



UNION BUDGET 2022

**Summary of GST related changes as
proposed in the Finance Bill, 2022**

**S B Gabhawalla & Co
Chartered Accountants**



Introduction

The Finance Bill, 2022 was presented by the Hon'ble Finance Minister. The said Bill proposes certain changes to the GST Law. This note analyses the said proposals in relation to GST. Unless specifically mentioned, the amendments would come into effect from a date to be notified after the enactment of the Finance Bill, 2022.

Despite the buoyancy in GST collections, it seems that the Government continues to have apprehensions of revenue loss on account of mis-use or non-compliance of the provisions of the law. Accordingly, the Finance Bill, 2022, while formally burying the original proposed three step return filing process involving two-way communication between the supplier and customer, attempts to introduce provisions placing further restrictions on availment or utilisation of input tax credit, depending on compliances / non-compliances by the suppliers. Indeed, caveat emptor is the key word. Having said so, the law also tries to tighten the noose around the errant supplier. A few benefits and procedural concessions are sprinkled in between, to balance out the difficult times.

Further Restrictions in Availment/ Utilisation of Input Tax Credit by the Recipient on account of default by the supplier

1. Section 16(2) prescribes the conditions for claim of input tax credit. Right from the introduction of the GST Law, sub-clause (c) cast an obligation on the recipient to ensure that the tax has been paid to the Government Treasury. This obligation was deemed onerous by the trade and was contested through multiple representations and also before judicial forums. In the case of D. Y. Beathel Enterprises v. the State Tax Officer¹, the Madras High Court was pleased to interpret the said obligation as a secondary obligation and insisted that the Department first proceed against the supplier and exhaust the remedy of recovery before demanding reversal of input tax credit from the recipient.

¹[2021-TIOL-890-HC-MAD-GST]



Before dust could settle on this aspect, Section 41(2) proposed to be inserted through clause 105 of Finance Bill, 2022 specifically provides for reversal of the input tax credit along with interest. The proviso to the said section 41(2) permits a re-availment of the said reversed credit when the supplier actually makes the payment of the tax. It may however, be noted that the interest cannot be re-availed and would thus result in dual jeopardy since the supplier would also have discharged the interest for delayed deposit of tax.

2. Independent of the requirement of the vendor making the payment of the tax to the Government, a further sub-clause (aa) was introduced by Finance Act, 2021 and made effective from 01.01.2022. The said sub-clause prescribes that the input tax credit can be claimed only if the same is reflected in GSTR-2B of the recipient. Accordingly, a detailed transaction level matching of input tax credit is required before claiming the same and un-matched credit cannot be claimed immediately but needs to be deferred.
3. In the above background, Clause 99 of the Finance Bill, 2022 proposes to introduce sub-clause (ba) to section 16(2) so as to provide that input tax credit with respect to a supply may be availed only when such credit has not been restricted in the details communicated to the registered person under section 38. Thus, a new concept of restricted input tax credit (distinct from unmatched credits u/s 16(2) (aa), which can be deferred and can be claimed when actually matched and blocked credits u/s 17(5), which have to be expensed off and can never be claimed) is introduced under section 38(2), which is explained below.
4. Clause 103 of the Finance Bill, 2022 introduces section 38(2) which seeks to provide for the classification of input tax credits as reflected in GSTR2B between unrestricted credits and restricted credits. It also provides for an indicative set of circumstances under which the credits can be restricted if the inward supplies are from a registered person:
 - (i) within prescribed period of taking registration
 - (ii) who has defaulted in payment of tax beyond a prescribed period



- (iii) whose output tax payable in GSTR1 exceeds the output tax paid in GSTR3B by a prescribed limit
 - (iv) whose credit availment in GSTR3B exceeds the un-restricted credit as per GSTR2B by a prescribed limit
 - (v) whose proportion of output tax discharged through credit exceeds the prescribed limit under section 49(12)
 - (vi) Any other class of persons as may be prescribed
5. It is not very clear whether the restrictions prescribed above are temporary, in the sense that at a later point of time, on corrective actions undertaken by the supplier, whether the recipient will be eligible for input tax credit or not. A re-credit enabling provision similar to the proviso to Section 41(2) is missing in this situation and could result in undue loss of input tax credit even for temporary defaults of the vendor.
6. While the above clauses deal with restrictions on the availment of input tax credit, further provisions are prescribed through clause 109 of the Finance Bill, 2022 to restrict subsequent utilisation of validly availed input tax credit in certain circumstances. Section 49(4) seeks to provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger. Further Section 49 (12) provides for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger, thereby giving a legal sanctity to Rule 86B, which is already in force.

