



India Tax Update - GST JULY 2022

Changes made consequent to the 47th meeting of the GST Council

- Enhanced refunds under inverted duty structure
- Transfer of credit between distinct persons allowed
- Concessional rate supplies made eligible for inverted duty refunds
- No Interest liability on availment of credit without utilisation
- Time limits for demands and recovery extended till September 2023 for FY 2017-18
- Penalty applicable on persons involved in the issuance and credit of fake invoices
- Relaxation in compliances for composition dealers
- Various Clarifications relating to credit availment and other changes

www.kochhar.com



Summary of Notifications and Circulars issued on July 5 and July 6, 2022

S. No.	Particulars	Page No.
1.	Formula to calculate refund of ITC on account of inverted duty structure revised	01
2.	Clarification in respect of refund under inverted duty structure where the supplier is supplying goods under some concessional notifications	01
3.	Time limit to pass recovery order relating to erroneous refund and filing of refund application extended	01
4.	Time limit to pass order under Section 73(10) extended for FY 2017-18	01
5.	Transfer of cash balances between Distinct Persons	02
6.	Interest liability on ITC only if wrongly availed and utilized	02
7.	No reversal of ITC on account of supply of Duty Credit Scrips	02
8.	Clarification regarding taxability of perquisites provided by employer to employee	02
9.	Clarification regarding applicability of demand and penalty provisions in respect of transactions involving fake invoices	02
10.	Manner of re-credit under electronic credit ledger	03
11.	Utilization of amounts in electronic cash and credit ledger	03
12.	Automatic restoration of registration upon filing of all pending returns	03
13.	Disclosure of information in GSTR-3B	03
14.	UPI and IMPS made as an accepted mode of payment of GST	04
15.	ITC in respect of goods or services provided by employer to employee under any law	04
16.	Manner of filing refund of unutilized ITC on account of export of electricity	04
17.	Refund of GST paid on inward supply of indigenous goods to Duty Free Shops for supply made to international passengers	04
18.	Declaration in tax invoice by those enjoying exemption from complying e-invoicing	05
19.	Refund of ITC on deemed export supplies	05
20.	Exemption from filing Annual Return for specified assesses	05
21.	Due date to file GST CMP_08 and waiver of late fee to file GSTR-4 by composition dealers extended	05

1. Formula to calculate refund of Input Tax Credit ("ITC") on account of inverted duty structure revised–Circular 173/05/2022-GST

- Rule 89(5) has been amended to provide for a revised formula in case of refund due to inverted duty structure. Under the revised formula, utilization of ITC on input services for payment of output tax liability has been considered for calculation of the refund amount.

Our comments: This amendment is in line with the judgement of Hon'ble Supreme Court in UOI Vs. VKC Footsteps case, wherein the Court observed anomalies in formula for calculation of maximum refund amount which has now been rectified. This is a beneficial change for taxpayers.

2. Clarification in respect of refund under inverted duty structure where the taxpayer is supplying goods under a concessional rate notification – Circular 173/05/2022

- In exceptional cases, due to anomalies in rates, output supplies attract tax at a lower rate than inputs resulting in an accumulation of credits. This anomaly is rectified by refund of the accumulated credit. It has now been clarified that the refund would be admissible even where the difference in rates is on account of concessional tax rate. Refund of accumulated ITC, where output supplies are provided at a concessional rate notification is hence allowed.

Our Comments: This clarification is important for those companies who are supplying goods and services by availing benefit of concessional notifications. The object and intent of providing benefit of concessional notification was not being realized fully as such companies were facing large accumulation of unutilized ITC. Now, with the clarifications these companies would get benefitted.

3. Time limit to pass recovery order relating to erroneous refund and filing of refund

application extended - Notification 13/2022-CT

- The time from March 1, 2020, to February 28, 2022, shall be excluded while computing the limitation period for passing order under Section 73(10) of the Central Goods and Services Tax Act, 2017 ("Act") relating to recovery of erroneous refund and for filing refund application under Section 54 and Section 55 of the Act.

Our Comments: The Board taking cognizance of the Supreme Court extension order for the purpose of computing limitation period has clarified that for both passing of recovery order on account of erroneous refund and for filing refund application, period between March 2020 to February 2022 will be excluded for computing limitation period. This is a welcome move as balanced approach has been taken to extend the time limit to file refund application and pass recovery orders of erroneous refund.

4. Time limit to pass order under Section 73(10) extended for FY 2017-18 – Notification 13/2022-CT

- The time limit to issue notice and pass order for tax not paid or credit wrongly availed or utilized for FY 2017-18 under Section 73(10) of the Act has been extended by more than 6 months.

