

Tax Alert

GST



Highlights of the 53rd GST Council Meeting

The GST Council met after a gap of almost eight months, this being the first one after the new government came into power. Several significant changes and clarifications have been recommended, aiming to strengthen the GST systems and processes, reduce litigation, and provide relief to taxpayers on multiple issues. The recommendations of the GST Council shall be given effect through Notifications and/or Circulars or by way of an amendment to the GST law. The key decisions taken by the GST Council in the said meeting are as follows:

Changes relating to GST rate on goods and services

- To boost Maintenance Repairs Operations (MRO) activities, a uniform rate of 5% IGST shall be applicable on imports of parts, components, testing equipment, tools and tool kist of aircraft, subject to conditions.
- All milk cans, whether of steel/iron/aluminium will attract 12% GST.
- Cartons, boxes and cases (of corrugated or non-corrugated paper or paper board) of solar cookers (single or dual energy source) will attract 12% GST.
- Parts of poultry-keeping machinery and sprinklers (including fire water sprinklers) will attract 12% GST. Past period liabilities are to be regularized on 'as is where is' basis on account of genuine interpretational issues.

- IGST exemption on imports of specified items for defense forces is to be extended for another five years, i.e., 30 June 2029.
- Compensation cess on the imports in SEZ by SEZ units/developers for authorized operations has been exempted retrospectively from 1 July 2017.
- Compensation cess has been exempted on the supply of aerated beverages and energy drinks at Unit Run Canteens under the Ministry of Defence.
- Adhoc IGST exemption has been provided on imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces.
- Service provided by Indian Railways to the general public by way of sale of platform tickets, facility of retiring/waiting rooms, cloakroom services and battery-operated car services and intra-railway transactions has been exempted. Liability in respect of transactions between 20 October 2023 till the date of issuance of exemption Notification will be regularized.
- Accommodation services where the value of monthly accommodation is less than INR 20,000 per person and continuing for a minimum period of 90 days to be exempted; exemption to apply retrospectively.



- Apportionment of premium made by lead insurers to co-insurers under coinsurance agreements and transactions of ceding/re-insurance commission between insurer and re-insurer to be declared as 'no supply' under Schedule III of the CGST Act, 2017. Past period transactions are to be regularized on 'as is where is' basis.
- GST liability on re-insurance services of specified insurance schemes (as covered under Sr. no. 35 and 36 of exemption Notification no. 12/2017) and on insurance services for schemes where the government pays the total premium may be regularized on 'as is where is' basis for the period 1 July 2017 to 24 January 2018 and 1 July 2017 to 26 July 2018, respectively.
- It has been recommended to clarify that:
 - Exemption as provided under Sr. no. 36A of exemption Notification no. 12/2017 is also applicable on retrocession, i.e., 're-insurance of re-insurance.'
 - Statutory collections made by the Real Estate Regulatory Authority (RERA) are exempt from GST by covering such services under exemptions provided to the "Governmental Authority" for any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution.

Our Comments

It would be interesting to see how "RERA" can be treated as a "Governmental Authority" to cover within the scope of exemption entry.

- Sharing of incentives by acquiring banks to other stakeholders as defined under the scheme for promotion of RuPay Debit Cards and low-value BHIM-UPI transactions is not taxable.

Measures for facilitation of trade

- Waiver of interest or penalty or both for demand notices issued under Section 73 of the CGST Act, 2017 for the FY 2017-18 to FY 2019-20, in cases where the full amount of tax demanded has been paid upto 31 March 2025. It is important to note that refund cases are kept outside the said amnesty scheme.

Our Comments

The above amnesty scheme will significantly cut down on legal disputes at the adjudication stage for FY 2019-20, whereas for FY 2017-18 and FY 2018-19, the scheme will involve the dismissals of appeals before the first appellate authority. It will be interesting to see if pre-deposits made at the appeal level will be allowed to be adjusted to discharge the tax liabilities for the given period.

Additional clarification is needed on whether the advantage of waiving interest and penalties applies to each issue individually in a given Show Cause Notice (SCN) or to the entire SCN as a whole.