Extension in time limit for claim of input tax credit and rectification of mistakes and credit notes

7. The GST Law prescribes timelines for certain actions in relation to input tax credit and rectification of mistakes and issuance of credit notes. Currently, the timeline is based on the due date of filing the return for the month of September immediately following the financial year pertaining to which the input tax



credit is to be claimed/ corrective action is sought to be performed. Through various Clauses of the Finance Bill, 2022, the said timeline is sought to be extended upto 30 November following the end of the financial year. The following table summarises the relevant provisions in this regard:

| Clause of Finance Bill, 2022 | Amendment to Section of CGST Act, 2017 | Gist of the Proposed Amendment |
|-------------------------------------|---|---|
| 99 | 16(4) | <p><u>Input Tax Credit</u></p> <p>A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note after the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains, or furnishing of the relevant annual return, whichever is earlier</p> <p>Note: This provision applies where the credit is claimed on the basis of invoice or debit note and not in cases where the credit is claimed on any other document like bill of entry.</p> |
| 101 | 34 | <p><u>GST Credit Notes</u></p> <p>The last date for issuance of credit notes in respect of any supply made in a financial year is prescribed as thirtieth day of November following the end of the financial year</p> <p>Note: There is no timeline for issuance of debit note or for the issuance of commercial credit note where GST adjustment is not sought by the supplier</p> |



| Clause of Finance Bill, 2022 | Amendment to Section of CGST Act, 2017 | Gist of the Proposed Amendment |
|-------------------------------------|---|--|
| 101 | 37(3) | <u>Amendment in GSTR1</u> The last date for amendment in GSTR1 Entries is prescribed as thirtieth day of November following the end of the financial year |
| 104 | 39(9) | <u>Amendment in GSTR3B</u> The last date for amendment in GSTR3B Entries is prescribed as thirtieth day of November following the end of the financial year Note: In view of the GSTR3B not accepting negative values, this provision could result in substantial difficulties if the credit notes cannot be offset against subsequent invoices till November. |
| 111 | 52 | <u>Amendment in TCS Particulars</u> The last date for amendment in TCS particulars is prescribed as thirtieth day of November following the end of the financial year |

8. It may be noted that in all the above cases, if the taxpayer chooses to file the annual return before 30 November, then the timelines will get preponed to the date of filing of the annual return.



Ensuring better compliance by suppliers

9. By now, it is more than evident that the effective implementation of GST implies compliance by all the stakeholders. In order to ensure better compliance by the suppliers, the law not only obliges the suppliers to file returns in time and imposes late fees, interest and penalties, but also provides for various stringent deterrent steps.
10. Section 29(2)(b) of the CGST Act, 2017 provides for cancellation of registration of a composition dealer if he has not furnished returns for three consecutive tax periods. Clause 100 of the Finance Bill, 2022 seeks to amend the provision to provide for cancellation if the return for a financial year has not been furnished beyond three months from the due date of furnishing of the said return.
11. Similarly, section 29(2)(c) of the CGST Act, 2017 provides for cancellation of registration of a non-composition dealer if he has not furnished returns for six consecutive months. Clause 100 of the Finance Bill, 2022 seeks to amend the provision to provide for cancellation if the return has not been furnished prescribed continuous tax periods.
12. The process of matching can function smoothly only if the supplier is filing timely returns. To ensure such timely filing of GSTR-1 returns, Clause 102 of the Finance Bill, 2022 seeks to insert section 37(4) to the CGST Act to provide for tax period-wise sequential filing of details of outward supplies under sub-section (1). Similarly, Clause 104 of the Finance Bill, 2022 seeks to amend section 39(10) requiring the filing of GSTR1 mandatorily before the filing of GSTR-3B
13. Clause 107 of the Finance Bill, 2022 seeks to amend section 47(1) of the CGST Act so as to provide for levy of late fee for delayed filing of return under section 52 pertaining to TCS.
14. Clause 112 of the Finance Bill, 2022 seeks to amend Section 54(10) permitting withholding of refunds under section 54(3) in case of outstanding tax payments, so as to extend the scope of the said withholding to all types of refund claims.