Our Comments: Section 73(10) of the Act provides 3-year time period to the proper officer from the date of Annual Return for passing of the demand and recovery order. The time period to pass order for tax not paid or credit wrongly availed or utilized for FY 2017-18 was to expire in February 2023. However, the government has extended the time period till September 30, 2023.

It is pertinent to note that even after 5 years, the assessment for FY 2017-18 under normal period of limitation are not final, and the Department has still more than 6 months to issue notices. This is a negative move as it would not give finality to the assessments.

5. Transfer of cash balances between Distinct Persons – Notification 9/2022-CT

- Section 49(10) of the Act has been amended to permit transfer of any amount lying in the electronic cash ledger including integrated tax, central tax, state tax, union territory tax or cess between the distinct person registered under the same PAN, provided there is no unpaid liability in the electronic liability ledger of the transferor.

Our Comments: Earlier the statute only provided facility to transfer an amount from one (major or minor) head to another (major or minor) head in the electronic cash ledger. With this amendment the GST law has recognized the principle of one juridical person who were until now treated separately based on unique GSTIN though being part of same entity.

6. Interest liability on ITC only if wrongly availed and utilized – Notification 9/2022-CT

- Section 50(3) of the Act has been retrospectively amended w.e.f. July 1, 2017, to provide that liability of interest on credits arises only on utilization and not on mere availment. A new Rule 88B has also been introduced retrospectively, providing for payment of interest only on the portion of tax paid in cash, in the case of delayed returns, other than as a result of a demand under Section 73 or 74.

Our Comments: The taxpayers have been made free from the burden of interest when credits are availed but not utilized. The long-standing demand of trade also echoed by various judicial pronouncements has finally been implemented.

7. No reversal of ITC on account of supply of Duty Credit Scrips – Notification 14/2022-CT

- Under GST law Scrips are goods and covered under HSN 4907. Supply of Scrips is exempted from tax in terms of S. No. 122A of Notification 2/2017-CT(R) dated June 28, 2017. Explanation 1 to Rule 43 has been

amended, to remove the requirement of reversal of ITC for exempted supply of Duty Credit Scrips (“Scrips”) by the exporters. The sale value of scrips will not be required to be included in the computation of exempted supplies.

Our comments: As the supply of Scrips are exempted from tax, the registered person is required to reverse the applicable ITC on common inputs and input services used in relation to supply of such Scrips i.e. for manufacturing of exported goods. The legal position was not clear as several assesses held a view that Scrips are merely an incentive bestowed by the Government which accrues to them because they have exported goods. These are merely incidental because exports are undertaken. Now with insertion of the explanation in Rule 43, it has become clear that no reversal of ITC in respect of Scrips is required even though sale of scrips are exempted supply.

8. Clarification regarding taxability of perquisites provided by employer to employee – Circular 172/04/2022-GST

- Perquisites provided by employer to employee in terms of contractual agreement entered between the employer and the employee will not be subject to GST, as there is no taxable supply rendered by the employee to the employer, in view of Entry 1 of Schedule III.

Our Comments: This would settle the ambiguity regarding taxability on benefits extended by employer to its employees as different authorities of advance ruling have given conflicting decision on this issue.

9. Clarification regarding applicability of demand and penalty provisions in respect of transactions involving fake invoices – Circular 171/03/2022-GST

- The Board has come out with clarifications pertaining to applicability of demand and penal provisions in supply chains involving

fake invoices. The circular has clarified that no demand of tax will be made from the issuer of the fake tax invoice, but the beneficiary of fake tax invoice would be demanded with tax and penalty. Further, the receiver of the fake invoices would be proceeded for demand and penalty for wrong availment of ITC. Furthermore, appropriate penalty shall also be leviable on person for passing on the credit availed from fake invoices.

Our comments: This circular clarifies the stance of Government in fake invoice transactions. Earlier, the Department could proceed against either the issuer or the receiver of fake invoices. After, issuance of this circular, the Department would be pursuing after the beneficiary of fake invoices as the issuer of fake invoices have already deposited the tax amount without any supply. However, for passing any credit on such fake invoices appropriate penalty would be levied.

10. Manner of re-credit under electronic credit ledger – Notification 14/2022-CT read with Circular 174/06/2022-GST

- A new Rule 86(4B) has been inserted to provide for re-credit in the electronic credit ledger where the assesses deposits the erroneous refund sanctioned to him along with interest and penalty. Till the time online facility is enabled on the common portal a manual procedure for getting re-credit of erroneous refund paid back along with interest and penalty, if applicable has been provided. The jurisdictional officer would order to recredit the electronic credit ledger through GST PMT-03A.

