

# EY Tax Alert

## GST Council recommends rate rationalization and changes in GST law and procedure

Tax 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.

### Executive summary

This Tax Alert summarizes a recent press release<sup>1</sup> issued by the Ministry of Finance. The 47<sup>th</sup> meeting of Goods and Services Tax (GST) Council was held on 28 and 29 June 2022 in Chandigarh.

The key decisions are as follows:

- ▶ Recommendations and clarifications relating to GST rate on various goods and services (including rate rationalization to address inverted tax structure, withdrawal of exemption/concessional rates). The changes shall be effective from 18 July 2022.
- ▶ Changes in GST law and procedure including trade facilitation measures such as modification in the formula for claiming refund on account of inverted duty structure, continuation of exemption of Integrated tax (IGST) on import of goods under Export Promotion Capital Goods (EPCG)/ Advance Authorisation (AA)/ Export Oriented Units (EOU) scheme etc.
- ▶ Time period from 1 March 2020 to 28 February 2022 to be excluded while calculating limitation period for filing refund claims and issuance of order by proper officer in respect of erroneous refunds.

Further, the limitation period for issuance of order for FY 2017-18 in respect of other demands linked with due date of annual return is extended till 30 September 2023.

- ▶ ITC reversal will not be required in respect of sale of duty credit scrips by the exporters.
- ▶ Group of Minister to re-examine issues on services of casino, race-course and online gaming.
- ▶ Decision to constitute a Group of Ministers to address concerns raised by the States on constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in the Central Goods and Services Tax Act, 2017 (CGST Act).

<sup>1</sup> Press release dated 29 June 2022

## Background

- ▶ GST Council held its 47<sup>th</sup> meeting on 28 and 29 June 2022 at Chandigarh.
- ▶ The Council has made recommendations relating to changes in GST rates on supply of goods and services and law and procedures.

## Key Decisions

### Rate related changes for goods and services

#### Changes in rates with respect to goods

Sl. No.	Description	Existing rate	Proposed Rate
1.	Printing, writing or drawing ink	12%	18%
2.	Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps, submersible pumps, bicycle pumps	12%	18%
3.	LED Lamps, lights and fixture, their metal printed circuits board	12%	18%
4.	Solar Water Heater and system	5%	12%
5.	Tetra Pack (Aseptic Packaging Paper)	12%	18%
6.	Cut and polished diamonds	0.25%	1.5%
7.	Specified defense items imported by private entities, where end-user is the Defense forces	Applicable rate	Nil
8.	Cheques, loose or in book form	Nil	18%
9.	E-waste	5%	18%

#### Other Changes/ clarification in respect of goods

- ▶ Refund of accumulated input tax credit (ITC) shall not be allowed on edible oils and coal.
- ▶ GST exemption shall not be available on unbranded pre-packaged or pre-labelled retail food items.
- ▶ Electric vehicles, whether or not fitted with a battery pack, are eligible for the concessional GST rate of 5%.
- ▶ Fly ash bricks attract same concessional rate irrespective of fly ash content.
- ▶ Sewage treated water is not purified water and hence, exempt.

- ▶ Nicotine polarilex gum attracts GST @ 18%.

#### Changes in rates with respect to services

Sl. No.	Description	Existing rate	Proposed Rate
1.	Services supplied by foreman to chit fund	12%	18%
2.	Job work in relation to manufacture of leather goods and footwear	5%	12%
3.	Works contract for roads, bridges, railways, metro, effluent treatment plant etc.	12%	18%
4.	Works contract service supplied to Central and State governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. and its sub-contracting	12%	18%
5.	Works contract service supplied to Central and State governments and local authorities involving predominantly earthwork and its sub-contracting	5%	12%
6.	Renting of truck/ goods carriage where cost of fuel is included	18%	12%

