

December 2022

NEWSLETTER

TAX

- Income Tax
- Goods and Services Tax



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Income Tax	
1.	Relaxation to Non Resident Taxpayers from mandatory electronic filing of Form 10F
	<div style="text-align: right;">CBDT</div> <div style="text-align: right;">Notification No. 9227/2022 dated 12.12.2022</div> <p>Vide this notification, CBDT has provided exemption from mandatory e-filing of Form 10F till 31st March, 2023.</p> <p>Non-Resident taxpayers can file form 10F manually till 31st March 2023.</p> <p>Form 10F is filed by non-resident Indians (NRIs) receiving payments from India to claim lower TDS deduction as per Double Taxation Avoidance Agreement (DTAA). NRI's Tax Residency Certificate (TRC) details are required to be furnished therein.</p> <p>CBDT, vide circular dated July 16, 2022, mandated electronic filing of Form 10F on the income tax portal. Since, PAN is mandatory for registration at Income Tax Portal, NRIs who do not have a PAN are unable to file this form electronically. Hence CBDT has allowed manual filing of the Form 10F till 31st March 2023.</p> <p>Notification No.9227</p>

GST**1. Central Goods and Services Tax (Fifth Amendment) Rules, 2022.**

CIBC

Notification No. 26 dated 28.11.2022

CBIC vide this notification has notified following amendments in the GST regime:

A. GST Registration Process

- Permanent Account Number (PAN) will be verified through sending OTPs with registered mobile number and mail id linked with PAN.
- Biometric based Aadhar Authentication of the applicants is mandatory.
- Original copy of the uploaded documents with the GST registration form will be physically verified at the notified Facilitation centers.
- Photographs of applicants are also required to be taken on record.
- Applications can be processed for physical verification of place of business based on GST data analysis and risk parameters.
- As a Pilot Project, these rules are applicable only for the state of Gujarat.

B. Reversal of GST Input Credit (ITC) in case of Non Payment of consideration to the supplier within 180 days (Rule 37)

- Currently, the entire ITC is required to be reversed by the taxpayer if consideration is not paid to the vendor within 180 days.
- Now, only ITC proportionate to the unpaid consideration is required to be reversed,
- This amendment is effective retrospectively from 01.10.2022.

C. Reversal of ITC in case of Non Payment of GST by Supplier:

- ITC is availed by Tax payers based on return filed in Form GSTR-1 by suppliers. However payment of GST is made vide Form GSTR-3B.
- It has now been notified that where ITC has been availed by a registered person based on Form GSTR-1 filed by suppliers but Form GSTR-3B for the tax period corresponding to form GSTR-1 has not been furnished by such supplier till September 30 of the subsequent Financial Year, then such ITC shall be reversed on or before November 30 of the subsequent Financial Year.
- In case of Non reversal of ITC on or before November 30 of the subsequent Financial Year, such amount shall be payable along with interest thereon under section 50.
- Provided further that where the said supplier subsequently furnishes the return in Form GSTR-3B for the said tax period, then registered person may re-avail the amount of such credit.

D. Invoicing

- Rule 46 has been amended to include that in case where any taxable service is supplied by or through an Electronic Commerce Operator, tax invoice issued by the registered person shall contain the name and address of the recipient along with its state and PIN code.

E. Rule 88C – Difference in the Tax Liability reported in Form GSTR-3B and GSTR-1

- Where the difference between the Tax Liability reported in Form GSTR-3B and GSTR-1 in a particular month/quarter is more than a certain amount, then the registered person will be liable to pay the differential amount of tax or explain the reasons for the same.
- Further, the registered person will not be able to file the GSTR 1 for the subsequent period if differential tax has not been paid or reasons for mismatch has not been explained to the satisfaction of GST officer.

- Intimation of the difference between the Liabilities reported in GSTR-3B and GSTR-1 will be sent to the Taxpayer on GSTN Portal.

F. E-Way Bill

- E-way is also required to be generated for taxpayers in the business of *Imitation Jewelry*.

[Notification No.26](#)

2. GST Refund claims by unregistered Persons

CIBC

Circular No. 188/2022 dated 27.12.2022

In this Circular, CBIC has prescribed the Process of claiming GST Refund by unregistered persons.

Unregistered Persons:

- Instances have been brought to the notice of the GST department where
 - The unregistered buyers had entered into a contract with a builder for supply of services of construction of flats/ building, etc.
 - had paid the amount towards consideration for such service, either fully or partially, along with applicable tax
 - the said contract/ agreement was cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons and
 - The period for issuance of credit note on account of such cancellation of service under the provisions of GST Act may already have expired by that time.
 - In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.
 - As such the GST burden was borne by the unregistered person.
- Similar situation will arise in case of termination of long-term insurance policy where huge premium is already paid by unregistered Persons.
- Representations have been received requesting for providing a facility to such unregistered buyers for claiming refund of amount of tax borne by them in the event of cancellation of the contract for supply of services of construction of flat/ building or on termination of long-term insurance policy.

Process of filing of Refund application:

- Unregistered Person has to take temporary registration on the GST Portal.
- Unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered.
- Application for refund shall be filed in FORM GST RFD-01 on the common portal under the category '**Refund for unregistered person**'.
- The applicant shall upload
 - Statement 8 and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules.
 - Certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application and any other documents to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

- Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in each of the concerned States/UTs where the said supplier are registered

Time Period of filing of Refund application:

- Refund application should be filed **within 2 years** from the date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier.

Minimum Refund Amount:

- Minimum Refund claimed amount should be Rs. 1000.

[Circular No. 188](#)

3. Clarifications on collection of GST dues from taxpayers in respect of whom proceedings are finalized under Insurance and Bankruptcy code 2016 (IBC).

CIBC

Circular No. 187/2022 dated 27.12.2022

CIBC has clarified that where a confirmed demand for recovery has been issued by the tax authorities against the corporate debtor and where the proceedings also have been finalized against such corporate debtor under IBC reducing the amount of GST dues payable by that corporate debtor, then the jurisdictional GST Commissioner shall issue an intimation reducing such GST demand to that corporate debtor.

GST Department is authorized to collect only reduced GST dues as finalized by NCLT under IBC.

[Circular No. 187](#)

4. Taxability of No Claim Bonus offered by Insurance companies

CIBC

Circular No. 186/2022 dated 27.12.2022

Vide this Circular, CIBC has issued clarifications regarding taxability of No claim bonus (NCB) offered by insurance companies.

Issues	Clarifications
Whether the deduction on account of NCB allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).	<p>As per practice prevailing in the insurance sector, the insurance companies deduct NCB from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.</p> <p>It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.</p>

Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured

As per section 15(3)a of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply.

The insurance companies make the disclosure of the fact of availability of discount in form of NCB, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of NCB in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under section 15(3)a of the CGST Act.

It is, therefore, clarified that NCB is a permissible deduction for the purpose of calculation of value of supply of the insurance services. **Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.**

Disclaimer:

This is not a complete listing of all circulars/notifications issued during the month.
Instead, it is only a listing of some of the circulars/notifications that we considered important



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