

GOODS & SERVICES TAX / IDT UPDATE-142

1. Amendments made vide *Notification No. 35/2021 – Central Tax dt. 24.09.2021* to be effective from 1st January 2022

The following amendments made vide [Notification No. 35/2021 – Central Tax dt. 24.09.2021](#) shall be applicable from **January 1, 2022**:

- (i) Newly inserted rule 10B of the CGST Rules, 2017 making Aadhaar authentication mandatory for registered persons for filing application for revocation of cancellation of registration and refund application.
- (ii) Amendments made in rule 23 (revocation of cancellation of registration), rule 89 (application for refund of tax, interest, penalty, fees or any other amount) and rule 96 (refund of integrated tax paid on goods or services exported out of India) consequent to the insertion of rule 10B making Aadhaar authentication under rule 10B mandatory.

[Notification No. 38/2021 – Central Tax dt. 21.12.2021](#)

2. Amendments made vide the Finance Act, 2021 to be effective from 1st January 2022

The Central Government vide [Notification No. 39/2021-Central Tax dated 21st December 2021](#) has appointed **1st day of January, 2022**, as the date on which the provisions of sections 108, 109, 113, 114, 115, 116, 117, 118, 119, 120, 121 and 122 of the Finance Act, 2021 shall come into force.

The amendments made vide the aforesaid sections of the Finance Act, 2021 in the relevant sections of the CGST Act, 2017 have been tabulated below for ready reference:

Section of the Finance Act, 2020	Relevant section of the CGST Act, 2017	Amendment
Section 108	Amendment of section 7 (Scope of supply)	A new clause (aa) in sub-section (1) of section 7 of the CGST Act has been inserted, retrospectively with effect from the 1 st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
Section 109	Amendment of section 16 (Eligibility and	A new clause (aa) to sub-section (2) of the section 16 of the CGST Act has been inserted to provide

	conditions for taking input tax credit)	that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have 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.
Section 113	Amendment of section 74 (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful mis-statement or suppression of facts)	Section 74 of the CGST Act has been amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.
Section 114	Amendment of section 75 (General provisions relating to determination of tax)	An explanation has been inserted in sub-section (12) of section 75 of the CGST Act to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.
Section 115	Amendment of section 83 (Provisional attachment to protect revenue in certain cases)	Section 83 of the CGST Act has been amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.
Section 116	Amendment of section 107 (Appeals to Appellate Authority)	A proviso to sub-section (6) of section 107 of the CGST Act has been inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal

		to twenty-five per cent. of penalty has been paid by the appellant.
Section 117	Amendment of section 129 (Detention, seizure and release of goods and conveyances in transit)	Section 129 of the CGST Act has been amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.
Section 118	Amendment of section 130 (Confiscation of goods or conveyances and levy of penalty)	Section 130 of the CGST Act has been amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
Section 119	Amendment of section 151 (Power to collect statistics)	Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.
Section 120	Amendment of section 152 (Bar on disclosure of information)	Section 152 of the CGST Act has been amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.
Section 121	Amendment of section 168 (Power to issue instructions or directions)	Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.
Section 122	Amendment of Schedule II (Activities or transactions to be treated as supply of goods or supply of services)	Consequent to the amendment in section 7 of the CGST Act, paragraph 7 of Schedule II to the CGST Act has been omitted retrospectively, with effect from the 1 st July, 2017.

3. Clarification on applicability of GST on service supplied by restaurants through e-commerce operators

The CBIC has issued [Circular No. 167 / 23 /2021 - GST dt. 17th Dec, 2021](#) to clarify following issues regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO).

- (i) With effect from 01.01.2022, an electronic commerce operator (ECO) shall be liable to pay GST on 'restaurant services' provided through it as 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017. Thus, the ECO shall no longer be required to collect TCS on restaurant services and file GSTR-8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
- (ii) As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
- (iii) ECOs will be liable to pay GST on any restaurant service supplied through them including by any unregistered person.
- (iv) The aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurants through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall include such services in his aggregate turnover.
- (v) Supplies of restaurant service made through ECOs shall not be considered as inward supplies of ECOs since ECOs are not the recipient of restaurant service supplied through them. Accordingly, since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge) in GSTR-3B.
- (vi) ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service on which input tax credit is not admissible. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.
- (vii) It may be noted that on restaurant service, ECO shall pay the entire GST liability **in cash** i.e., input tax credit cannot be utilised for payment of GST on restaurant service supplied through ECO.

- (viii) In respect of supplies not notified under section 9(5) but supplied through ECO, the liability to pay GST continues to be on the supplier. Therefore, ECO shall continue to pay TCS on such supplies.
- (ix) Where a restaurant provides 'restaurant service' as well as other goods and services through an ECO under the same order, it is advisable that the ECO raises separate bill on restaurant service.
- (x) The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by the ECO.
- (xi) Reporting Requirements:
 - a) The ECO, on services notified under section 9(5) of the CGST Act, 2017, including on restaurant service, may continue to pay GST by furnishing the details in **Form GSTR 3B**, reporting them as outward taxable supplies for the time being.
 - b) ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of **Form GSTR-1**, as the case may be, for accounting purpose..
 - c) Registered persons supplying restaurant services through ECOs under section 9(5) shall report such supplies of restaurant services made through ECOs in Table 8 of **Form GSTR-1** and Table 3.1(c) of **Form GSTR-3B**, for the time being.

[Circular No. 167 / 23 / 2021 - GST dt. 17th Dec, 2021](#)

GST Knowledge Sharing

Please visit the website of the GST & Indirect Taxes Committee of ICAI www.idtc.icai.org for previous GST/IDT Updates and other knowledge resources on GST like articles, publications, legal updates, newsletter etc. as also for the information on upcoming events on GST organised by the Committee.

<i>Articles</i>	http://idtc.icai.org/knowledgesharing.php
<i>Legal Update on GST & E-Newsletter on GST</i>	http://idtc.icai.org/gst.html
<i>Publications</i>	http://idtc.icai.org/publications.php
<i>Upcoming events</i>	http://idtc.icai.org/upcoming-events.php

Disclaimer

Information published in the Update is taken from publicly available sources and is believed to be accurate. The GST & Indirect Taxes Committee of ICAI takes no responsibility of accuracy and reliability of information published in the Update. No part of this Update may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording, or otherwise without the permission of GST & Indirect Taxes Committee of ICAI.

ICAI Feedback

The GST Update is an endeavour of the GST & Indirect Taxes Committee to apprise the readers of the amendments made in the GST law vide significant notifications, circulars etc. We welcome your feedback on the Update and its contents. Please share your feedback at gst@icai.in.

*Chairman
GST & Indirect Taxes Committee*

*Vice- Chairman
GST & Indirect Taxes Committee*