Our comments: This would be a relief to taxpayer as there was no mechanism to reclaim the credit of erroneous refund paid back to the Government.

11. Utilization of amounts in electronic cash and credit ledger – Circular 172/04/2022-GST

- Clarification regarding use of amount in the

electronic credit ledger for making payment of output tax except under reverse charge mechanism and amount in the electronic cash ledger for making any payment including interest, fines and penalty.

Our comments: The Circular would provide some clarity over use of electronic credit and cash ledger for making various payments under GST law. Insistence on cash deposits by investigating officers can be resisted based on this clarification.

12. Automatic restoration of registration upon filing of all pending returns

- Amendment made in Rule 21A to allow automatic revocation of suspension of registration, where suspension was done by the system due to failure to file GSTR 1 for 3/6 consecutive tax periods, upon filing of all pending returns. This would apply only to cases, where registration has not been cancelled.

Our comments: The above amendment would provide relief to the registered person who missed to file GSTR 1 for legitimate reasons resulting in suspension of registration. They can get registration revived upon filing of all pending returns and payment of tax.

13. Disclosure of information in GSTR 3B – Notification 14/2022-CT read with Circular 170/02/2022-GST

- Form GSTR-3B has been modified to require both e-commerce operators and registered persons making sales through e-commerce operators, to declare their respective supplies on the common portal.
- Details of supplies to unregistered dealers, composition tax persons and UIN holders to be declared in GSTR 3B
- The manner of reporting ITC in GSTR-3B has been changed. Prior to the amendment, credits available on account of inward supplies, credits to be reversed and net credits after such reversal were all required to be reported under separate heads. Post

amendment, all credits (eligible or ineligible) are to be declared. Thereafter, credits which are required to be reversed are to be reported. Credits which are proposed to be reclaimed, relating to previous tax periods, for instance where ineligible credit became eligible upon fulfilment of prescribed conditions under Section 16, are to be reported.

Our comments: The amendment in GSTR-3B has made reporting requirement difficult for taxpayers, as all reversals have to be kept track of. Under GST, there are certain credits which are permanently barred such as those mentioned under blocked credit provisions under Section 17(5). Also, there are certain credits which cannot be availed during a tax period for failure to comply with conditions mentioned in Section 16 of the Act such as receipt of goods, receipt of payment etc. However, these kinds of credits can be taken once the conditions are fulfilled. Therefore, taxpayers have to be vigilant of the changes on the common portal while reporting details in GSTR-3B and make sure that details are furnished as per amended requirements.

14. UPI and IMPS made as an accepted mode of payment of GST – Notification 14/2022-CT

- An option to pay GST by way of UPI and IMPS has been enabled which would help taxpayers while making payment of tax.

15. ITC in respect of goods or services provided by employer to employee under any law – Circular 172/04/2022

- It is clarified that goods or services made available to the employees by the employer under any law is available as credit.

Our Comments: There was confusion regarding admissibility of ITC on certain expenses which were mandated to be incurred under law by the employer such as food and beverage expenses, health services, etc. These expenses may be mandated under various laws such as Factories Act, 1948, Labor Codes, etc. . After, the clarification ITC

can be availed on such expenses incurred by the Companies.

16. Manner of filing refund of unutilized ITC on account of export of electricity – Notification 14/2022-CT read with Circular 175/07/2022-GST

- Amendment made in the provisions for filing refund application as statement containing export invoices, details of energy exported, tariff per unit and other statutory documents issued by Regional Power Committee shall be treated as documentary evidence to establish that a refund is due on account of export of electricity. Further, a circular has been issued to prescribe the procedure for filing and processing of refund of unutilized ITC on account of electricity.

Our Comments: Under GST law electricity is considered as 'goods'. For getting refund of unutilized ITC, the exporter of electricity faces several challenges. With issue of the Circular, some clarity has been provided for instance refund to be claimed under 'Any Other' category, relevant date for claiming refund shall be last date of the month in which electricity has been exported as per monthly Regional Energy Account issued by Regional Power Committee etc. This will facilitate refunds for exporters of zero-rated electricity.

17. Refund of GST paid on inward supply of indigenous goods to Duty Free Shops for supply made to international passengers – Notification 14/2022-CT read with Circular 176/08/2022-GST

- Specific provision providing refund of taxes paid on inward supplies by the Duty-Free Shops for supply made to an outgoing international passenger and related Circular has been omitted.

