

## Time limit for availing ITC- Taxpayer's dilemma?

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Of all the perks and revenue growth, the Goods & Service Tax (GST) has provided, its one major shortcoming is the slow implementation of its amendments.

The recent example being related to the [Finance Act, 2022](#), addressed by Central Board of Indirect Taxes and Customs (CBIC) in [Notification No. 18/2022](#) dated September 28, 2022 wherein a registered person is not entitled to avail input tax credit on tax invoice/ debit notes after November 30, or furnishing of the relevant annual return, whichever is earlier.

Now this situation has created ambiguity in interpreting the applicability of said notification.

### What's the matter?

Since the implementation of the GST, there are numerous things that businesses and taxpayers are required to take care of on a daily basis, like return filing requirements, monitoring vendor data, and analyzing the input tax credits (ITC).

Out of these, the ITC is one of the critical aspects which business owners have to take care of as it helps them in **claiming the credit of the GST paid on purchase of Goods and Services which are used for the furtherance**. The mechanism of ITC is the backbone of GST and is one of the prime reason for the introduction of GST.

With the recent notification of Finance Act 2022, it has become crucial for us to understand the implications of amendments related to the ITC.

## What does the amendment say?

Central Government vide notification no. 18/2022- Central Tax dated September 28, 2022 has made various amendments under the GST law which came into force from October 1, 2022. One of the key amendments is regarding the timelines mentioned in Section 16, Section 34, and Section 39 of the CGST Act, 2017.

Section 16 of CGST Act, 2017 deals with provisions related to availing ITC and has been amended by the Central Government through Finance Act, 2022. Among the amendments in Section 16 of CGST Act, 2017, one of the amendment is in sub-section 4 to Section 16 of CGST Act, 2017 in which the words and figures “due date of furnishing of the return under section 39 for the month of September”, has been substituted with the words “thirtieth day of November” which states that a registered person is not entitled to avail input tax credit on tax invoice/ debit notes after November 30 or furnishing of the relevant annual return, whichever is earlier.

## What does the amendment mean?

There are two schools of thought;

**One** is that the amendment in the Finance Act is relevant for the current financial year i.e. FY 2022-23. It seems to be logical because the amendment has been made effective from October 1, 2022, and the last date for claiming ITC for the financial year 2021-22 was the due date of filing the September month return.

Further, September returns are filed based on the entries posted till September 30. As the last date to make any adjustments in books was September 30 which had already been passed before the amendment came into effect, thus the amendment done in Section 16 of CGST Act, 2017 is relevant for the ITC pertaining to FY 2022-23. Therefore, one can claim the ITC relevant to FY 2022-23 till November 30, 2023.

**The other school of thought** is more of an aggressive approach for the availment of ITC, which establishes that the amendment is applicable for FY 2021-22. Thereby one can avail ITC relevant for the FY 2021-22 till November 30, 2022 instead of “due date of furnishing of the return under Section 39 for the month of September” which in the present case is October 20, 2022. This can be justifiable on the grounds that since the due date for claiming ITC was October 20 earlier and the relevant amendment to Section 16 of CGST Act, 2017 has come into force from October 1, 2022, thus the benefit of extended period duly applies to FY 2021-22. However, this assumption is more on the aggressive side and may be refuted by the department.

## What else?

Similar ambiguity exists in the case of an amendment to Section 34: which talks about credit notes under GST law, an amendment to Section 37: amendment to GSTR -1 and section 52: amendment to TCS return.

## What's the confusion?

This has created confusion among the businesses about whether the last date rectification, resulting in additional output tax or reduction in input tax credit for the details pertaining to FY 2021-22 is due date for furnishing of return for the month of September i.e. October 20 or they still have time to do rectification till November 30, 2022.

[A clarification has been raised in context with Notification No. 18/2022 dated September 28, 2022](#) on CBIC helpdesk. CBIC helpdesk has laid down the clarification stating that “With this notification that applies after October 1, 2022, the due date stands revised from FY 2021-22 onwards for disclosing such yearly amendments or previously missed reporting to earlier of 30th November 2022 or the date of filing Form GSTR-9.”

Even though this email clarification will not have any legal validity, it has still been seen in the past that

the tax department has been using social media platforms like Twitter to issue such clarifications. Thereby it is expected that a large population of businesses would depend on this clarification to take a tax position.

This clarification can be seen from various vantage points:

A law student would advise businesses to refrain from relying on this clarification.

A business person would advise his employees to complete work by 20 october, 2022 and not rely on this clarification.

A Tax officer would never accept this clarification.

A litigation lawyer may accept the position established by clarification, however, he will refute the legal sanctity of this document.

Now you have to see which side you would sway.

### **Now, what next?**

[This notification notifying Finance Act, 2022 provisions have added to the confusion regarding the timelines. We believe some businesses will opt for the aggressive school of thought, and others will settle for a more risk-averse position, fueling temporary but injurious litigation in the country.](#) Exhibiting good governance, CBIC must issue a circular well within the time to clarify the ambiguity relating to amended timelines for claiming ITC and issuing credit notes under GST Law.