#### Other Changes/ clarification in respect of services

- ▶ Exemption on transport of passengers by air to and from North-eastern states and Bagdogra is restricted to economy class.
- ▶ Exemption on following services is withdrawn:
  - ▶ Transportation by rail or vessel of railway equipment and material
  - ▶ Storage or warehousing of commodities which attract tax (nuts, spices, copra, jaggery, cotton etc.)
  - ▶ Fumigation in a warehouse of agricultural produce
  - ▶ Services by Reserve Bank of India (RBI), Insurance Regulatory and Development Authority (IRDA), Securities and Exchange Board of India (SEBI), Food Safety and Standards Authority of India (FSSAI) and Goods and Services Tax Network (GSTN)
  - ▶ Renting of residential dwelling to registered business entities
- ▶ Common bio-medical waste treatment facilities for treatment or disposal of biomedical waste shall be taxed at 12% with ITC benefit.

- ▶ Hotel accommodation of value upto INR 1000 per day shall be taxed at 12%.
- ▶ Room rent (excluding ICU) charged by a hospital, exceeding INR 5,000 per day per patient shall be taxed. The tax shall be levied only on the room rentals @ 5% without ITC.
- ▶ Exemption on training or coaching in recreational activities relating to arts, culture or sports is restricted only when supplied by an individual.
- ▶ Fee charged by universities for issuance of migration certificate or eligibility certificate for admission is exempt from GST.
- ▶ Services associated with transit cargo both to and from Nepal and Bhutan are covered by exemption under entry 9B of notification No. 12/2017-CT(R).
- ▶ Activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%.
- ▶ Renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 and attracts GST at 18%. GST on such renting where cost of fuel is included in the consideration charged will be taxable at 12%.
- ▶ Preferential location charges (PLC) is part of consideration charged for long term lease of land and shall get the same treatment under GST.
- ▶ Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll and thus, exempt.
- ▶ Services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF) are covered under the definition of health care services and therefore, exempt.
- ▶ Sale of land after leveling, laying down of drainage lines etc. is sale of land and does not attract GST.
- ▶ Renting of motor vehicles for transport of passengers to a body corporate for a continuous period attracts RCM.
- ▶ All taxable services of Department of Posts would be subject to tax under forward charge.
- ▶ Option given to Goods transport agency (GTA) to pay GST needs to be exercised at the beginning of the financial year.

The recommended rate changes would be effective from 18 July 2022.

## Changes in GST legislation

- ▶ In-principal approval for relaxation in the provisions for persons making supplies through E-Commerce Operators (ECOs):
  - ▶ Waiver of requirement of mandatory

registration subject to fulfillment of conditions such as turnover not exceeding threshold limit for registration and person not making inter-state supply

- ▶ Composition taxpayers would be allowed to make intra-state supply through e-commerce operators

The details of the scheme will be worked out by the Law Committee and would be tentatively implemented from 1 January 2023.

- ▶ At present, the formula for refund of inverted tax structure is as follows:

*Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services*

Since "Net ITC" contains ITC only in respect of inputs and not input services, output tax will be restricted to the ratio of ITC availed on inputs during the said period.

- ▶ In some cases where the exporter is identified as risky exporter requiring verification by GST officers, or where there is a violation of provisions of Customs Act, the refund claims in respect of export of goods are suspended/ withheld.

Amendment in rule 96 of CGST Rules has been recommended to provide for transmission of such IGST refund claims to the jurisdictional GST authorities for processing.

- ▶ Form GST PMT-03A is introduced for re-credit of amount in electronic credit ledger where erroneous refund amount is deposited back by the taxpayer along with interest and penalty.
- ▶ Budgetary amendments relating to section 49(10) and section 50(3) of CGST Act to be notified at the earliest. Further, rules providing for the manner of calculation of interest under section 50 have also been recommended for more clarity.
- ▶ Due date for filing GST CMP-08 for Q1 of FY 2022-23 has been extended till 31 July 2022. Further, late fee for delay in filing GSTR-4 for FY 2021-22 has been waived till 28 July 2022.
- ▶ Present exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued and E-wallet scheme not to be pursued further.

