

# GST - Glance of game changers in the year 2019



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Goods and Service Tax is the best step in India's indirect tax reforms. GST is a path breaking indirect tax regime which creates a national common market. GST was implemented not only to get rid of fallacies of the then indirect tax models but also to improve tax compliances and check black market operations. The post GST era has witnessed numerous errors, mismatches and technical glitches as well as World Bank calling GST a very complex taxation system. The present tax system of GST is facing certain difficulties such as:



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1. Pertinent issues to small traders which implies additional operational costs and tiresome compliances.
2. Absence of free flow of credit due to ineligible ITC, blocked credits and reversal of ITC which is causing problem to certain industries.
3. Non alignment of module system with the provisions of GST law and Rules leaving crucial gaps.
4. Complex provisions and rules which make compliance more and more tedious and time consuming.
5. Reconciliation of numerous returns such as GSTR 2A, GSTR 1 and GSTR 3B which adds on to the hardships caused.

In view of the above, Government has been issuing numerous notifications and clarifications in order to simplify the compliance and provide more clarity to the suppliers and professionals. However, with the amount of notifications, circulars, orders, clarifications, advance rulings and judgements sizeable to more than 500 in the year of 2019, it is very strenuous to keep abreast all the day to day changes happening at such a rapid phase.

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GST as of now is more nail biting than a T20 cricket match with unanticipated and frequent game changing notifications and changes. So, I am here trying to supply with some of the major game changers.

### Major GST circulars

The GST council has met 38 times and has taken more than 1200 decisions out of which more than 90% have been implemented. In 2019 alone, GST council has met for 7 times and has taken various decisions. Some of the major circulars are as below:

### Clarification on GST applicability on supply of food and beverage services by educational institutions

CBIC via circular no. 85/04/2019- GST dated 1st January, 2019 has clarified that supply of food and beverage by the educational institute itself to its students, faculty and staff is exempt under notification 12/2017-Central Tax (rate) dated 28.06.2017, vide Sl. No. 66 w.e.f. 01-07-2017 itself. However, supply of food and beverages by any other person other than the educational institute based on a contractual arrangement with such institution is leviable to GST@ 5%.

### Clarification on various doubts related to treatment of sales promotion schemes under GST

CBIC via circular no. 92/11/2019-GST dated 7th March, 2019 has clarified treatment of GST in case of various sales promotion schemes. The clarifications are:

#### Free sample and gifts:

It is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.



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### **Buy one get one free offer:**

It can at best be treated as supplying two goods for the price of one. It is clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

### **Discounts including 'Buy more, save more' offers:**

1. Discounts offered by suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the conditions laid in sub section (3) of section 15 of the said Act. It is clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.
2. Secondary discounts are discounts which are not known at the time of supply or are offered after the supply is already over. It is clarified that supplier can issue financial / commercial credit note even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. Such secondary discounts cannot be excluded to determine the value of supply as the conditions aforesaid are not satisfied. However, there is no impact on availability or otherwise of ITC in the hands of supplier.

### **Clarification regarding applicability of GST on additional / penal interest**

CBIC has clarified wide circular 102/21/2019-GST dated 28th June, 2019 that the transaction of levy of additional / penal interest satisfies the definition of "interest" as contained in notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 and accordingly will be exempt. However, any fees / charge or any other charges that are levied in respect of transactions extending deposits, loans or advances does not qualify to be interest under aforesaid notification and accordingly will not be exempt.

### **Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members**

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Major clarifications by CBIC wide circular 109/28/2019-GST dated 22nd July, 2019 in case of Resident Welfare Associations (RWA) are:

1. If the aggregate turnover of an RWA does not exceed Rs. 20 lakhs in a financial year, no need to obtain registration and pay GST even if maintenance charges exceed Rs.7,500/- per month per person. Further, RWA shall be required to pay GST on monthly subscription / contribution charged only if such subscription is more than Rs. 7,500/- per month per member even though its aggregate turnover is more than Rs. 20 lakhs in a financial year.
2. RWA is eligible to take ITC of GST paid on inputs, input services and capital goods for discharging the liability on such supplies which exceed Rs.7,500/- per month per person.
3. The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by such member.
4. In case the charges exceed Rs. 7,500/- per month per member, the entire amount is taxable.

**Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of CBIC to tax payers and other concerned persons**

CBIC via circular no. 122/41/2019-GST dated 4th November, 2019 clarified that no search, authorization, summons, arrest memo, inspection notices and letters issued in course of any inquiry shall be issued without a computer-generated Document Identification Number (DIN) on or after 8th November, 2019. Further, CBIC vide circular no. 128/47/2019-GST dated 3rd December, 2019 has directed quoting of DIN shall be in respect of all communications (including e-mails) sent to taxpayers and other concerned persons.



**Standard Operating Procedure to be followed in case of non-filers of returns (Circular No. 129/48/2019-GST)**

Although, the circulars as explained above are issued for the purpose of clarification of various aspects but still the ambiguity persists in some of the cases. These circulars proved to be game changers in 2019 mainly because they provided the much-needed clarity. Now, we look at the important notifications and related circulars.

### **Major GST notifications and related circulars, public notices and press releases**

The GST council has issued around 80 notifications and around 30 rate notifications related to Central Goods and Services Taxes in the year 2019. Further, around 10 notifications in all in case of Integrated Goods and Service Taxes. In totality in the year 2019 alone around 150 notifications have been issued and around 350 decisions have been taken. Some of the major notifications, public notices, press releases, related circulars and related details are as below:

#### **Notable change as per notification No. 3/2019 - Central tax, dated 29th January, 2019 - Central Goods and Services Tax Rules, 2017 - First Amendment of 2019 with effect from 2nd February, 2019**

Separate registration for multiple places of business within a state or a union territory may be granted to any person subject to following conditions:

1. Such person has more than one place of business
2. Such person is not paying tax as per Composition levy of the CGST Act
3. Separately registered places of business shall pay tax on goods or services made to another registered place of business.

#### **Notification No. 2/2019 - Central tax (Rate), dated 7th March, 2019**

First supply of goods or services or both up to an aggregate turnover of fifty lakh rupees made on or after 1st April in any financial year by a registered person can avail the option to pay tax at 6% on the aggregate turnover provided certain conditions as mentioned in the said notification are met. This notification came to force with effect from 1st April, 2019.

Further, circular no. 97/16/2019-GST dated 5th April, 2019 was issued to prescribe certain procedures for availing the said option.

**Notification No. 10/2019 - Central tax, dated 7th March, 2019**

Exemption from registration for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed Rs 40 lakhs with effect from 1st April, 2019 except,

1. Liable to take compulsory registration
2. Persons engaged in production of ice cream, pan masala or tobacco and their substitutes
3. Persons making intra state supplies in specified states

**Notification No. 14/2019 - Central tax, dated 7th March, 2019**

Increase in the threshold limit for option to pay tax under composition levy from rupees seventy-five lakhs to one crore fifty lakhs and in case of specified states from rupees fifty lakhs to seventy-five lakhs with effect from 1st April, 2019.

**Notification No. 3/2019 - Central tax (Rate), dated 29th March, 2019**

The complete game changer of real estate sector was this notification pursuant to recommendations of 34th GST council meeting held on 19th March, 2019. The major modification wide this notification with effect from 1st April, 2019 was as follows:

Particulars	Projects (including ongoing projects)	Residential real estate project (RREP)	Real estate projects (REP)
		Effective tax rates	

Residential Apartment	Affordable residential apartment	1%	1%
	Others	5%	5%
Commercial apartment	Commercial apartments	5%	12%



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There are Certain conditions prescribed for availing this concessional rate which were released in a series of notifications on the same date by the CBIC such as taxability of TDRs / FSIs wide notification No. 04/2019 - CGST (rate) and RCM for real estate sector wide notification No. 05/2019 - CGST (rate). In case promoter opts for ongoing projects, the old effective rates of 8% for affordable housing projects and 12% in case of other projects may be paid. From 1st April, 2019, there would be no option but to follow the new rates prescribed as above for new projects.

