

INDIA EXPERT

Scenario in case of suspension of GST registration




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INDIA EXPERT, Chartered Accountants, is one of the leading providers of financial and business advisory, internal audit, statutory audit, corporate governance, & international taxation and regulatory services. With a global approach to service delivery, we are responds to clients' complex business challenges with a broad range of services

across industry sectors and national boundaries. The Firm has been set up by a group of energetic, open minded, highly skilled and motivated professionals who have gained experience from top consulting companies and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Assurance, Risk, Taxation, & Business advisory services to various clients & their stake holders. We have been associated with various national & International recognized associations in the field of our profession; Association of International tax consultants (AITC) is one of them.

**INDIA
EXPERT**

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Latest Updates on Cancellation of GST Registration

28th May 2021

Due date to file application for revocation of cancellation of registration falling between 15th April 2021 up to 29th June 2021 is 30th June 2021.

22nd December 2020

1. GST registration can be canceled under CGST Rule 21 at the discretion of the tax officer in the following cases:

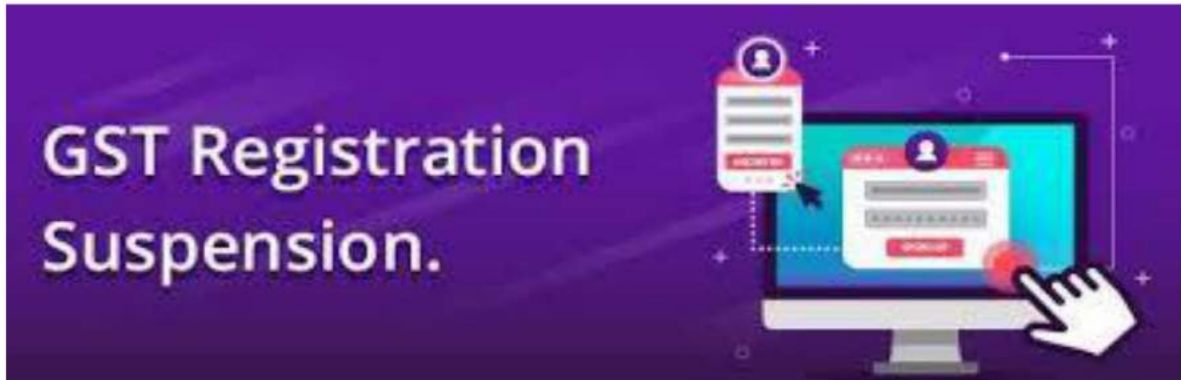
- a. Avails input tax credit in violation of the provisions of section 16 of the Act or the rules
- b. Utilisation of ITC from electronic credit ledger to discharge more than 99% of the tax liability for specified taxpayers – with the total taxable value of supplies exceeding Rs.50 lakh in the month, with some exceptions
- c. A taxpayer has not filed GSTR-1 due to GSTR-3B not being filed for more than two consecutive months (one quarter for those who opt into the QRMP scheme)

2. Suspension of GST registration may get attracted under CGST Rule 21A if there are major discrepancies between the GSTR-3B vis-a-vis the GSTR-1 and GSTR-2B.

14th March 2020

At the 39th GST Council meeting, taxpayers who have cancelled their GST registration till 14th March 2020 can file an application for revocation of cancellation of registration. The window to fill this application is available till 30th June 2020. The extension is a one-time measurement to facilitate those who want to continue conducting the business.

Suspension of GST Registration



Suspension of registration is covered under Section 29 of the CGST Act, 2017 and the procedure for the same has been provided under Rule 21A of the **CGST Rules 2017**. Section 29 has been amended vide the CGST (Amendment) Act, 2018 (no. 31 of 2018) dated 29.08.2018 to allow suspension" of GST Registration w.e.f. 01.02.2019 and Rule 21A was inserted vide **Notification 03/2019- Central Tax dated 29.01.2019** with effect from 01.02.2019.

To facilitate and making things easier for the taxpayer, the Government is continuously amending/inserting various provisions of the Goods and Service Tax. Thus the government has developed a new concept of the suspension of GST registration.

With the initiation of the suspension of GST registration, taxpayers who have demanded the cancellation of GST registration would be saved up from the requirement of complying with the GST return filing provision during the suspension period, thereby decreasing the compliance cost of the taxpayer.