- Aim to reduce litigation by fixing monetary limits for filing of appeals by the GST Department:

Forum	Monetary Limit (INR)
GSTAT	2 million
High Court	10 million
Supreme Court	20 million



- Reduction in pre-deposit amount for filing of appeals by taxpayers:

Level of Appeal	Existing pre-deposit	Proposed
First Appeal	Maximum amount – INR 500 million (250 million CGST and SGST each)	Maximum amount – INR 400 million (200 million CGST and SGST each)
Second Appeal	20% of the disputed amount with an upper cap of INR 1 billion (500 million CGST and SGST each)	10% with an upper cap of INR 400 million (200 million CGST and SGST each)

Our Comments

The revision of pre-deposit amounts from an additional 20% to 10% at the Tribunal level will certainly encourage more taxpayers to file appeals and will be considered a welcoming move for the industry at large. This, however, can add to the list of matters that will pile up in the initial years with the Tribunal.

Also, apart from that, for the initial years, few of the taxpayers have received demand orders confirming unjustifiable demands, specifically in cases where GSTR-2A vs. GSTR-3B related Input Tax Credit (ITC) values or e-way bill vs. GSTR-1 related transactions are compared. It would have been additionally helpful if the Council could have come up with a lower rate of pre-deposit for filing first-level appeals in these specific cases.

- The period of three months for filing an appeal before the Appellate Tribunal to start from a date to be notified by the government in respect of appeal/revision orders passed before the date of said Notification.

Our Comments

Clarification issued vide Circular No. 132/2/2020-GST specified that the timelines for filing Tribunal Appeals would begin from the date of assumption of office by the President of the GST Appellate Tribunal (GSTAT) or the State Bench President of the Appellate Tribunal. In May 2024, Justice (Retd.) Sanjaya Kumar Mishra

took an oath as the President of the GSTAT. With this, there was panic among taxpayers that the appeal filing clock had already started unwinding despite no functional Tribunal benches or mechanism on the GSTN portal for filing the appeals. This amendment will give sufficient time for the taxpayers to prepare and file the appeals before the Appellate Tribunal in the pending cases.

- The Council has recommended amending GST Rules and also issuing suitable clarification for prescribing a mechanism to adjust the amount paid through Form GST DRC-03 against the amount to be paid as pre-deposit for filing appeals.

Our Comments

The taxpayers largely welcome this recommendation. It would help many genuine taxpayers where appeals were rejected by appellate authorities solely on the basis of this procedural lapse of paying pre-deposit through Form GST DRC-03 instead of Form GST APL-01 and consequently, writs had to be filed by such taxpayers to seek relief as the GSTAT is yet to be functional. Andhra Pradesh High Court also adopted a similar view in case of writ petition filed by M/s. Ravi Traders, where the matter was remanded back to the lower authorities, who had rejected the appeal solely on this ground.

- Suitable amendment to be carried out in the CGST Act for keeping Extra Neutral Alcohol (ENA) outside the purview of GST when used for the manufacture of alcoholic liquor for human consumption.
- Reduced Tax Collected at Source (TCS) rates for e-commerce operators from the present 1% to 0.5% of the net value of taxable supplies made through it.



- The time limit for availing ITC in Form GSTR-3B for the FY 2017-18 to 2020-21 may be deemed to be 30 November 2021. Additionally, a retrospective amendment in Section 16(4) is to be made to allow the benefit of ITC for the period between cancellation and revocation of registration to the taxpayers who have filed all the returns for the said period within 30 days from the date of revocation of registration.

Our Comments

The above recommendation to retrospectively extend the time limit for availing ITC through any Form GSTR-3B filed up to 30 November 2021 for FY 2017-18, 2018-19, 2019-20 and 2020-21 comes on the anvil of Special Leave Petition pending before the Supreme Court in the case of Shanti Motors [(2024) 19 Centax 214 (SC)] challenging the constitutionality of Section 16(4).

While the amendment comes as a welcome move and will aid in arresting the issuance of unrequired notices for any future tax periods, had such a clarification been issued at least a few months back, taxpayers, as well as authorities, could have saved a lot of time on already issued notices and existing orders in similar matters.

Also, it will be interesting to see if the authorities allow for a refund of taxes, interest and penalties already paid in the past for the given FYs in the demands related to the provisions being proposed to be relaxed above.

- Balance available in the Electronic Cash Ledger (ECL) on the due date of filing of Form GSTR-3B shall be excluded for computing interest under Section 50 on account of delayed filing of return.

Our Comments

Contrary rulings were being passed in different cases by different High Courts. The said clarification appears to be in line with the decision of the Madras High Court in the case of Eicher Motors Ltd. [(2024) 14 Centax 323

(Mad.)]. It would be beneficial if the said amendment is also applied to retrospective cases.

