


Tax Insights**18 September 2021****GST Council at its forty-fifth meeting recommends key legal and procedural changes, announces changes in various GST rates and issuance of certain clarifications****In brief**

The forty-fifth meeting of the Goods and Service Tax Council (GST Council) was held on 17 September 2021 at Lucknow and was chaired by Union Finance and Corporate Affairs Minister Nirmala Sitharaman¹. The GST Council discussed various aspects of GST pertaining to legal and procedural changes to remove ambiguity/disputes, exemptions on COVID-19-related medical goods, changes in GST rates of goods and services, and few compliance-related relief measures.

In detail**A. Recommendations relating to GST law and procedure****Key trade facilitation measures**

- To remove ambiguity and legal disputes, issuance of circulars on the following aspects has been recommended:
 - scope of 'intermediary services';
 - clarification of the interpretation of the term 'merely establishment of a distinct person' in the definition of export of services in case of separate legal entities;
 - date of issuance of debit note and not the date of underlying invoice to be relevant for determining relevant financial year for the purpose of computing time limit to avail input tax credit (ITC);
 - in the case of invoices generated with valid invoice reference number, there is no need to carry a physical copy of the tax invoice; and
 - only goods subjected to export duty at the time of export to be covered under the restriction imposed on the refund of accumulated ITC.
- Periodicity for filing of Form GST ITC-04 to be made half-yearly (in case of taxpayers with annual aggregate turnover in preceding financial year above INR 5 crores) and annually (in case of taxpayers with annual

¹ Press Release on the forty-fifth GST Council Meeting dated 17 September 2021

aggregate turnover in preceding financial year up to INR 5 crores).

- In light of the earlier decision to charge interest only on net cash liability, it is proposed that section 50(3) of the Central Goods and Service Tax, 2017 (CGST) Act should be amended, with retrospective effect from 1 July 2017, to provide for interest at 18% to be charged only on 'ineligible ITC availed and utilised' and not merely on 'ineligible ITC availed'.
- Unutilised balance in the Central Goods and Service Tax (CGST) and Integrated Goods and Service Tax (IGST) cash ledger would be allowed to be transferred (subject to certain safeguards) between distinct persons, without going through the refund mechanism.
- CGST Rules, 2017, is to be amended to provide for procedure and time limit for claiming refund of incorrectly paid tax as per section 77(1) of the CGST Act and section 19(1) of the IGST Act.

Other key compliance-related measures

- Amendment proposed to CGST Rules, 2017, will allow registered persons to avail ITC only with respect to invoices/ debit notes furnished by the supplier in Form GSTR1/IFF and reflected in Form GSTR- 2B of the registered person.
- From 1 January 2022, Form GSTR-1 is not allowed to be filed in case the return in Form GSTR- 3B for the preceding month is not filed.
- Refund is to be disbursed to a bank account linked with the same permanent account number on which GST registration has been obtained.
- Late fees for filing Form GSTR-1 are to be auto-populated and collected in the next open return to be filed in Form GSTR-3B.
- Mandatory Aadhar authentication is to be prescribed for filing refund claims and application for revocation of registration cancellation

B. Setting up of GoM

In light of the discussion on the exhaustion of revenue collections from compensation cess for repayment of borrowings and debt servicing, the GST Council decided to set up a Group of Ministers (GoM) for the following:

- To examine the correction of the inverted duty structure for major sectors, rationalise rates and review exemptions from the GST revenue augmentation perspective; and
- To discuss ways and means of using technology to improve compliance; monitoring through improved e-way bill systems, e-invoices, and FASTag data; strengthening institutional mechanisms for sharing of intelligence; and coordinated enforcement actions by the Centre and the State Governments.

C. Recommendations on GST rate changes and clarifications

Correction in inverted duty structure

- GST rate changes were implemented to correct the inverted duty structure in the footwear and textile sector, to be implemented on 1 January 2022.

