

TAX INFO

Dated 30/12/2022

Latest update on GST Law: Summary of **Circular No. 183/15/2022-GST dated 27th December, 2022 ITC availed in GSTR-3B as compared to that in GSTR-2A for FY 2017-18 and 2018-19.**

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CBIC has issued clarification to deal with difference in ITC availed in GSTR-3B as compared to that in GSTR-2A for FY 2017-18 and 2018-19 which are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. These guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending and not to the completed proceedings.

During the initial period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their GSTR-1, which has led to certain deficiencies or discrepancies in GSTR-2A of their recipients. However, the recipients may have availed input tax credit on the said supplies in their returns in GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in GSTR-3B and the amount as available in their GSTR-2A were being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. and such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC. So, given are the below four scenarios where the clarification will apply:

1. Where the supplier has failed to file GSTR-1 but has filed the return in GSTR-3B, due to which the supplies made do not get reflected in GSTR-2A of the recipients.
2. Where the supplier has filed GSTR-1 as well as GSTR-3B, but has failed to report a particular supply in GSTR-1, due to which the said supply does not get reflected in GSTR-2A of the recipient.
3. Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply in his GSTR-1 due to which the said supply does not get reflected in GSTR-2A of the said registered person.
4. Where the supplier has filed GSTR-1 as well as return in GSTR-3B, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.

In all such cases, the difference in ITC claimed in GSTR-3B and that available in GSTR-2A may be handled by following the procedure provided below:

1. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his GSTR 3B but which are not reflecting in his GSTR 2A. He shall then ascertain fulfilment of the following conditions of Section 16 of CGST Act in respect of the ITC on such invoices by the said registered person:
 - i) That he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
 - ii) That he has received the goods or services or both;
 - iii) That he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.
2. The proper officer shall also check whether any reversal of ITC is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said ITC has been availed within the time period specified section 16(4) of CGST Act.
3. In order to verify the condition of Section 16(2)(c) of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:
 - In case, where difference between the ITC claimed in GSTR-3B and that available in GSTR 2A of the registered person **in respect of a supplier for the said financial year exceeds Rs 5 lakh**, the proper officer shall ask the registered person to produce **a certificate for the concerned supplier from the CA or CMA**, certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in GSTR 3B. Certificate issued by CA or CMA shall contain UDIN.
 - In cases, where difference between the ITC claimed in GSTR-3B and that available in GSTR 2A of the registered person in respect of a supplier for the said financial year is **upto Rs 5 lakh**, the proper officer shall ask the claimant to produce **a certificate from the concerned supplier** to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in GSTR 3B.

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