








50th GST Council Meeting Recommendations



Prepared by Team Tattvam



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GST LAW RELATED CHANGES

- Clarification to be issued through circular that **ISD mechanism is not mandatory** for distribution of ITC of common input services procured from third parties.
- Clarification also to be issued regarding the taxability of internally generated services provided by one distinct person to another distinct person **i.e., cross charge.**
- **Subsequently, an amendment may be made** in GST law **to make ISD mechanism mandatory prospectively** for distribution of ITC of such common input services procured from third parties.

Tattvam Comments:

- Numerous Notices have been issued to the Assesseees on this issue.
- Whether past practice will be regularised? To be seen after issuance of circular
- For Future, it is to be seen whether amendment will be made in Section 20 of CGST Act only or in Schedule I as well.

- Clarification to be issued that services supplied by a **director of a company in his private or personal capacity are not taxable under RCM.**
- Services supplied by a **director of a company in the capacity of director shall be taxable under RCM** in the hands of the company/ body corporate as per entry no. 6 of Notification No. 13/2017-CTR, dated 28.06.2017

Tattvam Comments:

A Judgment on similar lines was issued in Service Tax Regime by Hon'ble Tribunal, Delhi in the case of **M/s Cords Cables Industries Ltd [2023-VIL-338-CESTAT-DEL-ST]**. To establish the same position in GST Regime, clarification is to be provided by the Government. Now, the director may have to take GST registration if value of supplies exceeds the threshold limit of Rs. 20 lacs and discharge applicable GST.

- Clarification to be provided regarding TCS liability under Sec 52 of the CGST Act in cases where multiple ECOs are involved in a single transaction of supply.
- In cases of supply of taxable services by or through an ECO or by a supplier of OIDAR services to an unregistered recipient, requirement to mention only name of the State of the recipient, and not the name and full address of the recipient, on the tax invoice by way of amendment in clause (f) of Rule 46 of CGST Rules.
- To **mandate the reporting of supplies made to registered persons in India by OIDAR Service Providers** located in non-taxable territory to track payment of tax under RCM by such registered persons



- Clarification to be issued on **balance of ITC lying in electronic credit ledger, under the heads of IGST, CGST and SGST to be considered on consolidated basis** while calculating the amount of interest payable u/s 50(3) of the CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017 in respect of IGST ITC wrongly availed and utilized.

Tattvam Comments:

A welcome step to be taken by the Government which will certainly reduce litigation on this issue and provide relief to the taxpayers.

Whether balance of IGST ITC will be considered in cases of wrongly availed and utilized credit of CGST and SGST respectively? This question will be relevant for the period 01.07.2017 to 31.01.2019.

Difference in ITC between GSTR-3B Vs. GSTR-2A

- **Difference in ITC claimed in GSTR-3B vis-à-vis that available in GSTR-2A for the period 01.04.2019 to 31.12.2021 can be explained by virtue of a self-certificate/CA certificate** on the same lines of earlier clarifications issued vide **Circular No. 183/15/2022-GST dated 27.12.2022** which was applicable upto 31.03.2019 only.
- The council has recommended a mechanism for **system-based intimation to the taxpayers in respect of the excess availment of ITC** in FORM GSTR-3B vis a vis that made available in FORM GSTR-2B above a **certain threshold**, along with the procedure of auto-compliance on the part of taxpayers, to explain the reasons or take remedial action in respect of such difference to avoid ITC mismatches.

Tattvam Comments:

To be seen if this Circular will specify some alternate procedure, due to the fact that Rule 36(4) was introduced during the course of FY 2019-20 ?

No GST and no reversal of ITC required w.r.t. supply by way of replacement during warranty period:

- Clarification to be provided w.r.t. GST liability as well as the liability to reverse ITC in cases involving replacement of parts and repair services during warranty period without any consideration from the customers.

Tattvam Comments:

A welcome step to be taken by the Government which will certainly reduce litigation and provide relief to the taxpayers, especially in the auto components and consumer durables industries, where the warranty is generally provided to the end customers.