Suspension of registration is incorporated under Section 29 of the CGST Act, 2017 and its procedure has been provided under Rule 21A of the **CGST Rules 2017**. Section 29 has been amended by CGST (Amendment) Act, 2018 (no. 31 of 2018) dated 29.08.2018 to provide suspension" of GST Registration w.e.f. 01.02.2019 and Rule 21A was incorporated by **Notification 03/2019- Central Tax dated 29.01.2019** w.e.f 01.02.2019.

Provisions for Suspension of GST Registration

As per Section 29-

- The title of the section was revised from 'Cancellation of Registration' to 'Cancellation or Suspension of Registration.
- A new proviso was entered to section 29 (1) as under; *'Provided that during the pendency of the proceedings relating to the cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed'* The above proviso declares that the GST registration during the period between the date of application of cancellation of GST registration and the date of actual cancellation of GST registration would be excluded or you can say suspended.

- One more proviso was inserted to Section 29(2)(e) which deals with the suspension of GST registration by the proper officer during the pendency of the proceedings relating to the cancellation of GST registration, in the manner prescribed. Rule 21A applies to the registered person who has appealed for the cancellation of its registration.

In a case where the cancellation of registration proceedings are pending, the registration shall be deemed to have been suspended from later of the following dates –

- Date of submission of the application; or
- Date from which the cancellation is asked.

1. The heading of the section was amended from 'Cancellation of Registration' to 'Cancellation or Suspension of Registration'.

2. A new proviso was inserted to section 29 (1) and the same is reproduced hereunder for ready reference –

'Provided that during the pendency of the proceedings relating to the cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed'

The above-referred proviso simply states that the GST registration during the period between the date of application of cancellation of GST registration and the date of actual cancellation of GST registration would be suspended.

3. Another proviso was inserted to Section 29(2)(e) which provides for the suspension of GST registration by the proper officer during the pendency of the proceedings relating to the cancellation of GST registration, in the manner prescribed.

RULE 21A-

Deeming provision of suspension –

The deeming provision of suspension of GST registration shall be effective when the registered person has applied for the cancellation of GST registration. The effective date of suspension of GST registration would be later of the following –

4. Date of submission of registration cancellation application; or
5. Date from which the cancellation is sought.

Suspension of GST registration by the proper officer –

The proper officer has been bestowed upon the right to, cancel the GST registration of any registered person if he has a reason to believe that the registration of the person is liable to be cancelled.

However, the proper officer has to follow the entire procedure laid down under rule 22 of the CGST Rules, 2017 before cancelling such registration.

Thus in such a case, where the proceeding for cancellation of GST registration has been initiated by the proper officer, the proper officer can suspend the registration of such person.

The proper officer has been offered the right to; cancel the GST registration of a person if he has reason to believe that the registration is liable to be cancelled.

The complete procedure laid down under rule 22 of the CGST Rules, 2017 has to be followed before cancelling such registration by a proper officer.

Thus, where the procedure for cancellation of GST registration is being initiated by the proper officer, he can suspend the registration of such a person.

Rule 21A has been amended vide **Notification 94/2020-Central Tax dated 22.12.2020**, and Departmental Officers are given more powers concerning cancellation and suspension of GST Registration and to take action upon serious misreporting in GSTR 1 and 2B and GSTR 3B.

The amendments made vide the said notification are given as:

A new sub-rule 2A has been introduced which states that if a proper officer finds any flaws:

- While comparing details of outward supplies furnished under Form GSTR-1 and Form GSTR 3B
- On analyzing details of inward supplies reflecting in the Form GSTR-2B with the Form GSTR-3B
- While any other analysis

Form **GST REG-31 can be issued by him** for implying such miscalculations to the taxpayer on the portal or communicating through the registered email-id. It will also be mentioned that if a proper explanation is not given on these discrepancies, the registration may get cancelled.

The registration can also be suspended by him as per Rule 21A(2A) with effect from the date of this letter to the taxpayer. Moreover, the proper officer can lift the suspension if he receives a satisfactory reply from the taxpayer

Since REG-31 has not been activated on the GST portal, CBIC has given a standard operating procedure (SOP) vide **circular No 145/01/2021-GST dated 11.01.2021 (Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017 – regarding)** which should be read with Rule 21A(2A).

