

Note on Form GSTR -9 & 9C

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Dear Members,

Greetings and our Wishes for an empowered and successful 2019.

At the outset, we congratulate the Government for promptly responding to some of the clarifications sought by ICAI, in respect of Form GSTR 9 / Form GSTR 9A and Form GSTR 9C. These responses of the Government need to be digested to identify what is 'new' that the members need to consider, as compared to our recent understanding as the relevant Forms that existed before these amendments. We furnish below some of the snapshots of the changes:

I. 'Second' Removal of Difficulty Orders

- i. Order 2 inserts a new *proviso* to section 16(4) of the CGST Act, 2017 and by this Order the issue relating to availment of input tax credit that arises is paraphrased as under:
 - Inward supplies effected during the financial year 2017-18 on which taxes have been paid by the supplier
 - Where eligible as input tax credit in the hands of the recipient but was omitted to be claimed by the Recipient [in his earlier 3B return] would now be available
 - If the recipient claims the same in Form GSTR 3B (and not in GSTR 9) within the due date for filing of March 2019 return

- As a 'once only' facility due to the exceptional circumstances faced by trade and industry
- ii. Also, Order 2 inserts a new *proviso* to section 37(3) of the CGST Act, 2017 and by this Order the issue relating to reporting of output liability that arises is paraphrased as under:
- Outward supplies omitted or erroneously reported in GSTR 1 of 2017-18 by the supplier
 - Would be allowed to be rectified by the supplier as a 'once only' facility in 2018-19
 - By rectification in any upcoming GSTR 1 within the due date for filing of March 2019 return by way of inclusion or rectification
- iii. Therefore, Order 2 cited supra allows for extension of the time limit to avail input tax credit by the recipient and to report outward supplies by the supplier. Based on this understanding, it now becomes apparent and unambiguously clear by virtue of this Order 2 that there is no requirement to await any other specific extension of Form GSTR 1 (although an extension was granted earlier up to Oct 31, 2018).
- iv. Further construed, the rectification carried out by the supplier in Form GSTR 1 cited supra (during 2018-19) would appear in Form GSTR 2A of counter party in the financial year 2017-18 or in financial year 2018-19 needs to be understood. This aspect and its implications would be discussed again under GSTR 9 infra.
- v. By this Order 2, two situations arise for consideration, viz.,
- a. Where credits are already appearing in Form GSTR 2A (of financial year 2017-18) but omitted to be claimed by the recipient for the financial year 2017-18 (in Form GSTR 3B of the financial year 2017-18; or in Form GSTR 3B of the financial year 2018-19 up to Sept 2018); or
 - b. Where credits are newly appearing in GSTR 2A (of 2018-19) and not forming part of credits claimed in any earlier Form GSTR 3B either for the financial year 2017-

18 or in Form GSTR 3B of the financial year 2018-19 up to Sept 2018) by the recipient

all these new credits can now be claimed by the recipient only in Form GSTR 3B to be filed by the recipient in the financial year 2018-19 within the due date for filing of March 2019 return.

** Please note 'due date for furnishing GSTR 3B returns for March 2019' will be April 20, 2019, subject to any extensions that may be granted.*

*** Please note 'due date for furnishing GSTR 1 returns for March 2019' will be April 11, 2019 (refer NN 43/2018-CT and 44/2018-CT both dated September 10, 2018), subject to any extensions that may be granted.*

**** Please note 'no new credits' to be claimed in Form GSTR 9 indicates that credits 'for' 2017-18 are already closed with the filing of Form GSTR 3B of September 2018.*

vi. The following table summarizes the position with respect to availment of input tax credit, in respect of invoices / debit notes pertaining to financial year 2017-18 which would have been / can be availed, as under:

Return / time period	Conditions	Implications*
Form GSTR 3B filed for the tax period September 2018 on or before October 25, 2018 (irrespective of the month for which the said Form GSTR 3B is filed)	Usual conditions as stipulated in law. Reflection in GSTR 2A is not mandatory (source: Press Release dated October 21, 2018).	Will form part of Form GSTR 9 for the financial year 2017-18.
Form GSTR - 3B filed on or after October 25, 2018 but on or before April 20, 2019 (irrespective of the month for which the said Form GSTR 3B is filed)	Usual conditions as stipulated in law plus the following: <ul style="list-style-type: none"> Details of the invoice / debit note pertaining to the financial year 2017-18 should have been uploaded by the concerned supplier in Form GSTR 1 on or before the due date. 	Will form part of Form GSTR - 9 for the financial year 2018-19.