Issues	TA Comments
<p>Admissibility of refund claims where the goods are exported, or the payment in forex for export of services is made/received after the time limit prescribed under rule 96A of CGST Rules, 2017</p>	<p>Clarification regarding the issue has already been issued in Para 45 of Circular 125/44/2019.</p>
<p>Imposition of restrictions on refund claims (i.e., related to accumulated amount of ITC) for a tax period, after amendment in Rule 36(4) of CGST Rules, 2017 i.e., w.e.f. 1.01.2022, to the extent of ITC on inward supplies getting reflected in GSTR-2B of the said tax period or any previous tax period.</p>	<p>Whether refund will be eligible for ITC of RCM Supplies which are not reflected in GSTR-2B?</p>
<p><u>Notification to be issued regarding:</u></p> <ul style="list-style-type: none"> ▪ Amendments made in 16(1) & (3) of IGST Act, 2017 vide Finance Act, 2021 are to be notified with effect from 01.10.2023. ▪ Section 16(4) of IGST Act, 2017 (i.e., inserted vide Finance Act, 2021) to provide for restriction of IGST refund route in respect of exports of tobacco, pan masala & other similar items as well as mentha oil. 	<p>Vide Finance Act, 2021, the provisions of Section 16 of the IGST Act were sought to be amended. Post the amendment, a registered person will have to make zero rated supply under LUT without payment of tax. The option of making zero-rated supply on payment of IGST (and subsequently claiming refund of IGST) will be available to only notified class of persons/class of goods or services.</p>

- Provisions of Finance Act, 2023 pertaining to **GSTAT may be notified w.e.f. 01.08.2023**, so that the GSTAT can be brought into operation at the earliest.
- Goods and Service Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 to be issued for enabling smooth constitution and functioning of GST Appellate Tribunal.
- State Benches to be started in in a phase wise manner.

Tattvam Comments:

Highly awaited amendment to provide benefit to the taxpayers who either had to go to High Court for relief or wait for establishment of GST Appellate Tribunal.

Sr. No	Topics	Recommendation
1	GST Appeals (APL-01) before the Appellate Authority	Rule 108(1) and rule 109(1) of CGST Rules, 2017 to be amended to provide for manual filing of appeal under certain specified circumstances.
2	Place of supply of goods to unregistered person	Clause (ca) in sub-section (1) of section 10 of the IGST Act, 2017 to be inserted to clarify the place of supply in respect of supply of goods to unregistered persons.
3	Transitional credit	To enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd., special procedure to be provided under section 148 of CGST Act, 2017
4	E-invoice	Clarification to be issued that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, are required to issue E-invoice under Rule 48(4) of CGST Rules for the suppliers (Government Departments etc.) who are registered solely for the purpose of TDS.

Holding Co. Vs. Subsidiary

- Clarification to be issued that mere holding of securities of a subsidiary company by a holding company cannot be treated as a supply of services.

Tattvam Comments:

Holding Company and Subsidiary Company qualify as 'related persons under GST'.

- Whether any activity done by holding company for subsidiary company on account of its shareholding in subsidiary company will be covered under the clarification?
- Applicability of Circular on corporate guarantee by Holding Co. to Subsidiary Co. – To be seen?

AMNESTY SCHEME

Sr.no	Issue	Relief
1	Non-Filer of FORM GSTR-4 return	Late fee for filing of return for the period from July 2017 to March 2022 has been reduced to <ul style="list-style-type: none"> • 'Nil' for Nil returns • 'Rs. 500/-' (Rs. 250/- CGST + Rs. 250/- SGST) for other than Nil returns if returns are filed on or before 31.08.2023
2	Non-Filer of FORM GSTR-9	Maximum late fee is restricted to Rs. 20,000/- (Rs. 10,000/CGST + Rs. 10,000/- SGST) for filing of return for any F.Y. from 2017-18 to 2021-22, if filed on or before 31.08.2023
3	Non-Filer of FORM GSTR-10 return	Late fee for filing of return been reduced to 'Rs. 1,000/-' (Rs. 500/-CGST + Rs. 500/-SGST), if filed on or before 31.08.2023
4	Application for revocation of cancellation of registration	Where registration was cancelled on or before 31.12.2022 due to non-filing of returns, may file application for revocation of cancellation of registration after filing of all returns pending up to the effective date of cancellation of registration along with payment of due tax, interest, penalty and late fee thereon on or before 31.08.2023.
5	Best Judgment Assessment order under Section 62 of the CGST Act, 2017	Where orders were issued on or before 28.02.2023 for non-furnishing of valid FORM GSTR-3B returns will be deemed to be withdrawn if such returns are filed on or before 31.08.2023 along with payment of due tax, interest and late fee thereon

