

EY Tax Alert

CBIC issues Notifications pursuant to recommendations in 52nd GST Council Meeting

Executive summary

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

This Tax Alert summarizes recent Notifications¹ issued by Central Board of Indirect Taxes and Customs (CBIC) pursuant to recommendations made in the 52nd Goods and Services Tax (GST) Council Meeting. The same are effective from 20 October 2023.

The highlights are:

- ▶ In case where the supplier of passenger transport services by any motor vehicle or rental services of motor vehicles with operator, opts to discharge tax @5%, an additional condition is imposed to restrict input tax credit (ITC) in excess of 5% of the value of input services in the same line of business.
- ▶ Various supplies made by Ministry of Railways (MoR) are made taxable under forward charge to enable them to avail ITC.
- ▶ Refund of unutilized ITC is now restricted to only those construction services of complex, building or a part thereof, which are intended for sale to a buyer and where the amount charged includes the value of land or undivided share of land.
- ▶ Bus operators organised as companies and supplying services through e-commerce operators (ECO) are made liable to pay GST. Earlier, the liability to pay GST was on ECO.
- ▶ A conditional IGST exemption is notified on foreign going vessel converted for a coastal run subject to its reconversion to foreign going vessel within six months.

¹ Notification Nos. 12 to 20/2023 - Central Tax (Rate), 15 to 23/2023- Integrated Tax (Rate) and 60/2023 - Customs all dated 19 October 2023

Background

- Goods and Services Tax (GST) Council in its 52nd meeting had made recommendations relating to changes in GST rates, measures for trade facilitation and streamlining compliances in GST.²
- Central Board of Indirect Taxes and Customs (CBIC) has now issued Notifications³ to give effect to some of the above recommendations. The same are effective from 20 October 2023.

Highlights

Passenger transport services and rental services of transport vehicle with operators

- Suppliers of (1) passenger transport services by any motor vehicle, and (2) rental services of motor vehicles with operator, are required to discharge tax @5% with no input tax credit (ITC) other than ITC on input services in the same line of business, or @12% with full ITC.
- In case where the supplier opts for the first option and discharges tax @5%, an additional condition is imposed to restrict ITC in excess of 5% of the value of input services in the same line of business.

Illustration: 'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for INR1000. 'B', for supplying the said service, hires a motor cab with operator from 'C' for INR800. 'C' charges 'B' tax @12% (INR96). If 'B' charges 'A' tax @5%, he shall be entitled to take ITC on the input service in the same line of business supplied by 'C' only to the extent of INR40 (5% of Rupees 800) and not INR96.

Lottery, Betting and Gambling

- Activities of a race club by way of totalizator, and gambling are excluded from the service rate Notification⁴.
- Further, entries pertaining to lottery, betting and gambling are omitted from the "Scheme of Classification of Services" annexed to the above Notification.

Services provided to a Governmental Authority

- Services provided to a Governmental Authority namely, by way of water supply, public health, sanitation conservancy, solid waste management, and slum improvement and upgradation are exempted from GST.

Services provided by Ministry of Railways (Indian Railways)

► Following services provided by Central Government (CG), State Government (SG), Union territory (UT) or Local Authority (LA) are exempt (subject to certain exceptions):

- Any services to non-business entities
- To a business entity with an aggregate turnover of up to such amount in the preceding financial year as it makes it eligible for exemption from registration under GST
- To another CG, SG, UT or LA, or
- Where the consideration for such services does not exceed INR5000

Now, services provided by Ministry of Railways (MoR) are excluded from the above exemptions.

► Earlier, tax on following supplies by CG, SG, UT or LA was required to be paid under reverse charge mechanism (RCM):

- Any services to a business entity (with certain exceptions)
- Services of renting of immovable property to a registered person
- Sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap

Now, if the above supplies are made by MoR, tax on the same will be paid by MoR under forward charge.

► The above amendments are carried out to enable MoR to avail ITC on its inward supplies.

Restriction on claiming refund of unutilized ITC

► Drawing powers from Section 54(3) of the Central Goods and Services Tax Act, 2017 (CGST Act), Government had notified services specified in item 5(b) of Schedule II to the CGST Act as services on which no refund of unutilized ITC could be claimed.⁵

The above entry covered services of "*construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier*".

► The said Notification is amended to restrict refund of unutilized ITC to only those construction services of complex, building or a part thereof, which are intended for sale to a buyer and where the amount charged includes the value of land or undivided share of land.

² Refer our alert "GST Council recommends changes in tax rates and clarification on issues including taxability of personal and corporate guarantee" dated 9 October 2023

³ Notification Nos. 12 to 20/2023 - Central Tax (Rate), 15 to 23/2023- Integrated Tax (Rate) and 60/2023 - Customs all dated 19 October 2023

⁴ Notification No. 11/2017 - Central Tax (Rate) dated 28 June 2017

⁵ Notification No.15/2017 - Central Tax (Rate) dated 28 June 2017

- No refund of unutilized ITC due to inverted duty structure shall be allowed in case of supply of imitation zari thread or yarn made out of metallized polyester film /plastic film.

Transportation of passengers by bus

- W.e.f. 1 January 2022, liability to pay tax on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on ECO.

Now, bus operators organized as companies are excluded from the above. This would enable them to pay GST on supplies using their ITC.

Rate changes relating to goods

- GST rate on molasses is reduced from 28% to 5%.
- Food preparation of millet flour in powder form containing at least 70% millets by weight, when sold in loose form are exempted. If the same is sold in pre-packaged and labelled form, the rate is reduced to 5%.
- Spirits for industrial use shall attract tax @18%.

Exemption provided to foreign going vessel

- Earlier, foreign flag foreign going vessel was liable to 5% GST on the value of vessel if it converted to coastal run.

A conditional IGST exemption is notified on such conversion subject to its reconversion to foreign going vessel within six months.

Comments

- It may need to be analyzed whether the applicability of refund eligibility, in cases other than those construction services notified for restriction, is prospective or retrospective.
- Activities of lottery, betting and gambling have been excluded from the service rate Notification since the same has been classified as actionable claim being goods under GST. Requisite amendments were earlier carried out in goods rate Notification to provide rate of tax on supply of such actionable claims.
- The GST exemption given to foreign going vessel for coastal run is likely to boost the tourism industry in India.
- Reduction in rate of GST on molasses may increase the working capital of the sugarcane industry and facilitate faster clearance of dues to farmers.
- Although tax exemption on various services provided by the Ministry of Railways have been withdrawn, passenger transport services by railways other than in first class or air-conditioned coach continues to be exempt.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing

Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Fairdeal Complex
Holding No. 7, SB Shop Area
Bistupur, Jamshedpur - 831 001
East Singhbhum Jharkhand
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2

Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

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