**Clarification from Government is required in this regard.*

II. 'Third' Removal of Difficulty Orders

- a. Section 44 of the CGST Act, 2017 stipulates the due date for submission of annual return along with the reconciliation statement in the respective Form GSTR 9 / Form GSTR 9A and Form GSTR 9C as "31st December 2018". This due date was extended up to "31st March, 2019". Now, Order 3 substitutes the said due date of "31st March, 2019" with "30th June, 2019". Therefore, by this Order, the due date to submit the annual return and the reconciliation statement in the respective Form GSTR 9 / Form GSTR 9A along with Form GSTR 9C is extended to June 30, 2019.
- b. It would be interesting to note that Part V in Form GSTR 9 for the financial year 2017-18 continues to refer to 'April 2018 to September 2018'. This fact is in consonance with the understanding of Order 2 discussed supra. In other words, the time available up to June 30, 2019 is only for preparation and filing of Annual Return and Reconciliation Statement, but the time available for claiming 'omitted' credits stops at April 20, 2019 being the due date for filing the returns for March 2019.

III. GSTR 9

- a. A plain reading and understanding of Order 2 and Order 3 discussed supra, would indicate in clear terms that information to be reported in Form GSTR 9 cannot be reported in the absence of submission of the relevant details in Form GSTR 1 and Form GSTR 3B for the financial year 2017-18. The Government has made this unambiguously clear in more than one place in the instructions to Form GSTR 9. Since filing of Form GSTR 1 / Form GSTR 3B is a prerequisite, it is obvious that they must agree with each other by the end of the last opportunity granted vide Order 2 discussed supra. However, there may be situations when they are not in agreement, viz.:
 - Where outward supplies for the financial year 2017-18 reported by the supplier are correctly uploaded in Form GSTR 1 during financial year 2018-19 (on availing

the benefit provided by Order 2), then the additional taxes that remain unpaid, must be promptly paid through Form DRC 3 so that Form GSTR 9 would carry the correct information regarding outward supplies and taxes duly paid (partly through GSTR 3B and rest through DRC 3); or

- Where outward supplies for the financial year 2017-18 are correctly reported in Form GSTR 3B, then GSTR 1 (already filed) must be rectified before the due date for filing of March 2019 returns so that Form GSTR 9 carries the correct turnovers..
- b. As per the instruction no. 2 to Form GSTR – 9, the emphasis for filing of Form GSTR 1 and Form GSTR 3B is only "for" financial year 2017-18, whereas Order 2 permits addition of invoices in GSTR 1 to be filed "for" financial year 2017-18 till the due date for filing of returns for March 2019. Thus, it appears that one would **not** be permitted to report any additional liability in Form GSTR 9 without reporting any corresponding Form GSTR 1, as per Order 2 discussed supra and payment of such additional tax through DRC 3.
- c. It is important to note that input tax credit claimed in Form GSTR 3B that is to be reported in Table 13 of Form GSTR 9 would only accommodate input tax credit claimed in Form GSTR 3B 'of' April 2018 to September 2018 and not up to March 2019. Therefore, credit availed pursuant to Order 2, cannot be reported in Table 8C of Form GSTR 9. Thus, any input tax credits becoming available by virtue of the benefit granted by Order 2 would only be available to be enjoyed in the financial year 2018-19.
- d. Based on the above reasoning, new credits cannot be claimed in Form GSTR 9, and any rectification of Form GSTR 1, pursuant to Order 2, would appear in Form GSTR 2A of the counter party only in 2018-19. This reasoning was put to test by filing of invoice dated sometime in 2017-18 in Form GSTR 1 during January 2019 and the same appeared in Form GSTR 2A 'record for the month' of January 2019.

