

Insertion of Section 74A of CGST Act, 2017: Clause 134 of Finance Bill 2024 seeks to insert newly proposed Section 74A in lieu of Section 73 and 74. Section 73 and 74 shall be applicable for period upto Financial Year 2023-24. As such, a new Section 74A shall be applicable for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason (be it willful suppression of facts or otherwise) pertaining to the Financial Year 2024-25 onwards. The detailed comparison of Section 73, 74 and 74A is as under for better understanding:

<u>Old Provision</u>		<u>New Proposal</u>	
Non-fraud cases - Section 73	Fraud cases - Section 74	Non-fraud cases - Section 74A	Fraud cases - Section 74A
Scope			
Tax has been not paid/short paid/ erroneously refunded, or where input tax credit has been wrongly availed/utilised for any reason other than fraud/willful misstatement/suppression of facts.	Tax has been not paid/short paid/erroneously refunded, or where input tax credit has been wrongly availed/utilised for reason of fraud/willful-misstatement/suppression of facts.	Uniform approach i.e. tax has been not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for reason of fraud or otherwise.	
Threshold amount for SCN			
Nil	Nil	Rs. 1,000/-. Therefore, no SCN to be issued if demand is less than Rs. 1000.	
Time limit for issuance of SCN			
Within 33 months from the due date of filing the annual return.	Within 54 months from the due date of filing the annual return.	Within 42 months from the due date for furnishing of annual return for the financial year or from the date of erroneous refund.	
Time limit for issuance of Demand Order			
Within 3 years from the due date of filing the annual return.	Within 5 years from the due date of filing the annual return.	Within 12 months from the date of issuance of SCN. This can be further extended to maximum of 6 months on prior approval of senior officer as specified.	

Penalty Provisions				
	Non-fraud cases- Section 73	Fraud cases - Section 74	Non-fraud cases-Section 74A	Fraud cases - Section 74A
	10% of tax dues or Rs. 10,000, whichever is higher	100% of tax Dues	10% of tax dues or Rs. 10,000, whichever is higher	100% of tax dues
Option for voluntary payment				
i. Before SCN	No penalty	15% of tax as penalty.	No penalty	15% of tax as penalty
ii. After SCN	No penalty if payment within 30 days of the SCN	25% of tax as penalty if payment within 30 days of the SCN	No penalty if payment within 60 days of the SCN	25% of tax as penalty if payment within 60 days of the SCN.
iii. After Demand Order	-----	50% of tax as penalty if payment within 30 days of the Demand Order.	-----	50% of tax as penalty if payment within 60 days of the Demand Order.

Note: The above table depicts the provisions relating to penalties only. However, in all cases, the assessee shall be liable to pay tax and interest as applicable.

Therefore:

- For FY 23-24, last date of issuance of SCN under section 74 of CGST Act, 2017 shall be 30.06.2029. However, the time limit for adjudication by the authorities shall be 6 months after issuance of SCN.
- For FY 24-25, due date of annual return is 31.12.2025 and hence, SCN can be issued till 30.06.2029 and order can be issued upto 30.06.2030.
- Earlier there were different time-limits for issuance of SCN and adjudication in non-fraud and fraud cases by virtue of two separate sections 73 and 74 respectively. Now, new section 74A prescribes uniform time limitation for both types of cases. In a way, this has increased limitation for non-fraud cases and reduced limitation for fraud cases.