



## GST changes post 48<sup>th</sup> GST council meeting

The GST Council met for the 48th time (through virtual mode) on December 17, 2022. There was no decision or recommendation regarding GST on online gaming and setting-up of the GST Appellate Tribunal, which were widely expected and on agenda. The Council made several recommendations of GST rate changes, clarifications on varied issues and amendments to the GST Law. Subsequently, the Government introduced requisite notifications / circulars to give effect to certain recommendations. This Alert is a detailed update on the key GST changes and clarifications.

### A. Changes to GST rate (effective from January 1, 2023)

- Carbonated beverages of fruit drink or carbonated beverages with fruit juice shall be taxable at the rate of 28 percent<sup>1</sup>. Fruit pulp or fruit juice-based drinks shall continue to be taxable at 12 percent.
- Exemption to services of renting of residential dwelling for use as residence shall be available to a taxpayer, if<sup>2</sup>:
  - Taxpayer is the proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence, and
  - Such renting is on his own account and not that of the proprietorship concern.
- Exemption withdrawn on supply of service by way of access to a road or a bridge on payment of annuity<sup>2</sup>. The same shall now be taxable at 18 percent.

**Dhruva Comments:** There have been disputes on the applicable GST rate on carbonated beverages of fruit drink or carbonated beverages with fruit juice. The entry of Schedule II has been amended to provide for a specific exclusion. These goods are already covered under entry 12B of Schedule IV and attract 28 percent GST w.e.f. October 1, 2021. A doubt had however prevailed over the applicable tax rate on these goods in the past.

<sup>1</sup> Notification No 12/2022- Central Tax (Rate) dated December 30, 2022

<sup>2</sup> Notification No 15/2022- Central Tax (Rate) dated December 30, 2022



*The insertion of explanation to exemption to renting services stands in line with the Delhi High Court judgement in case of **Seema Gupta v. UOI, 2022-VIL-671-DEL.***

*GST exemption for annuity payments was upheld by the Karnataka High Court in its judgement dated July 11, 2022 in case of **DPJ Bidar - Chincholi (Annuity) Road Project Private Limited v. UOI, 2022-VIL-500-KAR,** while declaring that Circular No. 150/06/2021-GST dated June 17, 2021 is bad in law. The withdrawal of the exemption is on the back of this judgement.*

## **B. Changes to the CGST Rules (effective from December 26, 2022)**

### **1. Mobile number and e-mail ID linked with PAN to be used for registration purposes**

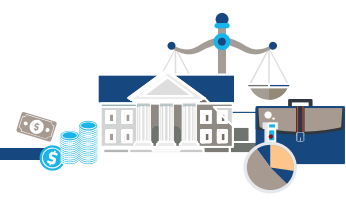
- Rule 8 of the CGST Rules is amended to provide that the authentication for new GST registration shall be done with reference to the mobile number and e-mail ID linked with the PAN of the applicant. Thus, one-time-password for authentication shall be issued to the contact details linked with the PAN.

### **2. Physical verification of applicant and documents mandatory for system-picked registration applications**

- As a measure to further strengthen the registration of taxpayers, sub-rule (4A) has been introduced to Rule 8 of the CGST Rules. The said sub-rule provides that based on data analysis and risk parameters, the GST portal shall select the registration applications for physical verification. Such verification would include biometric-based AADHAR authentication, photographs of the applicant, verification of original documents at the notified facilitation centres as well as physical verification of the place of business. This functionality shall be applicable only for the notified States or Union Territories.
- In case the applicant is not an individual, the above authentication (including photograph) shall be done by the karta, managing director, whole time director, partners, authorised representative or authorised signatory etc. of the applicant.
- In the said cases, the proper officer shall have time of 30 days (instead of 7 days) to grant the registration.

### **3. Reversal of ITC where the supplier has not filed GSTR-3B**

- A new Rule 37A has been introduced in the CGST Rules to provide for reversal of ITC where ITC has been availed in Form GSTR-3B ('GSTR-3B') in respect of such invoice or debit note which has been furnished by supplier in GSTR-1 ('GSTR-1') but, corresponding return in GSTR-3B has not been filed (by the supplier) till 30<sup>th</sup> September following the FY in which the ITC has been availed.
- Such ITC reversal shall be made in GSTR-3B to be filed on or before 30<sup>th</sup> November of the following FY. If the ITC amount is not reversed within such time, then such reversal shall also attract interest under Section 50 of the CGST Act.
- ITC can be reclaimed by the recipient once the supplier files GSTR-3B for the relevant tax period.



