

# EY Tax Alert

**Council recommends amending GST law and issuing clarifications for achieving rate rationalization, trade facilitation and reduction in ongoing litigation**

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## Executive summary

This Tax Alert summarizes the recent press release<sup>1</sup> issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 53<sup>rd</sup> meeting held on 22 June 2024. The key recommendations are:

- ▶ Value of corporate guarantee as per Rule 28(2) of Central Goods and Services Tax Rules, 2017 (CGST Rules) will not apply in case of export of such services and also where the recipient is eligible for full input tax credit (ITC).
- ▶ Section 11A to be inserted in Central Goods and Services Tax Act, 2017 (CGST Act) for granting power regarding non-recovery of duties not levied or short-levied as a result of general practice.
- ▶ Waiver of interest and penalty for demand notices issued under section 73 for FY 2017-18 to 2019-20, if entire tax demand is paid up to 31 March 2025.
- ▶ Time limit to avail ITC for FY 2017-18 to 2020-21 is extended till 30 November 2021 where the relevant GSTR-3B is filed upto such date.
- ▶ Interest is not leviable where balance is available in Electronic Cash Ledger on the due date of filing GSTR-3B and the same is utilised while filing the return.
- ▶ Three-month time period for filing appeal before GST Appellate Tribunal (GSTAT) will start from a date to be notified.
- ▶ Quantum of pre-deposit required to be paid for filing appeals is reduced.
- ▶ Time limit to avail ITC basis self-invoice raised by the recipient shall be calculated from the date of the self-invoice.

<sup>1</sup> Press release dated 22 June 2024

## Background

- ▶ The Goods and Services Tax (GST) Council held its 53<sup>rd</sup> meeting in New Delhi on 22 June 2024.
- ▶ The Council made recommendations relating to changes in GST rates, measures pertaining to law and procedures and certain measures for trade facilitation in GST.

## Key Recommendations

### *Changes relating to goods*

- ▶ To boost aircraft maintenance, repair and overhaul (MRO) activities, a uniform rate of 5% Integrated Tax (IGST) (subject to specified conditions) will apply on imports of parts, components, testing equipment, tools and toolkits of aircraft.
- ▶ GST Compensation Cess on imports by Special Economic Zone (SEZ) units/ developers for authorized operation will be exempt retrospectively from 1 July 2017.
- ▶ IGST exemption on imports of specified items for defence forces will be extended for a further period of 5 years till 30 June 2029.
- ▶ Milk cans (steel, iron, aluminium) irrespective of their use, carton, boxes, cases of both corrugated and non-corrugated paper or paperboard, solar cookers and sprinklers, including fire water sprinklers, will attract GST at 12%.
- ▶ Further, rate rationalization is proposed on various other goods.

### *Changes relating to services*

- ▶ Various services provided by Indian Railways like sale of platform tickets, facility of waiting rooms, cloak rooms, battery operated car service, and intra-railway transactions, will be exempt.
- ▶ Services provided by Special Purpose Vehicles (SPV) to Indian Railway by way of allowing to use infrastructure built and owned by SPV and maintenance services will be exempt. The issue for the past will be regularized on "as is where is" basis.
- ▶ Accommodation services, having value of supply up to INR 20,000 per month per person, for a minimum continuous period of 90 days will be exempt.

### *Other changes relating to services*

- ▶ Co-insurance premium apportioned by lead insurer to the co-insurer for the supply of insurance service by lead and co-insurer to the insured in co-insurance agreements, to be declared as no supply under Schedule III of Central Goods and Services Tax Act, 2017 (CGST Act) and past cases may be regularized on 'as is where is' basis.
- ▶ Transaction of ceding commission/re-insurance commission between insurer and re-insurer to be declared as no supply under Schedule III of CGST Act and past cases may be regularized on 'as is where is' basis.

- ▶ Few other disputed matters will be regularized for insurance sector.

### *Key Clarifications*

- ▶ In cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism and invoice is to be issued by the recipient, the relevant financial year for calculation of time limit for availment of Input Tax Credit (ITC) under section 16(4) of CGST Act is the financial year in which the invoice has been issued by the recipient.
- ▶ In cases where the foreign affiliate is providing services to the related domestic entity for which full ITC is available to the recipient, the value of such supply declared in the invoice by the domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.
- ▶ Further, in cases where full ITC is available to the recipient and if the invoice is not issued by the recipient with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil and may be deemed as open market value.
- ▶ Place of supply of custodial services supplied by Indian banks to foreign portfolio investors is determinable as per Section 13(2) of the IGST Act, 2017.
- ▶ ITC is not restricted in respect of ducts and manhole used in network of optical fiber cables under clause (c) or under clause (d) of section 17(5) of CGST Act.
- ▶ Sharing of the incentive by acquiring bank with other stakeholders is not taxable, where such sharing is clearly defined under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions and is decided in the proportion and manner by NPCI in consultation with the participating banks.
- ▶ Statutory collections made by Real Estate Regulatory Authority (RERA) are exempt as they fall within the scope of entry 4 of services exemption notification.

