

## GST Update-97

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### **GOODS & SERVICES TAX / IDT UPDATE – 97**

#### **Extension of the date for transition under GST on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli.**

The Central Government vide [Notification No. 45/2020- Central Tax dated 9<sup>th</sup> June, 2020](#) has extended the transition date for compliance of special procedures under GST as notified vide [Notification No. 10/2020 – Central Tax dated 21st March ,2020](#) on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli from 31<sup>st</sup> day of May,2020 to **31<sup>st</sup> day of July,2020**.

[[Notification No. 45/2020- Central Tax dated 9<sup>th</sup> June, 2020](#)]

#### **Extension of period to pass order under Section 54(7) of CGST Act.**

The Central Government vide [Notification No. 46/2020- Central Tax dated 9<sup>th</sup> June, 2020](#) has notified that w.e.f. 20th March,2020, that in cases **where a notice has been issued for rejection of refund claim**, in full or in part and where the time limit for issuance of order in terms of the provisions of sub-section (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, in such cases **the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 30th day of June, 2020**, whichever is later.

[[Notification No. 46/2020- Central Tax dated 9<sup>th</sup> June, 2020](#)]

#### **Extension of validity of e-way bill generated on or before 24.03.2020**

The Central Government vide [Notification No. 47/2020- Central Tax dated 9<sup>th</sup> June, 2020](#) has further amended [Notification No.35/2020-Central Tax, dated the 3rd April, 2020](#),to **further extend the validity period of e-way bill** generated on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, **till the 30th day of June, 2020**.

[[Notification No. 47/2020- Central Tax dated 9<sup>th</sup> June, 2020](#)]

#### **Clarification on Refund Related Issues**

The Central Board of Indirect Taxes and Customs vide [Circular No. 139/09/2020-GST dated 10th June,2020](#) has issued the following clarifications regarding the issue relating to refund of accumulated ITC in respect of invoices whose details are not reflected in the FORM GSTR-2A of the applicant :-

- It was decided vide Circular No.135/05/2020-GST dated the 31st March, 2020 that the refund of accumulated ITC shall be restricted to the ITC as per those invoices,

the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 was modified to that extent."

- Representations have been received that **in some cases, refund sanctioning authorities have rejected the refund of accumulated ITC in respect of ITC availed on Imports, ISD invoices, RCM etc. citing the above-mentioned Circular** on the basis that the details of the said invoices/ documents are not reflected in FORM GSTR-2A of the applicant.
- In this context it is noteworthy that before the issuance of Circular No. 135/05/2020-GST dated 31st March, 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in FORM GSTR-2A) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No.135/05/2020-GST dated the 31st March, 2020, the refund related to these missing invoices has been restricted. **Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.**
- **The aforesaid circular does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc.. It is clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020-GST dated 31st March, 2020.**

[\[Circular No. 139/09/2020-GST dated 10th June,2020\]](#)

#### Clarification in respect of levy of GST on Director's Remuneration

The Central Board of Indirect Taxes and Customs vide [Circular No. 140/10/2020-GST dated 10<sup>th</sup> June,2020](#) has issued the following clarifications on levy of GST on Director's remuneration paid by companies to their directors:-

The issue of remuneration to directors has been examined & clarified under following two different categories as below:

#### Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company.

- The primary issue to be decided is whether or not a 'Director' is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:
  - a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.
  - b. the definition of 'independent directors' under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a

partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

- Therefore, **in respect of such directors who are not the employees of the said company**, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. **the Company, is liable to discharge the applicable GST on it on reverse charge basis.**
- **Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.**

**Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company**

- Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.
- It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.
- Accordingly, it is clarified that the part of **Director's remuneration which are declared as 'Salaries' in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.**
- It is further clarified that **the part of employee Director's remuneration which is declared separately other than 'salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services** shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. **the Company, is liable to discharge the applicable GST on it on reverse charge basis.**

*[Circular No. 140/10/2020-GST dated 10<sup>th</sup> June,2020]*

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