**Dhruva Comments:** The Government has passed-on the burden of determining tax payment by the supplier to the bona fide recipient and not clarified the mechanism for this. Further, the timeline of filing of GSTR-3B to be computed from the FY of ITC availment seems vague (as ideally, such timelines are linked to raising of corresponding invoice). The provision also does not clarify the period for default for computation of interest.

#### 4. Provision to deal with difference between GSTR-1 and GSTR-3B

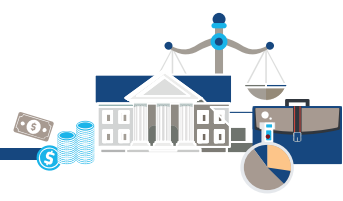
- A new Rule 88C has been inserted in the CGST Rules to deal with situations of difference in GST reported in GSTR-1 vis-à-vis GSTR-3B. It provides that:
  - Where tax paid in GSTR-3B is less than tax payable as per GSTR-1 by a notified amount and percentage (as may be recommended by the GST Council), an intimation with respect to the same shall be sent to the taxpayer, electronically in Part A of Form GST DRC-01B.
  - The said taxpayer shall have time of 7 days to either deposit the differential liability along-with interest or to furnish explanation towards such differences on the GST portal in Part B of Form GST DRC-01B.
  - In case the differential liability is not paid, or no explanation is offered, or the explanation provided is found to be unacceptable by the proper officer, proceeding for recovery of such tax liability shall be initiated under Section 79 of CGST Act. Also, the taxpayer shall not be allowed to file GSTR-1 during such period of non-compliance after passage of 7 days.

#### 5. Facility to withdraw an appeal

- A new Rule 109C has been inserted to provide a facility towards withdrawing the appeal filed by furnishing Form GST APL-01W / Form GST APL-03W (against appeal filed in Form GST APL-01 / Form GST APL-03). Such withdrawal shall be filed before passing of the order by the appellate authority or, issuance of show cause notice for additional tax liability, whichever is earlier.
- However, if final acknowledgement of submission of appeal is issued in Form GST APL-02, the withdrawal would be subject to an approval by the appellate authority.

#### 6. Other changes

- Rule 12 amended to provide option to TDS / TCS registrations to voluntarily file for cancellation of the registration.
- A proviso inserted to Rule 46(f) to provide for a requirement to mention name and complete address (with PIN code) of unregistered recipient on the tax invoice issued for a taxable service supplied by or through e-commerce operator or by a supplier of OIDAR services.
- Rule 37 amended w.e.f. October 1, 2022 to provide for proportionate ITC reversal in cases where proportionate invoice amount and tax thereon has not been paid to the supplier.



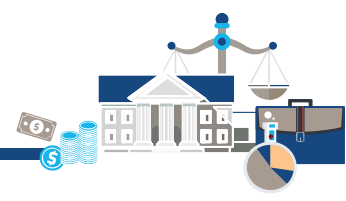
- Rule 89 amended to provide for the documents required by the unregistered person to file refund applications where the agreement or contract for supply of services has been cancelled or terminated.
- Amendments made in Rule 108 and 109 to provide that the following shall be considered as date of filing of appeal:
  - Date of provisional acknowledgment: Where the decision or order appealed against is uploaded on the common portal, or where such decision or order is not uploaded, and the appellant submits a self-certified copy of decision on common portal within 7 days of filing of appeal
  - Date of submission of certified copy: Where the decision or order is not uploaded, and the appellant does not submit a self-certified copy of decision on common portal within 7 days of filing of appeal.
- Format of GSTR-1 amended to provide for separate disclosure of supplies made through e-commerce operators. Description of goods has been made mandatory in the table containing HSN-wise summary of outward supplies.

## C. Clarifications

### 1. Differences in ITC between GSTR-3B and Form GSTR-2A for FY 2017-18 and 2018-19<sup>3</sup>

Issue	Particulars
<b>Background</b>	<p>The eligibility of ITC of GST paid on invoices not appearing in the Form GSTR-2A ('GSTR-2A') has long been a contentious issue especially for FY 2017-18 and FY 2018-19, wherein the matching functionality was not made available on the GSTN. This led to widespread disputes wherein the authorities raised tax demands on account of said matching difference.</p> <p>The CBIC has clarified the process and documents to deal with difference in ITC availed in GSTR-3B as compared to ITC appearing in GSTR-2A for the FY 2017-18 and 2018-19.</p>
<b>Scenarios</b>	<p>Circular covers the following scenarios leading to the said difference:</p> <ul style="list-style-type: none"> <li>• Where supplier filed GSTR-3B but did not furnish GSTR-1.</li> <li>• Where supplier filed GSTR-1 and GSTR-3B but, failed to report a particular supply in GSTR-1.</li> <li>• Where supplies made to a taxpayer reported wrongly as B2C supply, instead of B2B supply.</li> <li>• Where GSTR-1 and GSTR-3B are filed but, with wrong GSTIN of the recipient.</li> </ul>