As per the above Circular, a GST registration can be suspended by the Jurisdiction officer if he finds 'Significant Anomalies' between the values of

- Compare GSTR 3B Turnover with GSTR 1 Turnover Values as declared by the assessee
- GSTR3B Input tax credit value of the assesseevs GSTR1 Value filed by his suppliers

The period of suspension will be 30 days and the Assessee can present his reply with clarifications/explanations to the Jurisdictional officer within 30 days from the date of the notice.

If the officer is satisfied with the Assessee's reply he can withdraw the suspension of GST registration.

If the reply is not satisfactory to the Jurisdiction officer, or the Assessee has not presented his reply to the Jurisdiction officer within the designated time limit, then the Jurisdiction officer can continue with the Cancellation of the GST Registration.

The notice to the Assessee in **FORM GST REGN – 31** will be System generated and will be delivered to the Assessee.

Though, till the time the facility of generating **FORM GST REGN – 31** through Online is enabled, as an alternative arrangement, the Jurisdiction officer can publish a Notice in **FORM GST REG – 17 through** the GST portal. This notice can be seen from the **“View/Notice and Order”** tab after logging in.

The reply against the notice can be filed by the assessee online through **FORM GST REG – 18** in the same portal within the stipulated time limit of 30 days.

The government has further amended Rule 21A vide **Notification 94/2020-Central Tax dated 22.12.2020**, giving the Departmental Officers more powers with regard to cancellation and suspension of GST Registration and take action against serious misreporting in GSTR 1 and 2B and GSTR 3B.

The amendments made vide the said notification are as below:

- Rule 21A(2A): A new sub-rule 2A has been inserted which states that if a proper officer finds any discrepancies:
 - i. On comparing details of outward supplies furnished under Form GSTR-1 and Form GSTR 3B
 - ii. On comparing details of inward supplies reflecting in the Form GSTR-2B with the Form GSTR-3B
 - iii. Any other analysis

He can issue form **GST REG-31** for intimating such discrepancies to the taxpayer on the portal or via communication to the registered email-id. He will also mention that if a proper explanation is not provided on these discrepancies, the registration may get cancelled.

He can also suspend the registration as per Rule 21A(2A) with effect from the date of this communication to the taxpayer. Further, the proper officer can lift the suspension on receiving a satisfactory reply from the taxpayer.

In the words of the government, the sub-rule 2A has been inserted *“as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.”*

Since REG-31 has not been activated on the GST portal, CBIC has given a standard operating procedure (SOP) vide **circular No 145/01/2021-GST dated 11.01.2021** which is to be read with Rule 21A(2A).

The effective date of GST Registration Suspension:

- **When a taxpayer applies for the cancellation of registration:** The date of Suspension will be the date on which the Cancellation application was filed.

- **Cancellation by Tax official on their own:** Date of Suspension will be the date on which intimation for suspension of registration or notice Cancellation of registration (Form GST REG 31/REG-17) is issued.

What are the effect/consequences of the suspension of GST registration?

Effect of suspension of GST registration

On suspension of GST registration –

- Such a person cannot make any taxable supply after suspension of GST registration;
- Such a person is not required to furnish any returns as required under section 39 of the **Central Goods and Service Tax Act, 2017**; and
- Such a person will not be granted any refund under Section 54, during the suspension of the registration.

The main benefit of the suspension of GST registration, from the point of view of the registered person, is that he would be freed up from the return compliance under GST. However, the denial of refund till the revocation of suspension can prove to be disadvantageous to the taxpayer.

It seems that the only benefit of the suspension of GST registration, from the viewpoint of the registered person, is that he would be freed up from the return compliance under GST. Nevertheless, the rejection of refunds till the cancellation of suspension can prove to be disadvantageous to the taxpayer.

Revocation of suspension of GST registration

- Once the proceeding of cancellation of GST registration is being completed by the proper officer, the suspension of GST registration shall be revoked.
- The revocation of suspension of GST registration shall be effective from the date on which the suspension had come into effect.
- The suspension may be revoked by the proper officer, anytime during the pendency of the proceedings of the cancellation, if he deems fit.

After revocation of suspension of GST Registration



- If the suspension of registration is revoked the provisions in Section 31(3)(a) and Section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.
- According to Section 31(3)(a), a registered person may, within one month from the date of revocation of suspension, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of revocation of suspension.
- According to Section 40, the registered person, who has made outward supplies in the period between suspension of registration and revocation of suspension, shall declare the same in the first return furnished by him after the revocation of suspension.