### *Circulars to be issued*

The Council proposed issuance of Circular on the following matters:

- ▶ Taxability of re-imbursalment of securities/shares as ESOP/ESPP/RSU provided by a company to its employees.
- ▶ Requirement of ITC reversal in respect of amount of premium in life insurance services, which is not included in the taxable value as per Rule 32(4) of CGST Rules.
- ▶ Taxability of loans granted between related person or between group companies.
- ▶ Place of supply of goods supplied to unregistered persons, where delivery address is different from the billing address.
- ▶ Mechanism for providing evidence by the suppliers for compliance of the conditions of Section 15(3)(b)(ii) of CGST Act, 2017 in respect of post-sale discounts, to the effect that input tax credit has been reversed by the

recipient on the said amount.

- ▶ ITC availability on repair expenses incurred by the insurance companies in case of reimbursement mode of settlement of motor vehicle insurance claims.

## Trade facilitation measures

### Interest and penalty waiver

- ▶ Section 73 empowers the proper officer to determine the tax liability of a person for any reason, other than fraud or any willful-misstatement or suppression of facts to evade tax and serve notice.

W.r.t such demand notices, other than erroneous refund case, Section 128A to be inserted to waive interest and penalties for FY 2017-18, 2018-19 and 2019-20 in cases where the taxpayer pays the full amount of tax demanded in the notice, up to 31 March 2025.

### ITC

- ▶ Section 16(4) of the CGST Act prescribes time limit to avail ITC in respect of any invoice or debit note to be amended.

For FY 2017-18, 2018-19, 2019-20 and 2020-21, where GSTR-3B was filed up to 30 November 2021, the time limit to avail ITC may be deemed to be 30 November 2021.

In addition, conditional relaxation to be given where returns for the period, from the date of cancellation of registration till the date of revocation, are filed within 30 days of the order of revocation.

### Corporate Guarantee

- ▶ Rule 28(2) of CGST Rules which provides for valuation in case of corporate guarantee will be amended retrospectively with effect from 26 October 2023.
- ▶ Circular to be issued to clarify various issues regarding valuation of services of providing corporate guarantees between related parties.
- ▶ Further, valuation under rule 28(2) of CGST Rules would not be applicable in case of export of such services and also where the recipient is eligible for full input tax credit.

### Return

- ▶ A new optional facility (GSTR-1A) will be introduced to facilitate taxpayers to either amend the details in GSTR-1 or to declare additional details before filing of GSTR-3B for the said tax period. This will ensure that correct liability is auto-populated in GSTR-3B.
- ▶ Filing of annual return in GSTR-9/9A for FY 2023-24 to be exempted for taxpayers having aggregate annual turnover up to INR 2 crore.
- ▶ The due date for furnishing GSTR-4 by composition taxpayer to be extended from 30 April to 30 June following the end of the relevant financial year.
- ▶ The threshold for reporting of B2C inter-State supplies invoice-wise in Table 5 of GSTR-1 to be reduced from INR 2.5 lakh to INR 1 lakh.
- ▶ Registered person required to deduct tax at source

under Section 51 would be required to file GSTR-7 every month with invoice-wise details, irrespective of whether any tax has been deducted during that month.

No late fee may be payable for the delayed filing of a Nil return.

### Interest under Section 50

- ▶ Section 50 of the CGST Act provides for levy of interest when tax is not paid within prescribed period. Further, Rule 88B of the CGST Rules prescribes the manner of calculation of interest on such delayed payment of tax.

For calculating such interest, Rule 88B will not include an amount, which is:

- ▶ available in the Electronic Cash Ledger (ECL) on the due date of filing of return in GSTR-3B, and
- ▶ debited while filing the said return.

### Refund

- ▶ In case of upward price revision, IGST is payable on debit note where the original export was made with payment of tax.

At present, there is no mechanism to claim refund of additional IGST paid on such debit notes. It is recommended to prescribe a mechanism for the same.

- ▶ The second proviso to Section 54(3) of CGST Act places restriction on claiming refund of unutilized ITC in case where the goods exported out of India are subject to export duty.

Section 54 of CGST Act and section 16 of IGST Act to be amended to provide a similar restriction for export of such goods on payment of tax. This will also apply for supplies of such goods made by Domestic Tariff Area (DTA) to SEZ unit/ developer for authorized operations.

