Central Excise regime, interest shall be paid on the Net of Duty (.i.e. Duty Payable – Cenvat Credit) who fails to pay Excise duty on or before due date, as manufacturer have paid the Duty on Inputs and discharge the duty on finished goods after deducting the CENVAT. This principle should square off to GST. Hence the Govt. should give relief from 01-07-2017.

1. Bharat Raj Punj Vs Commissioner of Central Goods And Service Tax (Rajasthan High Court)

Case: Input tax credit availed fraudulently by issue of fake or fictitious sale invoices.

Decision: Arrested senior officials of the company after recording their statements. Also, Rajasthan High Court dismissed the Writ petition of the petitioner and imposed a cost of Rs. 1,00,000/- only.

Comments: It is an offence committed under Section 132 of the Act. It specifically covers cases leading to wrongful availment of

Input tax credit. The Department has the power to issue summons or arrest the offender on reasonable grounds, without first determining the tax.

2. Optival Health Solutions Pvt Ltd Vs UOI (Calcutta High Court)

Case: Rectification or Revision of GST TRAN-2 form should be allowed or not.

Decision: Allowed petitioner to file a revised Form GST TRAN-2 either electronically or manually.

Comments: Law permits a person to rectify or revise the Form , who voluntarily admits to have made a mistake in the form or admits to have submitted detail that is not true. The tax authorities have the right to retain original Form GST TRAN-2 for assessment purpose and they may ask the petitioner to provide proper explanation for such revision/rectification.

3. Vikas Goel and another Vs Central Goods and Services Tax Commissionerate (Punjab and Haryana High Court)

Case: Bogus billing under GST.

Decision: Arrested the petitioner and denied their bail in GST fraud.

Comments: Petitioners made bogus bills and adjusted the amount without any actual transportation or sale of goods. Transactions appeared only on paper. On search, it was found that premises were closed for a period of 5 years and there was tax evasion. So, the Department has the power to arrest under Section 69 of the Act.

4. *Supreme Court* dismissed SLP filed by GST department against Punjab & Haryana High Court order which allowed assessee to file Tran-1. Union of India v. Adfert Technologies (P.) Ltd. - [2020] 115 taxmann.com 29 (SC)