Our Comments: The activity of sale made by Duty Free Shops to outbound international passenger was doubted as supply under GST. The Government by way of notification

exempted such sale from levy of GST. Thereafter, a clarification was also issued to provide refund of tax paid on inward supplies of indigenous goods. However, no refund of tax paid on input services were being granted. The omission of specific refund provision is in line with various decisions of High Court which held that supply of goods by Duty Free Shops to international passengers will be treated as exports. Therefore, Duty Free Shops can claim refund under normal route of refund of taxes while making zero rated supply and thus special provision for claiming refund has been done away with.

18. Declaration in tax invoice by those enjoying exemption from complying e-invoicing – Notification 14/2022-CT

- Taxpayers such as insurers, banking companies, financial institutions including NBFCs, Goods, Transport Agencies (GTA), input service distributors, SEZ units, etc. are excluded from the provisions of e-invoicing. These categories are now required to give specified declaration stating that such person is not required to generate e-invoice in terms of Rule 48(4).

Our Comments: The companies who are not required to generate e-invoices shall have to make appropriate changes in IT system to reflect new format of tax invoices with the declaration.

19. Refund of ITC on deemed export supplies – Circular 172/04/2022-GST

- The Department vide an earlier clarification had allowed refund of tax paid on supply of deemed exports in the form of refund of ITC. However, confusion persisted regarding applicability of blocked credit provisions on such ITC. Now, the Department has made

clear that taxes paid on supply of deemed exports is allowed as refund of ITC and would not be subject to blocked credit provisions under GST. Further, while calculating unutilized ITC refund, ITC availed on deemed exports would not be considered for calculation of Net ITC.

Our comments: This clarification is a welcome move as facility of refund is available at the same time ITC in respect of deemed exports are not subject to any credit restrictions as applicable to ITC claimed other than on deemed exports.

20. Exemption from filing Annual Return for specified assesses – Notification 10/2022-CT

- The registered person whose aggregate annual turnover in FY 2021-22 is up to INR 2 crores has been exempted from filing Annual Return in Form GSTR-9 and GSTR-9A for FY 2021-22.

Our Comments: This would benefit the small taxpayers from additional compliance burden.

21. Due date to file GST CMP-08 and waiver of late fee to file GSTR-4 by composition dealers extended

- The Composition dealer can now furnish Form GST CMP-08 for the quarter ending June 30, 2022, by July 31, 2022, as earlier due date of July 18 has been extended – Notification 11/2022-CT.
- The Composition dealer can avail the benefit of waiver of late fee for delay in filing Form GSTR-4 for FY 2021-22, relating to Annual return, up till July 28, 2022, which was earlier available till June 30, 2022 – Notification 12/2022-CT.

Our Comments: Compliance relaxation to composition dealers is a welcome move.



REENA KHAIR

Senior Partner
E-mail : reena.khair@kochhar.com

Reena is a Senior Partner and Head of the International Trade & Indirect Taxation Practice at the Firm.

She is a lawyer of eminence with more than 25 years of work experience and specialisation in the areas of international trade and indirect taxation. She represents clients regularly before the Customs, Excise, and Service Tax Appellate Tribunal, as well as before various High Courts and the Supreme Court of India. She has extensive court room experience with more than 300 reported cases argued by her.

In the domain of international trade, Reena has represented clients comprising domestic and foreign industries, as well as user industries in India before the Designated Authority, Directorate General of Trade Remedies, and higher forums. She has also successfully argued the highest number of anti-dumping and anti-subsidy cases before the Tribunal. She has also assisted clients in trade remedial investigations in foreign jurisdictions.

She has been regularly providing advisory services and has been involved in dispute resolution for high-profile matters relating to customs, excise, service tax, FEMA, and GST. Critical issues handled by her include classification under the Harmonized System Nomenclature, valuation, export promotion schemes, drawback, EOUs, SEZs, inverted duty structure, admissibility of credits, transitional issues in GST, export refunds.

She regularly assists clients in the transition to the GST regime.

She has also conducted Internal Management audits for optimization of tax liability, identifying issues/risks for potential disputes with departmental authorities and restructuring of transactions undertaken for various clients including some of India's major conglomerates and multinational corporations in the oil & gas, specialty materials and chemicals, steel, and manufacturing sector.

Awards & Recognitions

Recognised among India's 'Top 100 Lawyers' by FORBES Legal Powerlist 2020; felicitated for expertise in Anti-Dumping.



SHAMPA BHATTACHARYA

Partner
E-mail : shampa.bhattacharya@kochhar.com

Shampa is a Partner in the Indirect tax practice of the Firm. She has more than 15 years of post-qualification experience in corporate and civil law with exclusive specialisation of more than 11 years in the domain of indirect taxes. She has worked extensively on various indirect taxes including Customs, Goods & Services Tax (GST), erstwhile Service tax, Excise laws, Value Added Taxes, Foreign Trade Policy and other ancillary laws.

