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Newsflash: Restrictions on Input Tax Credit (ITC) and Standard Operating Procedure (SOP) to be followed in case of Non-Filing of returns

1.0 Background

The Government has taken steps to strengthen the procedure to tackle the excess or undue availment of Input Tax Credit and also lay down standard procedure to be followed by GST authorities for non-filers of returns.

The highlights of such changes are as under:

2.0 Power to restrict the utilization of Input Tax Credit balance

- The Government has inserted new rule namely “**Rule 86A. Conditions of use of amount available in electronic credit ledger**”. This rule confer power on GST authorities to block debit to credit balance available in Electronic Credit Ledger for discharge of any liability or for claim of refund of unutilized Input Tax Credit.
- This power shall be exercised where authorities has reasons to believe that such credit has been fraudulently availed or is ineligible on the ground that
 - a) Supplier of such invoice, of which Input Tax Credit is availed, is non-existent or goods/ services has not been received.
 - b) The tax charged has not been paid to the Government.
 - c) Recipient, availing such Input Tax Credit, is non-existent.
 - d) Recipient, availing such Input Tax Credit, is not in possession of tax invoice or other prescribed document.
- Such restriction shall cease to have effect on expiry of 1 year from date of imposition of such restriction.


3.0 Restriction on availment of Input Tax Credit

The Government has further amended **Rule 36(4)** of Central GST Rules, 2017 to restrict availment of Input Tax Credit, not appearing in Form GSTR-2A, to the extent of 10% Input Tax Credit appearing in Form GSTR-2A from existing limit of 20%.

4.0 Standard Operating procedure to be followed in case of non-filers of returns

The Government has released a circular prescribing following guidelines as standard procedure to be followed in case of non-filers of return:

- A system generated mail would be sent to all tax payers 3 days before the due date, to alert them for filling of return for the tax period by due date.
- Immediately on expiry of due date for furnishing the return, a system generated mail or message would be sent to all defaulters intimating them about non filling of return for the relevant tax period.
- On expiry of 5 days after due date for furnishing the return, a notice in FORM GSTR-3A shall be issued to such defaulters requiring them to file return within 15 days of receipt of said notice.

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- On failure of filling return within 15 days, the Proper Officer may proceed to assess tax liability to the best of his judgment in Form GST ASMT-13
 - On filling of a return within 30 days of service of assessment order (Form GST ASMT-13), the said order would stand withdrawn.
 - However, if return is not filed within 30 days of assessment order then proper officer may initiate recovery proceedings.
 - Proper officer may even before the servicing of assessment order, provisionally attach the bank accounts or other assets of taxpayers in order to protect revenue interest.

Source:

(i) Notification No: 75/2019 – Central Tax dated 26th December 2019 and

(ii) Circular No: 129/48/2019 – GST dated 24th December 2019

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This newsflash is general in nature. In this newsflash, we have summarized the steps taken by government to strengthen the procedure to tackle the excess or undue availment of Input Tax Credit and also standard procedure to be followed by GST authorities for non-filers of returns. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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