Return Filing Process - Course Correction

15. The CGST Act, 2017, at the time of inception, provided for a three-step return filing process involving two-way communication between the supplier and customer with the concepts of provisional and final credits and intermediary matching of credits by the GST Portal. Due to systems restrictions, the said provisions could not be implemented and mid-term course corrections were carried out through Rules. However, the legal provisions continued to stay in the statute, resulting in ambiguity. Further, section 43A was also introduced to prescribe a different manner of achieving the matching process, which was also not implemented due to various challenges. Piece-meal incremental changes were carried out in the systems and supported through various amendments in the rules, though, at times, the substantive law did not support the said changes in the rules or the procedures. The Finance Bill, 2022 has duly recognised the futility of the older procedures and has formally buried the said provisions.
16. Clause 102 of the Finance Bill, 2022 amends section 37 to omit references to recipient induced rectifications in GSTR1
17. Clause 103 of the Finance Bill, 2022 amends section 38 to replace the originally envisaged GSTR2 (filing obligation by the taxpayer) with the already implemented GSTR2B document (Information flow from the Government). Section 38(2) further provides for bifurcation of matched credits into available credits and restricted credits as explained in an earlier point.
18. Clause 105 of the Finance Bill, 2022 amends section 41 to treat the credit claimed in GSTR3B as self-assessed final input tax credit and also provide for an obligation to reverse the credit along with interest if the vendor does not pay the tax to the Government, with a right to reclaim the credit at the time the vendor actually ends up paying the tax to the Government
19. Clause 106 of the Finance Bill, 2022 omits sections 42 and 43 pertaining to matching since matching is no longer the obligation of the Government, but that of the taxpayer. Similarly, Section 43A is sought to be omitted since the proposed return filing process under the said section never got notified or implemented.



Steps towards Business Facilitation

20. Clause 109 of the Finance Bill, 2022 proposes to amend section 49(10) to permit the transfer of the balance lying in the electronic cash ledger of one person to the electronic cash ledger of distinct person (i.e., another branch of the same legal entity)
21. Clause 110 of the Finance Bill, 2022 seeks to substitute section 50(3) with retrospective effect from 01.07.2017 to provide for levy of interest on wrongly availed input tax credit only to the extent that the credit has been utilised. The rate of interest is also notified to be 18% per annum
22. Clause 112 of the Finance Bill, 2022 seeks to introduce sub-clause (ba) to Explanation to Section 54 prescribing the relevant date. Accordingly, in case of zero-rated supplies to Special Economic Zone (SEZ) units or developers, the relevant date for refund shall be the due date of filing the return in respect of zero-rated supplies.
23. Retrospective tax exemption has been provided for supply of unintended waste generated during the production of fish meal except fish oil for the period from 01.07.2017 till 30.09.2019. However, it is also provided that taxes already collected will not be refunded. Clause 116 of the Finance Bill, 2022 may be referred to.
24. Retrospective tax exemption has been provided for supply of Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee for the period from 01.07.2017 till 30.09.2019. However, it is also provided that taxes already collected will not be refunded. Clause 117 of the Finance Bill, 2022 may be referred to.



Disclaimer

This newsletter is for general public information and knowledge sharing. In case any clarifications required, you may connect with us at:

Sunil Gabhawalla @ sunil@sbgco.in

Yash Parmar @ yash@sbgco.in

Parth Shah @ parth@sbgco.in

Darshan Ranavat @ darshan@sbgco.in

Prakash Dave @ prakash@sbgco.in

Aman Haria @ aman@sbgco.in

Our office address:

S B Gabhawalla & Co.,
802-803 Sunteck Grandeur
Off S V Road, Opp Subway
Andheri West Mumbai 400058
Landline - 022 - 66515100
Web: www.sbgco.co.in

Want to stay connected, join our Whatsapp group by clicking on the link -
<https://chat.whatsapp.com/KJRD8SHyjSK5FUkFj8Of4t>