Notable changes as per notification No. 16/2019 - Central tax, dated 29th March, 2019 - Central Goods and Services Tax Rules, 2017 - Second Amendment of 2019 with effect from 1st April, 2019



1. For the purposes of amount of input (T4) in Rule 42 clause (f), in case on real estate transactions, explanation was inserted to clarify that inputs to be apportioned will be zero during the construction phase as it will be commonly used for construction of apartments booked on or before date of issuance of completion certificate or first occupation of project whichever is earlier and which are not booked by said date.
  2. For the purposes of amount of input attributable to exempt supplies in Rule 42 clause (i), value of 'E/F' shall be calculated for each project separately where
  3. E = aggregate carpet area of the apartments, which is exempt from tax, plus aggregate carpet area identified to be sold after issue of completion certificate or first occupation which is earlier
  4. aggregate carpet area of the apartments in the project
3. Rule 88A. Order of utilisation of input tax credit - Input tax credit on account of integrated tax has to be first utilised fully before utilising central tax, state tax and union territory tax, as the case may be towards payment of respective taxes. Further, circular no. 98/17/2019-GST dated 23rd April, 2019 to clarify

Notable changes as per notification No. 20/2019 - Central tax, dated 23rd April, 2019 - Central Goods and Services Tax Rules, 2017 - Third Amendment of 2019 with effect from the same day

1. As per Rule 23, sub rule (1), when a cancellation of registration is revoked, the person has to file all the returns due for the period from cancellation to revocation and in the case of cancellation with retrospective effect, all the returns due for the period from effective date of cancellation to revocation within 30 days of order of revocation of cancellation.
2. In case of composition taxpayers (including new scheme composition taxpayers as per notification No. 2/2019 - Central Tax (Rate) dated 7th March, 2019), Form GST CMP - 08 for every quarter has to be filed within 18th day of the month succeeding such quarter and for every financial year, shall furnish Form GSTR - 4 within 30th of April following end of such financial year.

## **Blockage of generation of E-Way Bill in case of non-furnishing of returns**

Generation of E-way bill was blocked in respect of a registered person other than a composition taxpayer who has not furnished returns for a consecutive period of 2 months/2 quarters and in case of composition taxpayer (including new scheme composition taxpayers as per notification No. 2/2019 - Central Tax (Rate) dated 7th March, 2019), who has not furnished returns for 2 consecutive tax periods, i.e. 6 months with effect from 21st November, 2019 wide notification no. 36/2019 dated 20th August, 2019 which was initially 21st August, 2019 and 21st June, 2019 even before.

### **Notification No. 30/2019 - Central tax dated 28th June, 2019**

Registered persons and supplying online information and data base access or retrieval (OIDAR) services from a place outside India to a person in India, shall not be required to furnish annual return in Form GSTR 9 and reconciliation statement in Form GSTR 9C

### **Notification No. 12/2019 - Central tax (Rate) dated 31st July, 2019**

GST council meeting number 36 dated 27th July, 2019 recommended reduction in tax rate on electric vehicles from 12% to 5% and charger or charging stations from 18% to 5% with effect from 1st August, 2019.

### **Notification No. 38/2019 - Central tax dated 31st August, 2019**

Registered persons shall not be required to file Form ITC - 04 in respect of goods dispatched to the job worker for the period from July, 2017 to March, 2019. Instead, he shall be required to furnish the details of goods dispatched in the said period but not received or not supplied from the place of business of the job worker as on 31st March, 2019 in Form ITC -04 for April to June 2019 quarter.

### **Notification No. 20/2019 - Central tax (Rate) dated 30th September, 2019**

Rate of GST on hotel accommodation services where transaction value per unit per day is:

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Transaction Value	Rate of tax
Rs.1,000 and less	Nil
Rs.1,001 to Rs.7,500	12%
Rs.7,501 and more	18%

Further, GST on catering services was reduced to 5% without ITC from 18% with ITC, subject to catering to premises where daily declared tariff is more than Rs.7,500/- remains at 18% with ITC.

**Notification No. 43/2019 - Central tax dated 30th September, 2019**

This notification excluded manufacturers of Aerated Water from the purview of composition scheme with effect from 1st October, 2019.