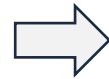
Earlier Amnesty Schemes were notified vide notifications dated 31.03.2023

- Relaxations provided in FY 2021-22 in respect of various tables of **FORM GSTR-9 and FORM GSTR-9C to be continued for FY 2022-23.**
- For easing compliance burden on smaller taxpayers, **exemption from filing** of annual return (in FORM GSTR-9/9A) for the taxpayers having turnover upto two crore rupees, to be continued for FY 2022-23 also.



SECTOR SPECIFIC CHANGES

- ✓ **Online gaming and horse racing to be included in schedule III as taxable actionable claims.**
- ✓ Casino, Horse Racing and Online gaming to be **taxed at the uniform rate of 28%.**
- ✓ **Valuation:**
 - **Casino:** Face value of the chips purchased.
 - **Horse racing:** Full value of the bets placed with bookmaker/totalizator.
 - **Online gaming:** Full value of the bets placed.



Tattvam comments:

The said change has been made to overcome the favorable judgement by Karnataka HC in *Gameskraft Technologies Pvt. Ltd. Vs. DGGI, New Delhi and others* wherein it was held that online games are not betting/gambling but a game of skill. Similar judgements like, Karnataka HC in *Bangalore Turf Club Ltd. v. State of Karnataka [2021 (51) G.S.T.L. 228 (Kar.)]* (bets in case of horse racing), Rajasthan HC in *Ravindra Singh Chaudhary v. Union of India [D. B. Civil Writ Petition No. 20779/2019 dated 16.10.2020]* (bets in case of online gaming) were in favor of assessee.

After subject amendment there would be no difference game of skill and game of chance and GST would be leviable on online gaming, horse racing and casino @ 28% on the bet amount.

- ✓ **Clarification that supply of food & beverages in cinema halls is taxable as restaurant service** if following conditions are met simultaneously:
 - they are supplied by way of or as part of a service and
 - supplied independently of the cinema exhibition service (not as composite supply).

- ✓ **Where the sale of cinema ticket and supply of food & beverages** are clubbed together, and **form composite supply**, the entire supply will attract GST at the rate applicable to **service of exhibition of cinema** being the principal supply.

Tattvam Comments:

Department was issuing notices regarding GST rate on supply of food & beverages in cinema halls alleging that the said services are not restaurant services and are taxable @ 18% GST. Now, basis the representations made by the industry, CBIC has to issue a clarification clarifying that subject services are restaurant services (other than the case of composite supply).

- **GTAs will not be required to file declaration for paying GST under forward charge every year.** If they have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to RCM.
- **Last date of exercising the option by GTAs to pay GST under FCM shall be 31st March of preceding FY** instead of 15th March. 1st January of preceding FY shall be the start date for exercise of option.

Tattvam Comments:

The above recommendation will make compliance burden easier for the GTA Service Providers.

- The GST Council has made recommendations regarding the special composition scheme for commodities like pan masala, gutkha, chewing tobacco etc. approved by 49th Council Meeting:
 - **Prescribing special procedure** for registration of machines used by manufacturers of the subject commodities and for filing of special monthly returns;
 - New provision for **special penalty** for non-registration of machines by such manufacturers;
 - **Imposing restriction on IGST refund route** in respect of **exports of subject commodities.**
 - To **avoid anomaly** in levying compensation cess on such commodities where retail sale price is not legally required to be declared, the earlier *ad valorem* rate as was applicable on 31.03.2023 may be notified.