Revocation of suspension of GST registration

- As the process of cancellation of GST registration is being performed by the proper officer, the suspension of GST registration shall be withdrawn.
- The revocation of suspension of GST registration shall be valid from the date on which the suspension had come into effect.
- The suspension may be revoked by the proper officer, anytime during the pendency of the proceedings of the cancellation, if he thinks fit.

Revocation of GST Registration Cancellation

The GST Act is very comprehensive and covers various situations a taxpayer may face with provision and procedures. In this article, we look at the procedure for revocation of **GST registration** cancellation order along with the applicable forms. The provision for revocation are contained under rule 23 of the CGST Rules, 2017.

Note: Revocation of GST registration can be initiated if a **GST registration certificate has been cancelled by GST authorities**.

Know more about **GST REG-19 – Order for Cancellation of GST Registration**

Time Limit for Revocation

Any registered taxable person can apply for revocation of cancellation of GST registration within a period of 30 days from the date of service of order of cancellation of GST registration. It must be noted that the application for revocation can be done only during the circumstances when the registration has been cancelled by the proper officer on his own motion. Hence, revocation cannot be used when GST registration was cancelled voluntarily by a taxpayer.

Application for Revocation

Application in FORM GST REG-21 needs to be filed by the registered person, for revocation of GST registration, either directly or through a facilitation centre notified by the Commissioner.

Online Revocation Procedure

Following are the steps which a registered person needs to be followed, who wants to apply for revocation online through the GST Portal:

1. Access the GST Portal at www.gst.gov.in.
2. In order to enter into the account, enter the username and appropriate password.
3. In the GST Dashboard, select services, under services select registration and further under registration select application for revocation of cancelled registration option.
4. Select the option of applying for revocation of cancelled registration. In the select box, enter the reason for revocation of GST registration cancellation. Further, you need to choose appropriate file to be attached for any supporting documents and you need to select verification checkbox and select name of authorized signatory and fill up the place filed box.
5. The final step would be to select SUBMIT WITH DSC OR SUBMIT WITH EVC box.

Processing of Application

If the proper officer satisfied with the reason provided by the taxpayer for revocation of cancellation of registration, then, the officer shall revoke the cancellation of registration.

Procedure of revocation of Suspension of GST registration

- A registered person can submit an application for revocation of cancellation, in form GST REG-21, if his registration has been cancelled suomoto by the proper officer.
- He must submit it within 30 days from the date of service of the cancellation order at the Common Portal.
- If the proper officer is satisfied he can revoke the cancellation of registration by an order in form GST REG-22 within 30 days from the date of receipt of the application. Reasons for revocation of cancellation of registration must be recorded in writing.
- The proper officer can reject the application for revocation by an order in form GST REG-05 and communicate the same to the applicant.
- Before rejecting, the proper officer must issue a show cause notice in form GST REG-23 for the applicant to show why the application should not be rejected. The applicant must reply in form GST REG-24 within 7 working days from the date of the service of notice.
- The proper officer will take decision within 30 days from the date of receipt of clarification from the applicant in form GST REG-24.
- Note: Application for revocation cannot be filed if the registration has been cancelled because of the failure to file returns. Such returns must be furnished first along with payment of all dues amounts of tax, interest & penalty.

The time period of revocation, by the proper officer, is 30 days from the date of application. The proper officer is required to pass an order revoking the cancellation of registration in FORM GST REG-22.

Rejection of Application

If a GST officer is not satisfied with the revocation application, the officer would issue a notice in FORM GST REG-23. On receipt of the notice, the applicant is required to furnish a suitable reply in FORM GST REG-24 within a period of 7 working

days from the date of service of the notice. On receipt of a suitable reply from the applicant, the officer is required to pass a suitable order in FORM GST REG-05 within a period of 30 days from the date of receipt of a reply from the applicant.

Ineligible Applicants

UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons), **GST Practitioner** or in case the registration is cancelled on the request of the taxpayer or legal heir of the taxpayer, cannot apply for revocation of cancelled registration.

Online Application Procedure for Revocation of Cancellation

The taxpayers must follow the below following steps for the Revocation of Cancellation of GST Registration online.

After the revocation of suspension of GST Registration

- In case the suspension of registration has reversed the provisions in Section 31(3)(a) and Section 40 in respect of the supplies that are made during the period of suspension and the procedure described there shall apply.
- According to Section 31(3)(a), a registered person may, within one month from the date of cancellation of suspension, issue an updated invoice against the invoice previously issued during the period starting with the effective date of registration till the date when the suspension is revoked.
- As per Sec 40, the registered person, who has made outward supplies in the period between suspension of registration and revocation of suspension, shall report the same in the first return provided by him after the revocation of suspension.

