

Nangia Andersen LLP

Indirect Tax Newsletter

September 2022



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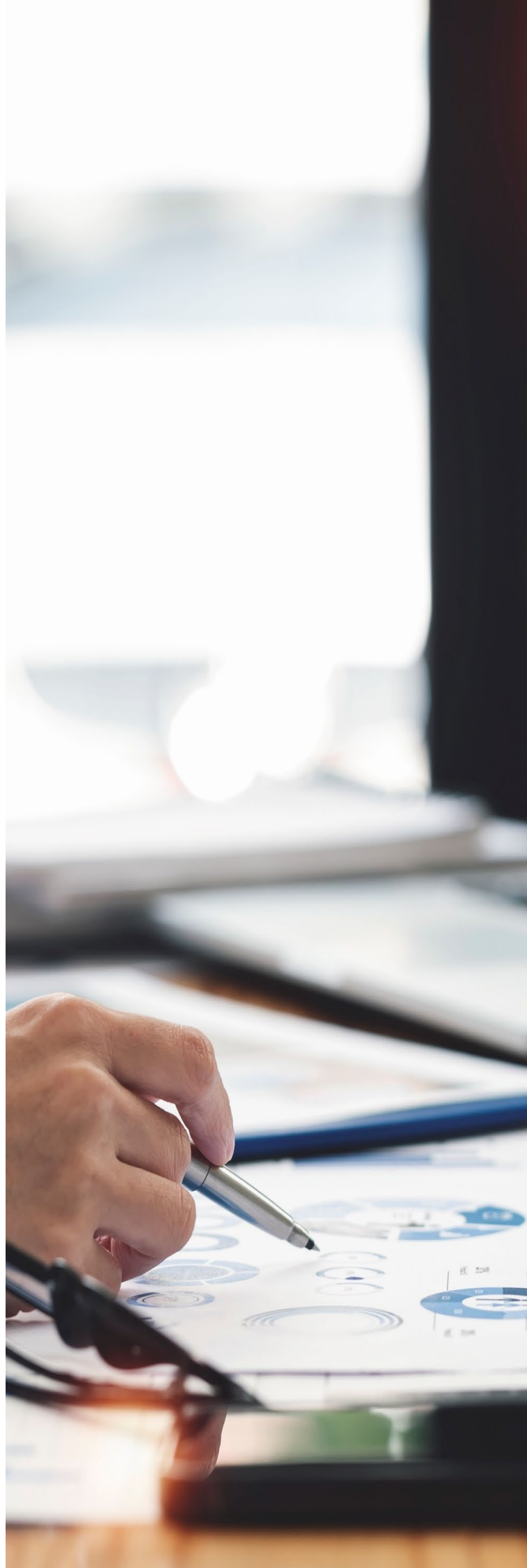
Mandatory e-invoicing for the assesses whose aggregate turnover exceeds INR 10 crore

The Central Board of Indirect Taxes and Customs ('CBIC') has amended the limit of aggregate turnover for implementation of e-invoicing system to 10 Crores from 20 crores. The same shall be effective from 1 October 2022.

(Notification No. 17/2022 – Central Tax dated 1 August 2022)

CBIC clarifies Goods and Services Tax ('GST') rates and exemption on certain services

- Ice cream supplied by the ice cream parlours during the period of 1 July 2017 to 5 October 2021 ('prior period') leviable to GST at 5% without input tax credit ('ITC'), whereas GST would be charged at 18% with ITC from 06 October 2021 onwards. The circular also clarifies that no refund shall be granted to the assesses who had charged GST at 18% for their sale during prior period.
- Fee or amount charged from prospective students for issuance of eligibility certificate for entrance/admission, or for issuance of migration certificates by educational institutions to the outgoing students or ex-students is exempt from GST *vide* entry no. 66 of the Notification No. 12/2017 Central Tax (Rate) dated 28 June 2017.
- The movement of empty containers from Nepal and Bhutan, after delivery of goods is a service associated with the transit cargo and is exempt from GST *vide* entry no. 9B of Notification No 12/2017 - Central Tax (Rate) dated 28 June 2017. This is a conditional exemption.
- Activity of sell of space for advertisement in souvenirs books would attract GST at 5% *vide* entry 21(i) of Notification No. 11/2017 – Central Tax (Rate) dated 28 June 2017.



