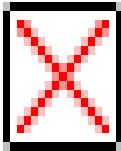


## 37th Meeting of the GST Council - It continues to rain reliefs! - Part II

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SEPTEMBER 27, 2019

By Shailesh Sheth, Advocate



### d. Restrictions on availment of ITC - Instilling discipline!

#### Council's recommendations:

The Council has recommended the imposition of restrictions on availment of Input Tax Credit (ITC) by the recipients in cases where the details of outward supplies are not furnished by the suppliers in the Statement under Section 37 of the [CGST Act, 2017](#). This is with an intention to nudge the taxpayers to timely file their statement of outward supplies.

#### Comments:

The Comptroller and Auditor General of India (CAG) tabled its Report for the year ended March, 2018 on July 30, 2019. In its Report No. 11/2019 on GST, the CAG had expressed the concerns over the declining trend or short filing of GSTR-1 and GSTR-3B Returns as compared to the number of registered taxpayers. The CAG had examined the trends of filing GSTR-1 and GSTR-3B as on February 28, 2019 for the period from April, 2018 to December, 2018. It was observed by CAG that the percentage of the GSTR-1 filed vis-à-vis the Returns due for filing ranged between as low as 58% to 76%. For the GSTR-3B, the same ranged between 59% to 68% during the same period. The CAG noted that

**" the filing percentage of GSTR-1 Returns were throughout less in comparison to the corresponding filing of GSTR-3B Returns ."**

The pitfall of such short filing of Returns was expressed by the CAG in the following words:

***" GSTR-3B being only a summary return, short-filing of GSTR-1 implied that the tax departments did not have complete invoice level details as filed by the suppliers, which could be used to verify details given in GSTR-3B or to arrive at turnover."***

Notwithstanding the concerns expressed by the CAG, there has not been much improvement in the declining trend of the filing of GSTR-1 and GSTR-3B Returns. As per the information available, the number of registered taxpayers who are required to file GSTR-3B were around 1.03 crore in April, 2019 while the number of registered taxpayers who have filed this Return in May, 2019 is little over 75 lakh. In other words, nearly **one-fourth** of the registered taxpayers, otherwise statutorily required to file the Returns, have not complied with the requirement.

It is understood that the Government has decided to put in an extensive plan to hunt for such **non-filers or non-GST payers**. The initial salvo appears to have been fired by the Council by recommending the imposition of restrictions on availment of ITC by the recipients in cases where the details of outward supplies are not furnished by the suppliers in the statement **i.e. GSTR-1** under Section 37 of the CGST Act. The intention behind such proposed restrictions is to nudge the taxpayers to timely file their statement of outward supplies.

It will be interesting to see in what form the restrictions are imposed in pursuance of the recommendations of the Council. In all likelihood, some portion of the ITC involved in the invoices or the debit notes the details of which are not uploaded by the suppliers may not be allowed and maybe kept in suspension till the lapse is corrected. It will also be interesting to see whether such portion of the ITC not to be allowed is

computed on the basis of the total eligible ITC i.e. the ITC involved in the invoices or debit notes, the details of which are uploaded by the suppliers, or the prima facie "ineligible" ITC i.e. the ITC involved in the invoices or debit notes, the details of which are not uploaded by the suppliers.

Whatsoever may be the compulsion and justification for such restrictions, it is hoped that a better solution is found sooner than later. As it is, there are enough roadblocks and potholes existing in the path of smooth availment of ITC and such additional restrictions will only make the ride torturous and bumpy for the taxpayers! It will be, well-nigh impossible to ascertain the reasons for not uploading of the details of the invoices or debit notes by the suppliers, which can either be for genuine reasons like technical glitches or at times could be deliberate. However, the moot question is whether the bonafide buyer i.e. the recipient of the goods or services can be penalized for the fault of the suppliers?

Such restrictions may also remain susceptible to judicial challenge as it is debatable whether the Central Government is empowered under sub-section (1) or sub-section (2) of Section 16 of the CGST Act to prescribe any such restrictions.

**" Ngakyaw ate it, but it was Ngakyi who had to pay."**  
**[From "Hill Proverbs of the Inhabitants of the Chitagong Hill Tracks"**  
**by Capt. Thomas Herbert Lewin]**

#### **e. Postponement of new return system – A welcome breather!**

##### **Council's recommendations:**

The Council has recommended that the **new return system**

which was earlier proposed to be introduced from October, 2019 may now be introduced from April, 2020 so as to provide ample opportunity to the taxpayers as well as the system to adapt. The Council has further recommended that accordingly, the due date for furnishing of return in **Form GSTR-3B** and details of outward supplies in **Form GSTR-1** for the period October, 2019 to March, 2020 may be specified.

##### **Comments:**

Netizens may recall that in its 35th Meeting held on June 21, 2019, the Council had announced the introduction of a new return system to be effective from October, 2019. The new system was proposed to be introduced in a phased manner **so as to give ample opportunities to the taxpayers as well as the system to adapt.**

However, it appears that while the trial run of the new return system has begun, neither the taxpayers nor the system are geared up for a hassle free and smooth adaption of the new system. The Council has therefore recommended the deferment of the introduction of the new system to April, 2020.

Ideally, such a major revamp of the return filing system ought not to have been proposed to be introduced in the middle of the financial year. When the taxpayers and the tax professionals are grappling with multiple issues concerning the compliance aspects of the GST regime, be it the regular filing of returns in **Form GSTR-1** or **Form GSTR-3B** or finalizing and filing of annual returns in **Form GSTR-9** or the Reconciliation Statement in **Form GSTR-9C**, it is really putting too much pressure on them to simultaneously understand and adapt to the new return filing system in the middle of the year!

While the Council has wisely postponed the introduction of the new return system to April, 2020, the matter still requires serious deliberation. The Council has already announced the revision and simplification of the forms for annual return (**Form GSTR-9**) and the Reconciliation Statement (**Form GSTR-9C**)

). It is also learnt that the possibility of merger of the annual return and the monthly/quarterly return is also being actively considered. Under these circumstances, why can't the introduction of the new return system be kept on hold? Instead, the Council may setup a Committee of Officers to comprehensively look into the various issues concerning the returns in

##### **Form GSTR-1, GSTR-3B, GSTR-9 and the Statement in GSTR-9C**

and address all the issues while further revising and simplifying these Forms. Simultaneously, the technical bottlenecks plaguing the GSTN can also be removed and the Portal can be made robust to make the entire return filing process smoother for the taxpayers. Isn't it advisable and better that the present return filing system is allowed to be stabilized instead of thrusting a new return system on the taxpayers abruptly? It is expected that this entire exercise may take about two years. If that be so, the new return system can advantageously be introduced, may be from April, 2021 i.e. for the F.Y. 2021-22 onwards.

Meanwhile, the Council may recommend such steps as are considered necessary and feasible to address the growing menace of the frauds happening in the GST regime.

Since the introduction of the new return filing system is being deferred to April, 2020, the Council has also recommended the specifying of the due date for furnishing their return in Form **GSTR-3B** and in **Form GSTR-1** for the period October, 2019 to March, 2020. Does this mean that the taxpayers will have some breathing period incase of filing of these monthly returns as well? Lets hope so.

***" The Taxpayer's prayer: Oh Mighty Internal Revenue Service, who turneth the labor of man to ashes, we thank thee for the multitude of thy forms which thou hast set before us and for the infinite confusion of thy commandments, which multiplieth the fortunes of lawyer and accountant alike."***

***[Russell Baker]***

**[â€¦To be continued]**

**[The author is founder M/s. SPS Legal and the views expressed are strictly personal.]**

See [Part I](#)

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