- ▶ Taxpayers having aggregate turnover upto INR 2 crores will be exempted from filing annual return for FY 2021-22.
- ▶ ITC reversal will not be required in respect of sale of duty credit scrips by the exporters.
- ▶ Payment of GST can also be made through UPI and IMPS.

- ▶ In respect of refunds pertaining to supplies to SEZ, an Explanation to be inserted to clarify that “specified officer” shall mean the specified or authorized officer as defined under SEZ Rules, 2006.
- ▶ Amendment will be made in CGST Rules to provide for refund of unutilized ITC on account of export of electricity.
- ▶ Circulars to be issued in order to remove ambiguity and legal disputes pertaining to:
  - ▶ Refund claim under inverted tax structure where supplier is supplying goods under concessional rate notification
  - ▶ Applicability of demand and penalty provisions under the CGST Act in respect of transactions involving fake invoices
  - ▶ Mandatory furnishing of correct and proper information of inter-state supplies and amount of ineligible/ blocked ITC and reversal thereof in return in GSTR-3B
  - ▶ Refund claims on account of deemed exports
  - ▶ Blocked credits covered under section 17(5) of CGST Act
  - ▶ Perquisites provided by employer to the employees as per contractual agreement
  - ▶ Utilization of amounts available in electronic cash and credit ledger for payment of tax and other liabilities
- ▶ Proposal for comprehensive changes in GSTR-3B to be placed in public domain for comments of the stakeholders.
- ▶ Rules to be amended to provide for automatic revocation of suspension of registration once all the pending returns are filed in case where the suspension was done due to non-filing of returns.
- ▶ Time period from 1 March 2020 to 28 February 2022 to be excluded from calculation of limitation period for filing refund claim. The said exclusion will also be applicable for issuance of order by the proper officer in respect of erroneous refunds under section 73 of CGST Act.
- ▶ The last date for issuance of order under section 73 for FY 2017-18 in respect of other demands linked with due date of annual return is extended till 30 September 2023.

#### **Other points**

- ▶ Group of Minister (GoM) to re-examine issues on services of casino, race-course and online gaming.
- ▶ Decision to constitute a GoM to address concerns raised by the States on constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in CGST Act.

- ▶ GoM on IT Reforms, *inter alia*, recommended that the GSTN should put in place the following:
  - ▶ Artificial Intelligence (AI)/ Machine Learning (ML) based mechanism to verify the background of the registration applicants
  - ▶ Improved risk-based monitoring of their behavior post registration.

## **Comments**

- a. The rate changes to address inverted tax structure for some of the industries including construction, electronics is part of trade facilitation measures to eliminate inefficiency and distortions. While the same is likely to reduce the ITC accumulation, in few cases it may increase the cost for the end consumer.
- b. Allowing composition dealers to supply through ECOs and relaxation in registration requirement for online suppliers may boost MSME sector.
- c. Amendment in the formula for refund on account of inverted tax structure is a welcome measure and could improve the working capital of the taxpayers due to higher refund eligibility. Earlier, SC had also suggested the Council to address the anomalies in the formula.
- d. Non-reversal of ITC in case of sale of duty credit scrip will benefit the exporters and should be made effective retrospectively.
- e. While CBIC circular on applicability of SC ruling extending the limitation period seems to suggest that refund claims are not covered by the SC order, various High Courts have ruled otherwise. The current extension is likely to settle the matter providing clarity to the taxpayers.
- f. Currently, if the supplier relinquishes the brand, the food items are exempt. This results into revenue leakage. The Council has now addressed this issue.
- g. The taxability of lease rentals charged by the landlord to registered businesses in respect of renting of residential dwellings is likely to impact the industry. One may need to analyse the credit eligibility in respect of such services.

# 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

Golf View Corporate Tower B  
Sector 42, Sector Road  
Gurugram - 122 002  
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, Shantiniketan Building,  
Holding No. 1  
SB Shop Area, Bistupur  
Jamshedpur - 831 001  
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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