- The activity of allowing choice of location of plot is an integral part of supply of long-term lease of plot and therefore, location charges will constitute part of consideration towards long term lease of plot and thus eligible for exemption under GST.
- Additional fee collected in the form of higher toll charges from vehicle not having Fasttag is essentially a part of 'toll' for allowing access to roads and bridges to such vehicle and therefore would get same tax treatment as given to toll charges and thus exempt from GST.
- Services in form of Assisted Reproductive Technology procedure such as Invitro fertilization ('IVF') are covered under definition of health care services and, thus exempt from GST.
- Any services provided with respect to development of land like levelling, laying of drainage line shall attract applicable GST rate for such services.
- GST would be payable under reverse charge mechanism when the body corporate hires the motor vehicle on rent for transportation of its employees (Heading 9966). However, no GST is payable under reverse charge mechanism wherein the body corporate avails the 'passenger transport services' (Heading 9964) for specific journey and does not take vehicle on rent for any particular period of time.
- Hiring of vehicles for transportation of employees to and from work is exempt from GST if it is undertaken by 'non-air conditioned contract carriages' wherein the transportation takes place over pre-determined route on a pre-determined schedule. However, exemption shall not be applicable if the contract carriage is hired for a specific period of time, during which the contract carriage is at the disposal of the service recipient and the service recipient is free to decide the manner of usage (route and schedule) subject to the conditions of agreement entered with the service provider

(Circular No. 177/09/2022- TRU dated 3 August 2022)

CBIC clarifies GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

- Liquidated damages cannot be considered as a consideration received for tolerating the breach or non-performance of the contract. Liquidated damages are mere flow of money from the party who causes breach of contract to the party who suffers loss or damage due to such breach. Thus, such payment does not constitute consideration for a supply, hence not taxable.
- Cheque dishonour fine/ penalty: Supplier or banker imposes fine/penalty for dishonour of a cheque, and not for tolerating the act or situation therefore, cheque dishonour fine/ penalty is not a consideration for any service hence, not taxable.
- Any penalty imposed for violation of laws would not be treated as a consideration as no services are received in lieu of payment of such fine and penalties, therefore, not taxable under GST.
- Notice pay recovery: In case of notice pay recovery, employee does not receive anything in return from the employer against payment of such amount. Therefore, such amounts recoverable by the employer are not taxable as consideration for the service of agreeing to tolerate an act or situation.
- Late payment charges: Late payment charges are ancillary supply naturally bundled and supplied in conjunction with the principal supply and therefore be assessed on the basis of principal supply.

(Circular No. 178/10/2022-GST dated 3 August 2022)

Clarification issued by CBIC w.r.t. applicability of GST rates and classification of specified goods

- Electrically operated vehicles whether fitted with battery or without battery shall attract GST at 5%.
- Supply of treated sewage water falling under heading 2201 is exempt from GST.

(Circular No. 179/11/2022-GST dated 3 August 2022)

Customs Update

CBIC clarifies customs duty on display assembly of a cellular mobile phone

- The CBIC has clarified that display assembly of mobile phone imported with merely a back support frame of metal /plastic attached to it continues to be display assembly for cellular mobile phone and BCD shall be charged at 10%.
- Additionally, it is also clarified that if the back support frame of plastic/metal is imported individually, it will attract BCD at 15%.

[Circular No. 14/2022 – Customs dated 18 August 2022]

CBIC instructs requirement of health certificate to be accompanied with the import of food consignments

- Food Safety and Standards Authority of India stated categories of imported food items as specified in Food Product Standards & Food Additives which shall be accompanied by the health certificate issued by the Competent Authority of the exporting country as per specified format. The food categories are as under:
 - Milk and Milk Products;
 - Pork and Pork Products;
 - Fish and Fish Products

The aforesaid instruction is effective from 1 November 2022

[Instruction No. 18/2022-Customs, dated 12 August 2022]

The existing concessional rate of import duties on specified edible oil is extended upto 31 March,2023 (earlier 30 September 2022).