However, there remains ambiguity in case of delayed reporting of invoices where liability is paid by way of a debit from an Electronic Credit Ledger. The industry would have greatly appreciated it if the same clarification also covered such cases.

- A mechanism to be prescribed for claiming refund of additional IGST paid on account of upward revision in the price of the goods subsequent to their export.

Our Comments

It may be noted that the shipping bill filed with customs authorities is considered to be refund application for IGST paid on the export of goods. However, an increase in price, without any necessary modifications to the Shipping Bill, has been leading to a scenario where the IGST portion of the price increase cannot be refunded. The GST as well as Customs authorities, have been denying the refund claims of additional IGST paid on the grounds of non-jurisdiction and the taxpayers are the ultimate sufferers. In the case of Venus Jewels, the Hon'ble Bombay HC reprimanded both GST and Customs authorities and directed them to issue a mechanism for ensuring that the refunds are granted to the taxpayers in similar matters. A mechanism providing a solution to cover such cases and provide refund of the additional IGST paid would be a highly appreciated recommendation from the GST Council.



- It is recommended to clarify that where the domestic recipient entity is eligible for full ITC and does not issue an invoice for services received from a foreign affiliate, the value of service may be considered as declared as Nil and the same will be treated as open market value.

Our Comments

The Central Board of Indirect Taxes and Customs (CBIC) issued Circular 199/11/2023, clarifying the above position in the context of Head Offices and Branch Offices. There was uncertainty among taxpayers about whether the same reasoning could be applied to other related parties covered under the proviso of Rule 28. This clarification appears to be well-received.

- ITC, in respect of GST paid on ducts and manholes used in the network of Optical Fiber Cables (OFCs) to be treated as eligible credit.
- It is recommended to clarify that the place of supply of Custodial services supplied by Indian Banks to Foreign Portfolio Investors will be determinable as per Section 13(2) of the IGST Act, 2017.
- The mandatory rate of 1% implemented vide Rule 28 (2) for corporate guarantees came with multiple ambiguities, for which the Council recommended issuance of a Circular clarifying various issues regarding valuation recommends that 1% valuation should not be applicable in case of exports and also where the recipient is eligible for full ITC.

Our Comments

The debate over the taxability of Corporate Guarantees appears to be ongoing. Recently, the Punjab and Haryana High Court had stayed the effect and operation of the Circular 204/2023. The issue before the High Court encompasses a challenge regarding taxability of corporate guarantee and also the valuation being arbitrary and discriminatory. It will be intriguing to observe how the matters related to corporate guarantee evolve.

- It is recommended to clarify that the time limit for availing ITC in respect of RCM supplies from unregistered suppliers will start from the date of issuance of self-invoice.

Our Comments

This should put the ongoing discussion on the manner of computing the time limit for claiming ITC with respect to prescribed RCM supplies to rest. The taxpayers involved in such RCM litigation matters up to FY 2019-20 may consider strategically settling their tax obligations and claiming the same amount in ITC without incurring interest and penalties by taking advantage of the amnesty scheme that requires tax payment by 31 March 2025.

- Retrospective amendment has been recommended to provide for transitional credit in respect of invoices pertaining to service provided before the appointed date and where such invoices were received by the Input Service Distributor (ISD) before the appointed date.
- The Council has recommended providing a new optional facility by way of GSTR-1A, which will allow the taxpayers to amend the details reported in GSTR-1 and/or declare additional details before filing GSTR-3B so that correct liability is auto-populated in GSTR-3B.

Our Comments

The above facility will help taxpayers ensure that the details of outward supplies flow appropriately from GSTR-1 to GSTR-3B without any particular need to amend the values of outward supplies in GSTR-3B. This will also help taxpayers do away with replying to notices issued vide Form DRC-01B (i.e., for differences between turnover as per GSTR-1 and GSTR-3B).

Certainly, one thing that may keep the taxpayers wondering is how the effect of the changes made vide Form GSTR-1A by their vendors/suppliers will impact the taxpayer's own GSTR-2B report and, thus, ultimately, affect the mechanism of taking ITC.



