



# SECTIONWISE ANALYSIS – GST AMENDMENTS (CHANGES FROM 01/01/2022)

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## **GST AMENDMENTS – HIGHLIGHTS AT A GLANCE**

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## 1. Transaction between a person (other than an individual) to its members for consideration to be treated as a supply

### Source

Section 108 of the Finance Act 2021

### Effective Date

With effect from the 1<sup>st</sup> day of July, 2017.

### New Provision

Section 7(1)(aa) of the CGST Act, 2017.

### Amendment

The provision marked in green has been newly inserted:

7(1)(aa) - the activities or transactions, by a person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.

*Explanation.* - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another;”.

### Effect of the Amendment

There had been an area of dispute regarding the taxability of transactions carried out between the members and the association of persons / partnership firms / joint ventures. This was particularly after the Hon'ble Supreme Court judgement in the case of Calcutta Club Ltd (Civil Appeal No. 4184 of 2009) recently. It was held that the club / association and its members are not distinct persons and that there would be no levability of service tax on any services provided by the club to its persons following the concept of mutuality.

This amendment aims to put a deeming fiction effective from 1st July 2017 within the law providing that the person (other than an individual) and its members should mandatorily be treated as two separate persons. Also, the activities or transactions carried out between such person and the members for consideration should mandatorily be treated as a supply leviable to tax under GST.

The above position of the law is overriding all the provisions of GST and any other law and even the judgements of any Court, Tribunal or any other authority. The validity of such amendment in the eyes of Courts may have to withstand the test of time.

## 2. Appearance of transaction in GSTR-2A/2B – a mandatory condition for availment of ITC i.e. 100% matching of ITC between GSTR 2A/2B and 3B

### Source

Section 109 of the Finance Act 2021

### Effective Date

1<sup>st</sup> January 2022

### New Provision

Section 16(2)(aa) of the CGST Act, 2017.

### Amendment

The provision marked in green has been newly inserted:

16(2)(aa) - the details of the invoice or debit note referred to in clause (a) has 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 in the manner specified under section 37;”.

#### Effect of the Amendment

Till now, the conditions for availment of input tax credit was only dependent on the supplier to the extent whether he has actually paid the taxes charged to the government. To a certain extent, this condition is not always possible to verify in the hands of the recipient particularly where the supplier has mis-declared or not declared the correct tax values in GSTR-3B.

On the other hand, there was no clause to deny input tax credit based on the matching of the details declared by the supplier in his GSTR-1 and actual input tax credit availed by the recipient. Thereby, the credit matching between GSTR-2A and 3B was not a pre-condition for availment of input tax credit under Section 16(2). In order to mandate availment of input tax credit based on GSTR-2A / 2B, the law now prescribes a pre-condition 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 his GSTR-1 and it is communicated to the recipient in GSTR-2A / 2B.

**From 1<sup>st</sup> January 2022, 100% matching of input tax credit for forward charge transactions would be applicable.**

## 3. Detention and Seizure to be separate from the Demand / Recovery provisions

### Source

Section 113 of the Finance Act, 2021.

### Effective Date

1<sup>st</sup> January 2022

### **Affected Provision**

Explanation 1(ii) of Section 74 of the CGST Act, 2017

### **Provision before Amendment**

Explanation 1.—For the purposes of section 73 and this section,—

- (i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;
- (ii) 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, the proceedings against all the persons liable to pay penalty under ~~sections 122, 125, 129 and 130~~ are deemed to be concluded.

### **Provision after Amendment**

Explanation 1.—For the purposes of section 73 and this section,—

- (i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;
- (ii) 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, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

### **Effect of the Amendment**

This amendment has been brought in to make the proceedings of the detention, seizure and confiscation of goods and conveyances in transit separate from the demand and recovery proceedings under Section 73 and 74 of the CGST Act 2017.

## **4. Direct recovery without SCN upon furnishing of details in GSTR-1 without tax payment in GSTR-3B**

### **Source**

Section 114 of the Finance Act, 2021.

### **Effective Date**

1<sup>st</sup> January 2022

### **Affected Provision**

Section 75(12) of the CGST Act, 2017.

### **Amendment**