Prior to joining Kochhar & Co., Shampa has an enriching extensive experience of having worked with two of the Big 4 international consultancy firms namely Deloitte and Ernst & Young in the indirect tax practice in Delhi and Gurgaon.

She has advised clients and assisted them in litigation matters by way of drafting, pleading and strategizing. Her experience includes advising large MNC and Indian companies on structuring of transactions by devising tax efficient models, identifying potential revenue and tax leakages in existing operations and providing feasible remedies, guiding through assessments, audit and investigations by the revenue authorities and compliance services for clients.

Shampa has advised extensively on revenue investigations by custom authorities, classification of goods as per Harmonized System of Nomenclature ('HSN') including imports under free trade agreements, issues with regard to customs valuation including special valuation bench matters, anti-dumping matters and advising on export benefits and authorisations viz EPCG, SCOMET, AA under the Foreign Trade Policy. She has had the expertise of assisting IT based corporates in setting up special economic zone (SEZ) units and other export -oriented units. She has been a part of the GST implementation for MNCs and also offers supports for periodical compliances including GST/ VAT/ Service tax audit. Shampa has been actively involved in rendering policy advocacy support as an alternative to tax litigations by reaching out to policy makers / tax authorities to pre-empt any business disruption. She also assists clients in their anti - profiteering matters and conducting detailed diagnostic tax reviews of the existing business operations of clients. Her focus is also on central and state incentives offered in India.

Her area of industry expertise includes automobile, infra and power, pharmaceutical, telecom and information technology services, FMCG, consumer durables, defence, oil & gas and several others.



KEY PRACTICE AREAS

ANTI-CORRUPTION &
WHITE-COLLAR CRIME

ARBITRATION & ADR

AVIATION & DEFENCE

BANKING & FINANCE

BANKRUPTCY & INSOLVENCY

CAPITAL MARKETS

COMPETITION & ANTITRUST

CORPORATE & COMMERCIAL

DATA PRIVACY

E-COMMERCE

FINTECH, BLOCKCHAIN &
CRYPTOS

ENVIRONMENTAL, SOCIAL,
AND GOVERNANCE (ESG)

INFRASTRUCTURE &
ENERGY

INTELLECTUAL PROPERTY

INTERNATIONAL TRADE &
CUSTOMS LAW

MERGERS & ACQUISITIONS

LABOUR & EMPLOYMENT

LITIGATION

PRIVATE EQUITY, VENTURE
CAPITAL & FUNDS

REAL ESTATE & CONSTRUCTION

SHIPPING & MARITIME

START-UPS

TAXATION (DIRECT & INDIRECT)

TECHNOLOGY, MEDIA &

TELECOMMUNICATIONS (TMT)

ABOUT US

With more than 200 lawyers, Kochhar & Co is one of India's pre-eminent corporate law firms. The firm has a full-service presence in seven (7) prominent cities namely New Delhi, Mumbai, Bengaluru, Chennai, Gurugram, Hyderabad and Chandigarh and three (3) overseas offices in Dubai, Singapore, and Chicago. Kochhar & Co has a reputation for cutting edge legal expertise, clear and commercially driven advice, and an unwavering commitment to our clients' needs through delivering bespoke, sustainable, and innovative legal solutions.

Kochhar & Co is the preferred law firm for some of the largest multinational and blue-chip corporations from Europe, North America, and Asia including 65 of the Fortune Global 500 corporations. The firm has an enviable domestic footprint and acts as counsel to several large and iconic Indian corporations across both the private and public sectors.

UAE presence: Kochhar & Co Inc. Dubai is a leading full-service law firm in the UAE advising clients on both UAE and DIFC Laws. The Dubai team comprises of senior partners and lawyers with several decades of rich and diverse experience on the UAE, English and Indian law matters and specialises in providing a wide range of legal services in the areas of corporate & commercial laws, banking & project finance, dispute resolution, tax and IPR.

Awards & Recognition: Conferred with numerous awards including the National Bar Award, International Council of Jurists Award bestowed by the Prime Minister and Rastriya Gaurav Award (National Pride) Award. Recognised among top-tier Indian firms by leading global publications: Forbes Legal Powerlist, Legal 500, Benchmark Litigation and India Business Law Journal.

Contact

Rohit Kochhar

Founder & Managing Partner

E: delhi@kochhar.com T: +91 11 4111 5222

Priyanka Gupta

Director - Strategy & Corporate Relations

E: priyanka.gupta@kochhar.com

T: +91 124 4545 222 M: +91 96509 05770