

Is there any last date to avail ITC for 2017-18?

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By which date, the input tax credit (ITC) pertaining to the invoices of 2017-18 could be taken?

In this connection, the Press Release dated 18.10.2018 has clarified as

3. *With taxpayers self-assessing and availing **ITC through return in FORM GSTR-3B**, the last date for availing ITC in relation to the said invoices issued by the corresponding supplier(s) during the period from July, **2017 to March, 2018 is the last date for the filing of such return for the month of September, 2018 i.e. 20th October, 2018.***

The due date for filing of GSTR-3B for the month of September 2018 was extended to 25th October 2018 through Notification No. 55/2018-Central Tax dated 21.10.2018. So it would mean that such credit pertaining to 2017-18 could be taken upto 25.10.2018.

In its 31st Meeting held on 22.12.2018 the GST Council has decided to extend this time limit upto the due date for filing GSTR 3 B return for March 2019, as seen from the Press note issued immediately after the meeting. To quote,

8. *ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March, 2019, subject to specified conditions.*

So it seems that the last date for availing credits for the year 2017-18 is being linked to the due date for filing GSTR 3 B returns in the subsequent period, for specified months.

But how far this interpretation is legal?

Section 16(4) of the CGST Act, 2017 is reproduced below

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.***

Thus it is understood by reading the above that for any Inward Supply received during the period from July 2017- March 2018, the Input tax credit shall not be availed **after the due date for furnishing the return under Section 39 for the month of September 2018** or **furnishing of the relevant annual return.**

As the reference above is to the return under Section 39, let us see what the said section says.

Section 39(1) of the CGST Act, 2017, is reproduced below

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

Rule 61 of the CGST Rules, 2017 deals with Form and manner of submission of monthly returns. The relevant sub rule (1) of Rule 61 of CGST Rules, 2017 is reproduced below.

*(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under **sub-section (1) of section 39** in **FORM GSTR-3** electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.*

Thus reading Section 39 of the CGST Act along with Rule 61(1) of the CGST Rules, 2017, it is evident that the return which is prescribed under Section 39(1) of the CGST Act, 2017 is **FORM GSTR-3**. Thus the return mentioned under Section 16 (4) of the CGST Act relates to **FORM GSTR-3**.

As per section 16 (4), if a person chooses to file the annual return for an year, before filing the GSTR 3 for the month of September of the succeeding financial year, the date upto which ITC for the relevant financial year can be taken would be preponed to the date of filing of such annual return.

Extensions and Disappearance of Form GSTR-3

The due dates for filing of **FORM GSTR-3** has been regularly extended several times by various notifications. Finally, vide Notification 44/2018C.T., dated 10-09-2018, it has been prescribed as,

2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2017 to March, 2019 shall be subsequently notified in the Official Gazette.

Thus no due date has yet been prescribed for the filing of GSTR 3 returns for the period July 2017 to March 2019. So, one of the return envisaged in Section 16 (4) for prescribing the latest point of time upto which ITC for a financial year can be taken is in limbo as of now, with no due date having been prescribed.

The other return envisaged in Section 16 (4) is the annual return (which is prescribed under Section 44). The due date for filing annual return for the year 2017-18 (From July 2017 to March 2018) has last been extended upto 31.03.2019 vide Removal of Difficulties Order No. 1/2018 Dt. 11.12.2018 and in the 31st GST council meeting held on 22.12.2018 it has been decided to further extent it upto 30.06.2019.

Though the relevant date upto which ITC for the year 2017-18 has to be decided only with reference to GSTR 3 return due dates for the month of September 2018 or the date of filing of annual return for 2017-18, the press notes referred to above refer to the GSTR 3 B return due date for the month of September 2018 (Press Note 18.10.2018), which is later revised to due date for the month of March 2019 (Press Note 22.12.2018).

So is it GSTR 3 B due date or GSTR 3 due date?

Introduction of GSTR-3B

CGST Rules, were notified vide Notification 3/2017 C.T. Dt. 19.06.2017, which contained upto Rule 26. Later, vide Notification No.10/2017 – Central Tax dated 28th June, 2017 Rules 27 onwards have been introduced. Reference is invited to sub-rule (5) of rule 61, which stood as below at the time of its introduction.

*"(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, return in **FORM GSTR-3B, in lieu of FORM GSTR-3**, may be furnished in such manner and subject to such conditions as may be notified by the Commissioner."*

It may be noted from the above that **GSTR 3B** was sought to be filed **in lieu of GSTR-3**.

Later, vide **Notification No.17/2017-Central Tax dated 27th July, 2017** sub rule (5) of Rule 61 has been substituted as,

"(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify that return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner."

Thus from the above it is observed that **FORM GSTR-3B is not in lieu of FORM GSTR-3**. GSTR 3 B is required to be filed when there are difficulties in filing GSTR-1 (Sec. 37) and GSTR -2 (Sec. 38).

So, there is no statutory basis to link GSTR 3 B due dates to Section 16 (4).

It is also axiomatic to note that the Hon'ble High court of Gujarat in the case of **AAP AND CO., CHARTERED ACCOUNTS Versus UNION OF INDIA** (R/Special Civil Application No. 18962/2018) has issued notice to **Centre, GST Council and State** returnable on 09.01.2019 after observing that the impugned Press Release issued on 18.10.2018 is contrary to Section 16(4) of the CGST Act, 2017.

Conclusion.

On the basis of the above discussion it can be concluded that ITC pertaining to the year 2017-18 can very well be taken even now as both the due dates prescribed in Section 16 (4) are far away, i.e. the due date for filing GSTR 3 for September 2018 has not at all been prescribed and nobody would dare to file their annual return for 2017-18 in the near future, as the due date is supposed to be extended upto 30.06.2019. Per qua, the Press Notes dated 18.10.2018 and 22.12.2018 in this regard are contrary to legal provisions.

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