### Pre-deposit

- ▶ To ease cash flow and working capital blockage for taxpayers, the amount of pre-deposit to be reduced:
  - ▶ Before the Appellate Authority, the maximum amount is reduced from INR 25 crore to INR 20 crores (CGST and SGST each)
  - ▶ Before the GSTAT, the amount is reduced from 25% to 10% of the tax in dispute, with maximum amount reduced from INR 50 crore to INR 20 crore (CGST and SGST each).

- ▶ Moreover, a circular is to be issued to prescribe a mechanism for adjustment of an amount paid in respect of a demand through GST DRC-03 against the amount to be paid as pre-deposit for filing an appeal. Rule 142 will also be amended in this regard.

### Electronic Commerce Operators (ECOs)

- ▶ ECOs are required to collect Tax at Source (TCS) on net taxable supplies under Section 52(1) of the CGST Act. Presently, the TCS rate is 1%.

To ease the financial burden on the suppliers making supplies through ECOs, the rate is reduced to 0.5%

- ▶ Further, penal provisions on ECOs under Section 122(1B) are applicable only for those ECOs who are required to collect tax at source under Section 52.

### Appeal

- ▶ Section 112 of the CGST Act stipulates time period for filing appeal before GSTAT against the order passed by first appellate authority or Revisional authority.

The three-month period will start from a date to be notified by the Government in respect of appeal/revision orders passed before the date of said notification.

- ▶ Further, monetary limits are prescribed for filing appeal by the department before Tribunal (INR 20 lakhs), High Court (INR 1 crore) and Supreme Court (INR 2 crores).

#### *Anti-profiteering*

- ▶ Section 171 to be amended to provide 1 April 2025 as sunset date for receipt of any new application regarding anti-profiteering. Further, Section 109 to be amended to provide for handling of anti-profiteering cases by Principal bench of GSTAT.

#### *Other measures*

- ▶ Section 140(7) to be amended retrospectively w.e.f. 1 July 2017 to provide for transitional credit in respect of invoices pertaining to services provided before appointed date, and where invoices were received by Input Service Distributor (ISD) before the appointed date.
- ▶ Section 11A to be inserted for granting power not to recover duties not levied or short-levied as a result of general practice.
- ▶ Section 9(1) of CGST Act to be amended to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside the ambit of GST.
- ▶ Currently, section 73 deals with non-fraud cases and section 74 deals with fraud cases. The timelines for issuing SCN and passing order are different under both these provisions.

In respect of demands for FY 2024-25 onwards, a common time limit will be provided for issuance of demand notices and demand orders, irrespective of cases involving charges of fraud or willful misstatement or not. To implement this change, Section 74A will be inserted.

- ▶ Also, the time limit for taxpayers to avail the benefit of reduced penalty, by paying the tax demanded along with interest, to be increased from 30 days to 60 days.
- ▶ Biometric-based Aadhaar Authentication for GST registration will be rolled-out on pan-India basis in a phased manner.

## Comments

- The recommendations made by the Council are likely to provide significant relief to taxpayers and enhance the ease of doing business through a set of measures designed to streamline GST procedures and reduce litigation.
- Since most of the SCNs are issued under section 74 alleging fraud, suppression or misstatement, it will need to be seen as to how the new amnesty provision on waiver of interest and penalty deal with such cases, particularly where allegations are litigated before appellate forum.
- Circular on various issues relating to corporate guarantee is much awaited by the industry. The benefit of Nil valuation can be explored where the recipient is eligible for full ITC.
- Earlier, Andhra Pradesh High Court (HC) in case of Maithan Alloys held that GST Compensation Cess is not exempt on imports made by SEZ [TS-677-HC(AP)-2023-GST]. The retrospective grant of exemption is likely to provide significant relief to SEZ units/developers.
- Mechanism to claim refund of additional IGST paid through debit note may facilitate a large number of exporters. Madras HC, in case of Vedanta Limited [2019-VIL-563-MAD] observed the lack of procedure and allowed refund of tax on debit note in relation to exports made on payment of tax.
- Levy of interest where sufficient balance was maintained in Cash Ledger has been a very litigious matter due to divergent High Court rulings. The Government should consider making the amendment retrospectively from 1 July 2017.
- Circular 199/2023-GST clarified that Nil value can be taken for cross-charge where recipient branch is eligible for full ITC. Extending the same to transactions between related persons may benefit the industry.
- Even under the recently issued draft of Central Excise Bill, 2024, a single time limit has been provided for issuance of SCN and passing order in both fraud as well as non-fraud cases.
- Exemption to hostels under the category of "renting of residential dwelling" is pending before the Apex Court. The outcome may impact the exemption proposed by the Council.

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