**Notification No. 47/2019 - Central tax dated 9th October, 2019**

Through this notification, Government gave a game changing third umpire decision of providing an option of not furnishing annual return in GSTR 9 for FY 2017-18 and 2018-19 to the registered persons whose aggregate turnover does not exceed two crore rupees. Notable changes as per notification No. 49/2019 - Central tax, dated 9th October, 2019 - Central Goods and Services Tax Rules, 2017 - Sixth Amendment of 2019 with effect from the same day

1. Input credit availed by the registered person in respect of invoices, debit or credit notes not uploaded by the suppliers shall not exceed 20% (further reduced to 10% vide notification no. 75/2019 dated 26th December, 2019) of the eligible credit available in

respect of such documents uploaded by the suppliers with effect from 1st January, 2020. (90-10 rule of ITC)

2. Government retrospectively amended the sub rule (5) of Rule 61 with effect from 1st July, 2017 wherein GSTR 3B was deemed to be a return under section 39(1) and thereby neutralised the landmark ruling of Gujarat High Court decision in case of AAP & Company which had observed that GSTR 3B was not a return but a statement prescribed in absence of valid return prescribed under section 39(1).

- Notable changes as per notification No. 56/2019 - Central tax, dated 14th November, 2019 - Central Goods and Services Tax Rules, 2017 - Seventh Amendment of 2019 with effect from the same day

This amendment was majorly brought in for simplification of Annual return in Form GSTR 9 and reconciliation statement in Form GSTR 9C. Apart from minor modifications in the form, major changes were:

1. In case of Form GSTR 9, optional filling of certain tables such as details of inputs to be shown under input only rather than bifurcating between inputs, capital goods and input services; reversals of ITC can be shown under other reversals only; option not to fill details of HSN wise summary of inward and outward supplies, etc.
2. In case of Form GSTR 9C, all the adjustments may be filled in other adjustments instead of particular line item, option not to fill ITC availed during current financial year and booked during current financial year but availed in subsequent financial year and expenses wise ITC shall also be optional.
3. In the certification part, i.e. Part B for the words 'true and correct', 'true and fair' was substituted which gave a relief to the auditors.

Notable changes as per notification No. 68/2019 - Central tax, dated 13th December, 2019 - Central Goods and Services Tax Rules, 2017 - Eighth Amendment of 2019 with effect from 1st April 2020

This was one more biggest game changer where Government brought in the concept of E-Invoicing to curb the evasion of GST and to reduce the ITC frauds unearthed in a large-scale during GST regime. Registered persons whose aggregate turnover in a financial year exceeds one hundred crore rupees (notified through notification no. 70/2019 dated 13th December, 2019) shall prepare invoice in Form GST INV-01 after obtaining Invoice Reference Number (IRP) from the one of 10 portals prescribed wide notification no. 69/2019 - central tax issued on the same day. Further, registered persons whose aggregate turnover in a financial year exceeds five hundred crore rupees while raising an B2C invoice to an unregistered person shall include a QR code in such invoice wide notification no. 72/2019-Central Tax issued on the said date.

#### **Notification No. 74/2019 - Central tax dated 26th December, 2019**

Waiver of late fees for the registered persons who failed to furnish the details of outward supplies in Form GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the said details between the period from 19th December, 2019 to 10th January, 2020 (further extended to 17th January, 2020). This notification came to force with effect from 19th December, 2019.

Notable change as per notification No. 75/2019 - Central tax, dated 26th December, 2019 - Central Goods and Services Tax Rules, 2017 - Ninth Amendment of 2019 with effect from the same day

Insertion of Rule 86A giving power to commissioner not to allow the utilisation or debit of an amount equal to ITC available in electronic credit ledger if he has reasons to believe that credit have been fraudulently availed or ineligible.

This is a summary of major changes and modifications which were considered to be turning points in the year 2019. As provided above, the number of changes is immense and due to the changes, taxpayers and professionals are having a very tough time keeping abreast the changes and modification issued. The annual return in Form GSTR-9 and reconciliation statement in Form GSTR-9C were extended from 31st March 2019 to at present 31st January

2019 for about 5 times which demonstrate the difficulty faced by both taxpayers in compliance and government in implementation.

**Disclaimer:** This is purely for the purpose of information regarding major alterations. Readers are advised to refer the above-mentioned notifications, circulars and rules to gain deeper understanding.

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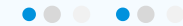
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