Tattvam Comments:

CBIC vide *Notification No. 2/2023-Compensation Cess (Rate) dated 31.03.2023* amended method to calculate rate of compensation cess from 'percentage rate' to 'per unit rate of retail sale price'. However, there are certain goods like pan masala, tobacco etc. wherein it is not legally required to declare retail sale price. Accordingly, GST Council has recommended to notify earlier *ad valorem* rate as was applicable before above notification for the purpose of levy of compensation cess.

CHANGES IN GST RATES OF GOODS AND SERVICES

- The GST Council has recommended to changes in GST rates on followings Goods:

Particulars	Old	New
Uncooked/unfried snack pellets, by whatever name called	Disputed	5%
Fish soluble paste	18%	5%
LD slag	18%	5%
Imitation zari thread or yarn known by any name in trade parlance	12%	5%

- ✓ It has been decided to regularize payment of GST on **'uncooked/unfried snack pellets, by whatever name called', 'imitation zari thread or yarn known by any name in trade parlance' and 'fish soluble paste'** during the past period on **'as is basis'**.
- ✓ **22% compensation cess applicable on all utility vehicles (currently applicable to SUVs only)** of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance (in un-laden condition) of 170 mm & above.

01

GST **exemption on satellite launch services** supplied by ISRO, NSIL etc. may be extended to such services supplied by private organizations.

02

IGST exemption on **Dinutuximab (Quarziba) medicine** when imported for personal use.

03

IGST exemption on **medicines and Food for Special Medical Purposes (FSMP)** used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 when imported for personal use subject to existing conditions and FSMP when imported by specified person/ institution

04

To include RBL Bank and ICBC bank in the list of specified banks for which IGST exemption is available on imports of gold, silver or platinum and update the bank list as per FTP, 2023

- The GST Council has recommended to regularize GST rates on matters relating to following on 'as is basis':

Particulars	Relevant period
Trauma, spine and arthroplasty implants	Prior to 18.07.2022
Dessicated coconut	01.07.2017 to 27.07.2017
GST on plates and cups made of areca leaves	Prior to 01.10.2019
GST on biomass briquettes	01.07.2017 to 12.10.2017



CHANGES wrt. GST COMPLIANCE

- To provide for **physical verification in high risk cases** even where **Aadhaar has been authenticated**;
- To do away with **the requirement of physical verification** of business premises **in the presence of the applicant**;
- Time limit to furnish bank details of registered person (same name and PAN) within 30 days of registration or filing of first GSTR-1, whichever is earlier. **As the date period prescribed is 45 days**;
- System-based suspension of the registration of such registered persons who have failed to furnish the details of valid bank account within the prescribed time limit;
- Non-availability of functionality of filing of GSTR-1 by such registered persons who have failed to furnish the details of valid bank account within the prescribed time limit;
- **Risk-based biometric-based Aadhaar authentication** of registration applicants is to be conducted in U.T of Puducherry on pilot basis.

Mechanism to track non-payment of tax under GST

- The council has recommended to insert New Rule 142B in CGST Rules and New GST Form DRC-01D to prescribe manner of **recovering tax and interest where output tax liability as per GSTR-1 exceeds the amount of output tax liability disclosed in GSTR-3B** of same months and for which no satisfactory explanation has been furnished by the registered persons.

Notice on Non-filing of Annual Return under GST

- To improve discipline in filing of annual return, it is recommended to provide for issuance of **Notice in Form GSTR-3A** to registered taxpayers who have **failed to furnish Annual Return in FORM GSTR-9 or FORM GSTR-9A by due date.**

- **Rule 138F** to be inserted in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States, who want to mandate the requirement of generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71 within their States.
- Formation of a **State level coordination Committee** comprising of GST officers from both State and Central GST administrations for knowledge sharing on GST matters and coordinated efforts towards administrative and preventive measures;
- **New provision** will be inserted to **prescribe the compounding amount for various offences including** fraudulent availment of input tax credit, issuance of invoices without supply of goods or services, and tax evasion etc.
- To provide for manner and conditions of **consent-based sharing of information of registered persons** available on the common portal with other systems

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Thank You