

## Dhruva Alert – Key Proposals From 47th GST Council Meeting

The Goods and Services Tax Council held their 47th meeting on 28th and 29th June 2022 in Chandigarh. Various recommendations were announced by the Council concerning rate changes, exemptions, changes in law, ease of compliances, clarifications, etc.

This Dhruva Alert provides an insight into the key proposals announced by the GST Council. Relevant Notifications and Circulars to follow:

### 1. Key Proposals<sup>1</sup>

#### General recommendations

- Comprehensive changes proposed in Form GSTR-3B (monthly returns); to be placed in public domain for inputs/suggestions of stakeholders.
- Limitation period for issuance of an order for demand and recovery of tax, interest and penalty in respect of FY 2017-18 will be extended to September 30, 2023.
- Payment of GST to be allowed by UPI and IMPS.
- Taxpayers having aggregate turnover up to INR 2 crores to be exempted from filing annual return in Form GSTR – 9 for FY 2021-22.
- In cases where registration has been suspended by the system (GSTN), due to non-filing of returns, automatic revocation (of suspension) will occur upon filing of all pending returns.
- Retrospective amendment in Section 50(3) and amendment in Section 49(10) of CGST Act, introduced by the Finance Act, 2022 to be notified soon.

<sup>1</sup> As contained in the Press Release by the Press Information Bureau, Ministry of Finance, New Delhi



## 1. Key Proposals<sup>1</sup>

- Rules to be introduced to provide for manner of calculation of interest under Section 50 and transfer of cash ledger balance of CGST and IGST, under Section 49(10) of the CGST Act between distinct persons<sup>2</sup>
- A Group of Ministers (GoM) to be constituted to make recommendation for appropriate amendments in CGST Act, to address the long pending issue of constitution of GST Appellate Tribunal.

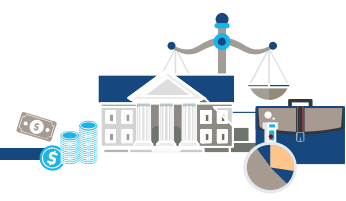
### Dhruva Comments

- *Changes in Form GSTR-3B are expected to include a provision for its amendment.*
- *Due date for filing of annual return for FY 2017-18 was extended till February 7, 2020. Accordingly, the last date for issuing any demand order in terms of Section 73 of CGST Act is February 6, 2023. The same is now proposed to be extended to September 30, 2023, thereby giving more time to tax authorities to undertake audits and scrutiny.*
- *Forming of GoM for recommending changes in CGST Act to enable constitution of GST Appellate Tribunal is a long pending and welcome move.*

## Refunds

- Amendment proposed in the formula for calculation of refund in respect of inverted duty structure ('IDS'). The formula would take into account utilization of ITC on account of inputs and input services for payment of output tax on IDS supplies in the same ratio in which ITC has been availed during the tax period.
- Re-credit of amount in electronic credit ledger ('ECL') is proposed to be provided in cases where taxpayer, to whom erroneous refund amount was sanctioned in contravention of Rule 96(10) of CGST Rules, has deposited the refund amount along with applicable interest and penalty. A new Form GST PMT-03A would be introduced for this.
- In certain cases, exporters claiming IGST refund to be categorised as 'risky exporters'. Refund claim by such exporters on export of goods to be suspended / withheld. It has been recommended that such refund claims be transmitted to the jurisdictional GST authorities for verification and processing.
- In respect of refunds pertaining to supplies to SEZ unit/ developer, clarificatory amendments proposed to the effect that "specified officer" shall mean "specified officer" or "authorized officer" as defined under the SEZ Rules, 2006.
- Amendments are proposed to provide for refund of unutilized ITC in respect of export of electricity.
- Refund of accumulated ITC will not be allowed on edible oils and coal.
- Clarification to be issued on issue of claiming refund under IDS where the supplier is supplying goods under some concessional notification and refund is claimed by recipients in case of deemed exports.
- Time period from March 1, 2020 to February 28, 2022 to be excluded from calculation of the limitation period for filing refund claim by an applicant as well as for issuance of demand/order by proper officer in respect of erroneous refunds.

<sup>2</sup> Proposed vide Sections 110 and 111 of Finance Act, 2022



## 1. Key Proposals<sup>1</sup>

- Supplies from Duty Free Shops ('DFS') at international terminal to outgoing passengers qualify as exports. DFS are entitled to claim consequent refund.

### Dhruva Comments

- *Impact of the proposed amendments in refund formula for IDS cases can be appreciated once the fine print is available. This recommendation seemingly flows from Supreme Court's ruling in case of VKC Footsteps, 2021 (52) GSTL 513.*
- *Several taxpayers claiming benefits under advance authorization, EOU, EPCG, etc., erroneously claimed and received refund of IGST paid on export of goods. In case such taxpayers opted to repay the refund amount, and there was no mechanism available to re-credit amount debited from ECL. The proposed change would enable taxpayers to rectify/ restore erroneous refund without losing ITC.*
- *Exclusion of time period to claim refund comes as a huge respite to taxpayers and confirms the ruling of several High Courts<sup>3</sup>.*
- *In keeping with the ease of doing business mantra, recommendations on refund claims by risky exporters, suppliers to SEZ, exporters of electricity and proposed clarifications will pave the way for streamlined refund benefit.*

### E-commerce

- Relaxation of mandatory registration for persons supplying goods through e-commerce operators, subject to conditions such as:
    - Aggregate turnover is lower than the threshold limit
    - Person is not engaged in making inter-state taxable supply
  - Composition taxpayers allowed to make intra-state supply through e-commerce operators.
- (Above changes are likely to be implemented with effect from January 1, 2023)

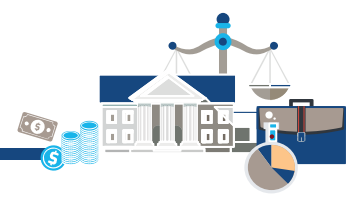
### Other changes with respect to services

- All taxable services of Department of Posts would be subject to forward charge
- Good transport agency ('GTA') to have option to pay GST at 5% or 12% under forward charge. Option where recipient pays tax at 5%, under reverse charge mechanism would also continue.
- Service provided by an Indian tour operator to a foreign resident would be taxed to the extent the tour is conducted within India.