Inclusion of petroleum products

- In view of the directions of the High Court of Kerala², while the inclusion of specified petroleum products within the ambit of GST was considered, it was decided not to include these products at this stage.

COVID-19-related rate reliefs

- Existing concessional GST rates (valid until 30 September 2021) will be extended up to 31 December 2021 on specified COVID-19 treatment drugs, along with a reduction of the GST rate to 5% on additional COVID-19 treatment drugs up to 31 December 2021.

² Kerala Pradesh Gandhi Darshanvedhi v. UOI [TS-283-HC(KER)-2021-GST]

Key recommendations on GST rate changes and clarifications in relation to goods

- The rates of specified renewable energy devices and parts to be increased from 5% to 12%.
- Rates of ores and concentrates of metals such as iron, copper, aluminium, and zinc to be increased from 5% to 18%.
- Rates of railway parts, locomotives, and other goods in Chapter 86 of the Customs Tariff Act, 1975 to be increased from 12% to 18%.
- IGST on the import of specified life-saving medicines for personal use to be exempted.
- It has been clarified that external batteries sold along with uninterruptible power supply (UPS) systems/ inverters will attract the GST rate applicable to batteries, i.e. 28% for batteries other than lithium-ion batteries and UPS/ inverter will attract 18%.
- It has been clarified that, even for the period from 1 July 2017 to 31 December 2018, the GST on specified renewable energy projects can be paid in terms of a 70:30 ratio for goods and services, respectively, in the same manner as has been prescribed for the period on or after 1 January 2019.
- It has been clarified that the essentiality certificate issued by the Directorate General of Hydrocarbons for imports will suffice, and there will be no need to take a certificate on inter-state stock transfer in every instance.

Key recommendations on GST rate changes and clarifications in relation to services

- E-commerce operators (ECO) will be made liable to pay tax on following services provided through such an ECO with effect from 1 January 2022 on
 - transport of passengers, by any type of motor vehicles through ECO; and
 - restaurant services provided through ECO with some exceptions.
- For parity between distribution and licencing services, the rate applicable to licencing services/ rights to broadcast and show original films, sound recordings, and radio and television programs is to be increased from 12% to 18%.
- Relaxations are to be made in conditions relating to IGST exemptions with respect to the import of goods on lease in order to extend the exemption even if such goods are transferred to a new lessee in India (upon expiry or termination of lease), and where the lessor located in the 'special economic zone' pays GST under forward charge.
- Validity of exemption on transport of goods by vessel and air from India to outside India is to be extended up to 30 September 2022.
- It has been clarified that services by cloud kitchens/ central kitchens are covered under 'restaurant service' and will attract 5% GST without ITC. It has been further clarified that the sale of ice cream by ice-cream parlours will attract 18% GST.
- It has been clarified that overloading charges at toll plazas are exempt from GST because they are akin to toll.
- It has been clarified that services by way of granting mineral exploration and mining rights attracted a GST rate of 18% from 1 July 2017.
- It has been clarified that alcoholic liquor for human consumption is not 'food and food products' for the purpose of prescribing a 5% GST rate on job work services in relation to food and food products.

The takeaways

The recommendation on issuance of clarifications on ambiguous issues such as intermediary and establishment of distinct person, etc., and the announcement on the use of the CGST/ IGST cash balance between distinct persons are welcome steps that were much awaited by the industry. The announcements on the correction of the inverted duty structure for footwear, textile and railways sectors were also anticipated. While some of the rate rationalisation measures and clarifications attempt to plug loopholes, recommendations

on taxing restaurant services in the hands of ECO and widening the ambit of restaurant services, for example, are expected to contribute to revenue augmentation. Although certain compliance-related facilitation measures are beneficial, the announcement on aligning Rule 36(4) of CGST Rules with section 16(2)(aa) of the CGST Act throws light on the government's clear intent to restrict ITC availability to matched credit.

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