

## GST Update (25-12-2021)

The Government has issued two Notifications on Dec 21, 2021 notifying procedural changes in the implementation of GST. Almost all changes had been enacted in the Finance Act, 2021 which have now been notified to be effective from Jan 01, 2022, other than an amendment which has been made applicable with retrospective effect from July 01, 2017. These changes have wide ranging impact on the way GST is being implemented in the country. These amendments are as follows:

1. Aadhaar authentication of registered person is mandatory for filing of Refund/ Revocation of cancelled registration applications - Authentication of specified persons, as per the constitution of the assessee, is now required for (i) filing of application for revocation of cancellation of registration, (ii) filing of refund application in FORM RFD-01; and (iii) refund under rule 96 of the integrated tax paid on goods exported out of India; w.e.f. Jan 01, 2022. The functionality in this regard had already been deployed on the GSTN portal w.e.f. January 06, 2021. The taxable person, who has not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above applications and enabling GST system to validate and transmit the IGST refund data from GST system to ICEGATE system.

(Notification No. 38/2021 – Central Tax dt. 21st December, 2021)  
<https://www.gst.gov.in/newsandupdates/read/514>.

2. Supply between a person, other than an individual, to its members or constituents or vice versa included in supply - Section 7 and Schedule II (serial no. 7) of the CGST Act, 2017 has been amended so as to say that any transaction between a person, other than an individual, to its members or constituents or vice versa, shall be included within the scope of supply; w.r.e.f. July 01, 2017. The amendment provides that it would have an overriding effect over the other statutes, any judgement, decree or order of any Court, Tribunal or Authority.

3. ITC availment in GSTR 3B restricted to details as furnished by the supplier - Section 16(2) has been amended to say that now ITC shall be restricted to the details uploaded by the supplier and available in form GSTR 2A/ 2B. The relaxation of 5% under rule 36(4) is now no more available w.e.f. Jan 01, 2022.

4. Seizure and Confiscation of goods and conveyances to be made into separate proceedings - Finance Act 2021 has made amendment in the above explanation to exclude Section 129 and 130 of the CGST Act from its purview. Explanation 1(ii) of Section 74 of the CGST Act provided that where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under Section 73 or Section 74 of the CGST Act then the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 of the CGST Act were deemed to be concluded, The said amendment has made seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.

5. Self-assessed tax - The definition of self-assessed tax in section 75 has been amended to include the tax payable in respect of details of outward supplies furnished in GSTR 1 u/s 37, but not included in the GSTR 3B furnished u/s 39. This amendment now empowers the Government to issue demand notice on the basis of difference between GSTR 1 and not paid in GSTR 3B based on self-assessment system u/s 79 - Recovery of Tax.

6. Provisional attachment in certain cases - The scope of sections under which Provisional attachment can be done has been increased manifold to include all sections in Chapters XII (Assessment) (sections 59 to 64), Chapter XIV (Inspection, Search, Seizure and Arrest) (sections 67 to 72) and Chapter XV (Demands and Recovery) (sections 73 to 84). Earlier provisional attachment was allowed only for proceedings u/s 62, 63, 64, 67, 73 and 74.

7. Provisional attachment of a person other than the taxpayer - The scope of Provisional attachment has been increased to include that provisional attachment can also be done of a person who retains the benefit of a transaction and at whose instance such transaction is conducted. This will enable the Government to provisionally attach assets of persons who are involved in the chain of fraudulent transactions and middlemen.

8. Appeal to Appellate Authority against Detention, seizure and release of goods and conveyances in transit - Appeal to Appellate Authority against detention, seizure and release of goods and conveyances in transit shall lie only after payment of 25% of penalty as pre-deposit. It may be noted that the % of 100% tax and 100% penalty u/s 129 has been amended to 200% penalty.

9. Detention, Seizure and release of goods & conveyances in transit - The % of 100% tax and 100% penalty u/s 129 has been amended to 200% penalty. Further with this Notification, the proceedings of u/s 129 i.e. detention, seizure and release of goods and conveyances in transit have been delinked with the provisions of Section 130 i.e. confiscation of goods or conveyances and levy of penalty. Earlier only upon non-payment of tax and penalty u/s 129, proceedings u/s 130 was initiated. Now, the proper officer detaining or seizing goods or conveyance shall issue a notice within 7 days. Thereafter, he shall pass an order within 7 days from the date of service of such notice for payment of penalty. In case of non-payment, within 15 days of receipt of order, the goods or conveyance shall be liable to be sold or disposed of in such manner and time which will be prescribed to recover penalty payable.

10. Power to call for information - At present, the Commissioner has the right to demand data only by issuing a notification. However w.e.f. 1st January 2022, he shall now be empowered to direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and such manner, as may be specified therein and the person shall be obliged to provide the information.

11. Apart from this, some amendments have also been done in section 152 - Bar on disclosure of information and section 168 - Power to issue instructions or directions.

All these amendments implementing changes of Finance Act, 2021 have been notified vide Notification No. 39/2021 - Central Tax dt. 21st December, 2021.

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