### Clarifications and exemptions recommended

- Clarifications are proposed to be issued in respect of:
  - Applicability of demand and penalty provisions in respect of transaction involving fake invoices
  - Interpretation of restrictions on ITC under Section 17(5) of CGST Act
  - Taxability of perquisites provided to employees as per contractual agreement
  - Utilization of amount available in electronic credit ledger and electronic cash ledger

<sup>3</sup> Saiher Supply Chain Consulting Private Limited v. UOI & Anr. [TS-04-HC(BOM)-2022]; GNC Infra LLP v. Assistant Commissioner of Commercial Taxes Department [2021 (11) TMI 973-Mad. HC]



## 1. Key Proposals<sup>1</sup>

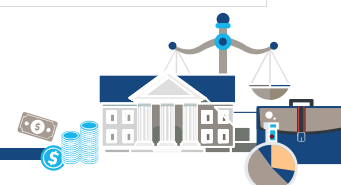
- Exemption of IGST on import of goods under Advance Authorization, EPCG, EOU scheme to continue. The current expiry period was June 30, 2022. E-wallet Scheme to be discontinued.
- Requirement to reverse ITC in case exempted supply of duty credit scrips to be done away.

### Dhruva Comments

- *Representations received from trade and commerce on various issues and matters of policy and interpretation would be addressed by proposed clarifications.*
- *Exports claiming benefits under RoDTEP, SEIS, MEIS etc. would not be required to undertake reversals of ITC, in case of sale/ transfer of duty scrips.*

## 2. Proposed GST rate changes of select goods / services (effective from July 18, 2022)

S. No.	Description	Current Rate	Proposed Rate
<b>Rate change in services</b>			
1	Job work in relation to manufacture of leather goods and footwear	5%	12%
2	Works contract for roads, bridges, railways, metro, effluent treatment plan, crematorium etc.	12%	18%
3	Works contract supplied to Central and State governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contracts thereof	12%	18%
4	Works contract supplied to Central and State Governments, Union territories & local authorities involving pre-dominantly earthwork and sub-contracts thereof	5%	12%
5	Renting of truck / goods carriage where cost of fuel is included, under Forward Charge Mechanism	18%	12%
6	Hotel accommodation priced up to Rs. 1,000 per day	NIL	12%
<b>Rate change in goods</b>			
1	Solar water heater and system	5%	12%
2	Tetra Pak (Aseptic Packaging Paper)	12%	18%
3	Cut and Polished diamonds	0.25%	1.5%
4	Specified defence items imported by private entities / vendors, when end-user is the Defence forces	Applicable rate	NIL
5	E-waste	5%	18%
6	Unbranded food items, grains etc. when supplied in pre-packaged and pre-labelled retail packages in terms of Legal Metrology Act (such as pre-labelled curd, lassi, butter milk etc.)	NIL	Applicable rate



### Rate rationalization of certain services

1	Exemption on following services to be withdrawn: <ul style="list-style-type: none"><li>• Storage or warehousing of commodities which attract tax (nuts, spices, jaggery, cotton etc.)</li><li>• Fumigation in a warehouse of agricultural produce</li><li>• Services by RBI, IRDAI, SEBI, FSSAI, and GSTN</li><li>• Renting of residential dwelling to business entities registered under GST, even when used for residential purposes</li></ul>
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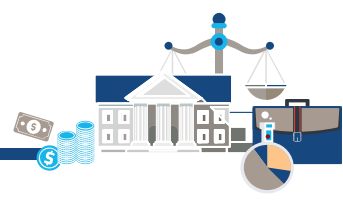
### 3. Clarifications on GST rates

#### Goods

1	Electric vehicles, whether or not fitted with a battery pack, are taxable at GST rate of 5%
2	Sewage treated water qualifies as water and is exempt from GST

#### Services

1	Renting of vehicles with operator for transportation of goods on time basis is classifiable under SAC 9966 (rental services of transport vehicles) and attracts GST at 18%. GST on such rental activity, where the cost of fuel is included in the consideration charged, shall be taxable at 12%.
2	Location charge or preferential location charges ('PLC') are part of consideration charged for long term lease of land and shall have same GST implications as on land lease.
3	Sale of land, after levelling, laying down of drainage lines etc., shall continue to qualify as sale of land. Hence, GST shall not be applicable on the same.
4	Services provided by way of renting of any motor vehicle designed to carry passengers, provided to a body corporate to be taxable in the hands of the body corporate under reverse charge mechanism.





## ADDRESSES

### Mumbai

1101, One World Centre,  
11th floor, Tower 2B, 841,  
Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahlanagar, Corporate Road,  
Ahmedabad 380015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana 122002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart, Baner,  
Pune 411045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
Emaar Square Building 4, 2nd Floor,  
Office 207, Downtown,  
Dubai, UAE  
Tel: + 971 56 900 5849

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Niraj Bagri

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

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