

Finance Bill, 2021 receives the assent of the President: When would the GST related amendments become effective?

The Finance Bill, 2021 ('the Bill') presented by the Finance Minister on February 01, 2021 has finally received the assent of the President on March 28, 2021 and with that, the Bill stood enacted and has come into existence as the 'Finance Act, 2021' ('the Act'). It may be pointed out here that before the enactment of the Bill, the FM had moved total 127 amendments to the proposals of the Bill relating to various legislations including the Income Tax Act, 1961. However, no amendment was proposed to any of the proposals of the Bill relating to GST. The Bill was passed by the Lok Sabha, without much discussion, on March 23, 2021 and by the Rajya Sabha on March 24, 2021 and has finally been enacted on March 28, 2021.

The question that arises here is 'from which date the GST related amendments come into effect?' There prevails an all-round confusion and misunderstanding on this count and it is essential that one is aware of the actual legal position.

Generally, the various proposals relating to the direct and indirect taxes contained in any Finance Bill come into effect on different dates which are specified in the Finance Bill itself. When any such Finance Bill stands enacted on receipt of the assent of the President, various proposals of the Bill (which have become the provisions of the Finance Act) would take effect from the respective specified dates. It is desirable that one is fully aware as to on and from which date the specific proposals would become operative. At the same time, it shall be kept in mind that a few proposals of the Bill may also be given immediate effect. Considering all aspects, the various proposals of a Finance Bill may come into force on the different dates as under:

- i. Proposals of the Finance Bill which are given immediate effect through a Declaration under the Provisional Collection of Taxes Act, 1931. Such Declaration is always a part of the Finance Bill.
- ii. Proposals of the Finance Bill which would come into effect on the date of the enactment of the Bill.

- iii. Proposals of the Finance Bill which, on its enactment, would come into effect generally on April 01 or any other specified date of the new Financial Year. (This is generally prescribed in case of Direct Tax related amendments.)
- iv. Proposals of the Finance Bill which would come into effect on the date to be appointed by the Central Government by Notification in the Official Gazette after the enactment of the Bill.
- v. Proposals of the Finance Bill which, on its enactment, would become part of the respective legislation but would come to life on the date to be notified by the Central Government and which would then come into effect retrospectively if so prescribed.

The budgetary amendments relating to the GST are contained in S. 108 to S.123 of the Finance Act, 2021 [originally, these proposals were contained in clauses 99 to 114 of the Bill]. **As per S.1(2)(b) of the Act, the provisions of S.108 to 123 of the Act shall come into force on such date as may be appointed by the Central Government by Notification in the Official Gazette.** Consequently, one may clearly bear in mind that the provisions of the Finance Act, 2021 amending various provisions of the GST Laws have not – repeat, have not – come into force on March 28, 2021. Please remember that these GST related amendments will come into effect only on the date to be notified by the Central Government. Let us try to understand this legal position in the context of a few specific amendments.

Be it the provision inserting another pre-condition in S.16(2) of the CGST Act, 2017 for the availment of ITC or be it the provision amending S.35 and S.44 so as to omit the filing of the Reconciliation Statement in Form GSTR-9C and the requirement of the certification of the Annual Return in Form GSTR-9 by a Chartered Accountant or Cost Accountant or be it the amending provision requiring the payment of 200% penalty for securing the release of detained goods – none of them have come into effect on March 28, 2021. These and all other provisions of the Finance Act, 2021 shall come into effect on the date to be notified by the Central Government. Similarly, the provisions of the Act amending S.7 and Sch.II of the CGST Act, 2017 so as to bring the Members' Club etc. within the GST net or the proviso inserted in S.50 (1) of the CGST Act, 2017 providing for the levy of interest only on the tax paid in cash in case of the delayed payment of tax will **'Go Live'** on such date as may be notified by the Central Government. However, since both these amendments are being made retrospectively, while they will come to life on such date as may be notified by the Central Government, they will also take effect retrospectively i.e. from July 01, 2017.

Elsewhere, the provisions of the Act amending S.16 of the IGST Act, 2017 so as to provide for the exports of goods or services mandatorily under LUT/Bond have also not become effective as on date. These provisions contained in S.123 of the Finance Act, 2021 will also come into effect only on the date that may be notified by the Central Government. Not only this, even when these provisions are brought into force, the Central Government, on the recommendation of the GST Council, may notify the class of persons or class of goods or services where the option to export on the payment of the integrated tax under refund claim may be made available. In short, an all pervading (mis)understanding that the exporters are compulsorily required to make the exports of goods or services under LUT/Bond effective from March 28, 2021 or April, 01, 2021 is absolutely baseless.

Finally, it may also be noted that the GST related provisions of the Finance Act, 2021 will have to be incorporated by all the States and Union Territories in their respective State/UT Act before these provisions are brought into force. It can therefore be safely presumed that these provisions may not come into effect before December, 2021.

Q & A:

Q. On which date the Finance Bill, 2021 has come into existence as an enacted law?

A. The Finance Bill, 2021 has received the assent of the President on March 28, 2021 and on that date, this Bill has come into existence as the 'Finance Act, 2021'.

Q. From which date the GST-related provisions of the Finance Act, 2021 will come into operation?

A. The GST-related provisions contained in S.108 to 123 of the Finance Act, 2021 will come into effect on the date to be appointed by the Central Government by a Notification in the Official Gazette. On this appointed date, a few amending provisions will come to life and become effective retrospectively from July 01, 2017 as specified.

Q. Are the exporters still allowed to export the goods or services on payment of IGST under refund claim?

- A. Yes. The option available to the exporters to export the goods or services on payment of IGST under refund claim is still available at present. The condition providing for the exports mandatorily under LUT or Bond inserted in S.16 of the IGST Act, 2017 by S.123 of the Finance Act, 2021 has not yet come into effect.