- Recommended for continuing the relaxation for filing of annual returns vide Form GSTR-9/9A for taxpayers having aggregate annual turnover up to INR 20 million.
- The amendment has been proposed to clarify that the penalty as prescribed vide Section 122(1B) applies only to those e-commerce operators who are required to collect tax under Section 52 of the CGST Act, 2017.
- ITC reversal with respect to the premium amount in life insurance services, which does not form part of the taxable value as per valuation rules.
- Taxability of wreck and salvage in motor insurance claims.
- Warranty/extended warranty provided by manufacturers to the end customers.
- ITC availability on repair expenses incurred by insurance companies in relation to motor vehicle insurance claims.

Clarification/Circular to be issued for:

- Taxability of reimbursement of securities/shares as ESOP/ESPP/RSU provided by a company to its employees.

Our Comments

Various MNCs have this practice of issuing their own shares as ESOPs/ESPPs/RSUs to the employees of their subsidiaries in India. Usually, the Indian subsidiaries undergo the cost of such issuance and recoup it (either at cost or at cost-plus-markup) from the parent entity located outside India. There is an area of ambiguity in cases where such reimbursements have been recouped by the domestic company from a foreign company, i.e., whether the foreign company is providing any services to domestic companies by way of issuance of securities/shares of a foreign company to the employees of a domestic company. The tax authorities have also picked up this issue in departmental audits. The industry has two schools of thought regarding the taxability of said transaction. A Circular clarifying the issues around the transaction will provide respite to the industry.

- Taxability of loans granted between related persons or between group companies.
- Clarification regarding the time of supply on Annuity Payments under Hybrid Annuity Model (HAM) projects and allotment of Spectrum to Telecom companies in cases where payment of license fee/usage charges are to be made in installments.
- Place of supply of goods to unregistered persons, where the place of delivery and billing address are different.
- A mechanism for providing evidence by the suppliers for compliance of condition in respect of post-sale discounts with regard to ITC reversal by the recipient.
- Clarifications on various issues pertaining to special procedures for manufacturers of specified commodities like pan masala, tobacco, etc.



Measures pertaining to law and procedures

- GST Council has recommended rolling out the biometric-based Aadhaar authentication of registration applications on a pan-India basis in a phased manner.

Our Comments

There would be a phased implementation of Aadhaar Biometric authentication on an all-India basis to combat the evils of fake invoices and fraudulent ITC. This move will further fortify an already stringent registration process, which currently involves Aadhaar EVC-based authentication of Directors, field visits and GPS-tagging of premises where registration is being sought. It could entail setting up of Aadhaar biometric authentication centers at various GST offices, akin to the erstwhile VAT regime, wherein the authorized signatory or the Director was required to appear before the authorities as part of the registration process. However, this could adversely affect the 'ease of doing business' concept.

- The GST Council has recommended providing a common time limit for the issuance of demand notices and orders for both fraud/non-fraud cases from FY 2024-25 onwards. The Council has also recommended allowing the benefit of reduced penalty where tax demanded is paid along with applicable interest within 60 days (as compared to 30 days currently).

Our Comments

It would be interesting to observe whether such common timelines will be achieved by extending the time limit currently applicable to non-fraud cases or by reducing the time limit applicable to fraud cases. This move will also be a significant change from the erstwhile laws where two separate time limits always existed.

- The GST council has recommended inserting a sunset clause for anti-profiteering cases and also providing for the handling of anti-profiteering cases by the Principal bench of GSTAT. 1 April 2025 has been proposed as the last date for receipt of any new application regarding anti-profiteering.
- GST Council has recommended restricting refunds of IGST paid or refunds of accumulated ITC in respect of goods that attract export duty. The said restriction will also apply in case where such goods are supplied to a SEZ developer or a SEZ unit for authorized operations.
- It has been recommended to report invoice wise details in case of B2C inter-state supplies where the invoice value exceeds INR 0.1 million as against the current threshold of INR 0.25 million.
- It has been recommended that GSTR-7 be filed every month whether or not any tax has been deducted during a particular month. Furthermore, it has also been recommended that invoice-wise details may be furnished in GSTR-7.

Comprehensive Comments

The recent GST Council meeting has proven to be highly productive and taxpayer-friendly. The Council has proposed several clarifications to address industry concerns, enhance clarity for tax officers, and reduce litigation. These legislative amendments are expected to be included in the Finance Bill during the upcoming Union Budget, which is just around the corner. Certainly, discussions on other important issues, such as the regulation of online gaming, the timeline for the full functionality of GSTAT, and the inclusion of products like natural gas, petrol, and diesel under the GST net, appear to be pushed for future meetings.



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