SOP for Suspension of GST registration:

1. The registration of specified taxpayers shall be suspended and system-generated intimation for suspension and notice for cancellation of registration in **FORM GST REG-31**, containing the reasons for suspension, shall be sent to such taxpayers at their registered e-mail address. Till the time functionality for **FORM REG-31** is made available on the portal. The notice/intimation shall be made available to the taxpayer on their dashboard on the common portal in **FORM GST REG-17** and they will be able to view the notice in the "View/Notice and Order" tab post login.

2. The taxpayers would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice/intimation, explaining the discrepancies/anomalies and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled:

a. The reply shall be made through **FORM GST REG-18** online through Common Portal within 30 days from the receipt of notice/ intimation.

b. In case the intimation for suspension and notice for cancellation of registration is issued on the ground of non -filing of returns, the taxpayer may file all the due returns and submit the response. Similarly, in other scenarios as specified under **FORM GST REG-31**, they may meet the requirements and submit the reply.

3. Proper officer, post examination of the response received from the taxpayer, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in **FORM GST REG-20** or for cancellation of registration in **FORM GST REG-19**. Based on the action taken by the proper officer, the GSTIN status would be changed to “**Active**” or “**Cancelled Suo-moto**” as the case may be.

4. Till the time-independent functionality for **FORM GST REG-31** is fully ready, the proper officer may drop a proceeding anytime after the issuance of **FORM GST REG-31** if he deems fit, he may advise the taxpayer to furnish his reply on the common portal in **FORM GST REG-18**.

5. If the proper officer is prima-facie satisfied with the reply of the taxpayer, he may revoke the suspension by passing an order in **FORM GST REG-20**. The proper officer has the authority to continue with the detailed verification of the documents and recovery of short payment of tax even after the revocation. After detailed verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in **FORM GST REG-17**.

- Rule 21A(3A): A person whose registration has been suspended shall not be granted any refund under Section 54, during the period of suspension of his registration.
- Rule 21A (2): The words “*after affording the said person a reasonable opportunity of being heard*” **has been omitted** from clause (2) of Rule 21A meaning thereby that no opportunity of being heard would be given to the taxpayer for suspension of registration, where the proper officer has reasons to believe that the registration of person is liable to be cancelled under Section 29.

This in my opinion is a clear violation of the principles of natural justice. While the suspension is seen as a positive change, the omission of the requirement of a personal hearing before the suspension of the registration tilts the balance of justice against the interest of the taxpayer.

However, the proper officer must give the registered person a reasonable opportunity of being heard and then follow the appropriate procedure for cancellation as mentioned under Rule 22 of the CGST Rules, 2017

Effective date of GST Registration Suspension:

- When a taxpayer files an application for cancellation of registration: Date of Suspension will be the date on which Cancellation application was filed.
- Suo Moto cancellation has been initiated by the Tax Official: Date of Suspension will be the date on which intimation for suspension of registration or notice Cancellation of registration (Form GST REG 31/REG-17) is issued.

Conclusion:

The terms directing the suspension of registration, particularly the recent amendments are intended to provide immediate support to the Government against any irregularity or contravention of GST laws to check that there is no misapplication of the online system and the defaulters are prevented from further violation.

The provisions governing suspension of registration, especially the recent amendments are designed to provide an immediate recourse to the Government against any anomaly or violation of

GST laws so that there is no misuse of the online system. And the defaulters are prohibited from further violation. Although the rules do provide certain relief to the genuine taxpayer who has applied for cancellation of registration, the same is more inclined towards the department in as much as it provides a wide range of powers to the department to initiate suo-moto cancellation proceedings and to suspend the registration in the interim.

Although the rules do provide some assistance to the genuine taxpayer who has applied for cancellation of registration, the same is inclined towards the department as it presents a wide range of powers to the department to initiate cancellation proceedings and to suspend the registration in between.

While the suspension is believed to be a positive change, the elimination of the requirement of a personal hearing before the suspension of the registration shifts the balance of justice against the interest of the taxpayer.

However, a reasonable opportunity of being heard should be given to the registered person and then the appropriate procedure of cancellation should be followed.



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