[Notification No.46 /2022-Customs dated 31 August 2022]



FTP Updates

Extension of the validity of status certificates issued in the FY 2015-16 and 2016-17 under Foreign Trade Policy ('FTP')

- Validity of the status holder certificates issued in FY 2015-16 and 2016-17 under FTP 2015-2020 has been extended upto 30 September 2022.

(Public notice No. 21/2015-20 dated 05 August 2022)

Non-Preferential Certificate of Origin can be filed manually/ paper mode upto 31 March 2023

- The Directorate General of Foreign Trade ('DGFT') has extended the date for mandatory electronic filing of Non-Preferential Certificate of Origin (NP CoO) through the common digital platform to 31 March 2023. The existing system of processing NP CoO applications in manual/ paper mode is allowed.

(Trade Notice No. 15/2022-23 dated 01 August 2022)



S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In September 2022
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	August – 11 September 2022
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20 th day of succeeding month	August – 20 September 2022
3	QRMP Scheme				
	Invoice furnishing facility ('IFF')	<ul style="list-style-type: none"> Optional facility to furnish the details of outward supplies under QRMP Scheme 	Monthly	1 st day to 13 th day of succeeding month	<ul style="list-style-type: none"> August – 1 to 13 September 2022
	Form GST PMT-06 (Monthly payment of tax)	<ul style="list-style-type: none"> Payment of tax in each of the first two months of the quarter under QRMP Scheme 	Monthly	25 th of the succeeding month	<ul style="list-style-type: none"> August - 25 September 2022
	Form GSTR-1 (Details of outward supplies)	<ul style="list-style-type: none"> Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme 	Quarterly	13 th day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> July to September 2022 – 13 October 2022

	Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states and union territories 	Quarterly	22 nd day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> July to September 2022 – 22 October 2022
	Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states and union territories 	Quarterly	24 th day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> July to September 2022 – 24 October 2022
4	Form GSTR-6 (Return for input service distributor)	<ul style="list-style-type: none"> Return for input service distributor 	Monthly	th 13 of the succeeding month	August - 13 September 2022
5	Form GSTR-9 (Annual Return)	<ul style="list-style-type: none"> Annual Return if aggregate turnover is more than INR 2 crore 	Yearly	On or before the 31 st December following the end of FY	Annual Return and reconciliation statement for FY 2021-22: 31 December 2022
6	Form GSTR-9C (Reconciliation Statement)	<ul style="list-style-type: none"> GST reconciliation statement if aggregate turnover is INR 5 crore or more 			



NOIDA

(Delhi NCR - Corporate Office)
A-109, Sector - 136,
Noida - 201304, India
T: +91 120 5123000

DELHI

(Registered Office) B-27,
Soami Nagar, New Delhi -
110017, India
T: +91 0120 5123000

GURUGRAM

812-814, Tower B, Emaar Digital
Greens, Sector-61, Gurugram,
Haryana – 122102, India
T: +91 0124 430 1551

MUMBAI

11th Floor, B Wing, Peninsula Business
Park, Ganpatrao Kadam Marg, Lower
Parel, Mumbai - 400013, India
T: +91 22 61737000

CHENNAI

Prestige Palladium Bayan,
Level 5, 129-140, Greams Road,
Thousand Lights, Chennai - 600006
T: +91 44 46549201

BENGALURU

Prestige Obelisk, Level 4
No 3 Kasturba Road,
Bengaluru – 560 001, Karnataka, India
T: +91 80 2228 0999

PUNE

3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune
Central Mall, Shivajinagar,
Pune - 411005, India

DEHRADUN

1st Floor, "IDA" 46 E.C. Road,
Dehradun - 248001, Uttarakhand,
India
T: +91 135 271 6300

www.nangia-andersen.com | query@nangia-andersen.com

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