<sup>3</sup> Circular No. 183/15/2022-GST, December 27, 2022

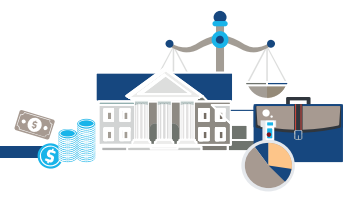


Issue	Particulars
<b>Verification Procedure</b>	<ul style="list-style-type: none"> <li>• Proper Officer shall foremost ascertain the fulfilment of the following conditions with respect to such missing invoices: <ul style="list-style-type: none"> <li>- Possession of a tax invoice or debit note issued or such other tax paying documents</li> <li>- Receipt of goods or services or both</li> <li>- Payment of value of supply along with tax to the supplier.</li> <li>- Availment of ITC within the specified time period</li> <li>- Reversals as specified under Section 17 or Section 18 of CGST Act have been made</li> </ul> </li> <li>• To verify the fulfilment of condition of payment of tax by the supplier, the authorities shall seek the following: <ul style="list-style-type: none"> <li>- <u>Where difference between the ITC claimed in GSTR-3B and GSTR-2A qua a supplier for a FY exceeds Rs. 5 lakhs:</u> A certificate from a Chartered Accountant or Cost Accountant, certifying that supplies in respect of the said invoices have been made and the tax thereon has been paid in GSTR-3B.</li> <li>- <u>Where difference between ITC claimed in GSTR-3B and GSTR-2A qua a supplier for a FY is less than Rs. 5 lakhs:</u> A certificate from the concerned supplier stating that said supplies have been made and the tax thereon has been paid in GSTR-3B.</li> </ul> </li> </ul>
<b>Other conditions</b>	<ul style="list-style-type: none"> <li>• Case specific clarifications and applicable to <i>bona fide</i> errors reported in FY 2017-18 and FY 2018-19.</li> <li>• Applicable only to ongoing proceedings (audit / investigation etc.) and not to completed proceedings.</li> </ul>

**Dhruva Comments:** While the clarification aids mitigating litigation for the past periods, it poses several questions, viz. (a) what happens to period from April 2019 to October 9, 2019, wherein the matching provision was not in effect and even subsequently (till January 01, 2022) when the ITC was available on ad-hoc basis up-to 120%/110%/105%; (b) Bona fide buyers who cannot get such certificate (if vendors are not functional or are not cooperating) will continue to face litigation on the differences.

## 2. Entitlement of ITC where place of supply is as per proviso to Section 12(8) of IGST Act

Issue	Particulars
<b>Relevant POS</b>	<ul style="list-style-type: none"> <li>• Proviso to Section 12(8)(a) of the IGST Act provides that where the transportation of goods is to a place outside India, the POS shall be the place of destination.</li> <li>• It is clarified that said supply of services would be considered as inter-state supply since the location of the supplier is in India and the POS is outside India, i.e., IGST is to be applied.</li> <li>• Further, the supplier shall report POS by selecting State code as '96-Foreign Country' in GSTR-1.</li> </ul>



Issue	Particulars
<b>Eligibility of ITC</b>	<ul style="list-style-type: none"> <li>No restriction under the GST Law on availment of ITC if the POS of the said input service is outside India.</li> <li>Hence, the recipient of such transportation services shall be eligible to avail ITC subject to the fulfilment of conditions laid down in section 16 and 17 of the CGST Act.</li> </ul>

**Dhruva Comments:** The Circular is a welcome relief since there was wide-spread confusion in the industry regarding availment of ITC of IGST charged by courier companies with the POS outside India. It is however important to note that the GST Council recommended omission of the said proviso, which has not been notified.

### 3. Impact on limitation periods on applicability of Section 75(2) of CGST Act<sup>4</sup>

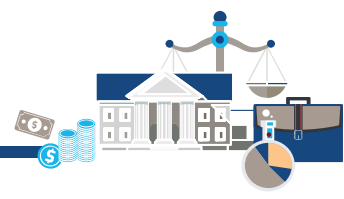
Issue	Particulars
<b>Determination of limitation and demand</b>	<ul style="list-style-type: none"> <li>As per section 75(2) of the CGST Act, where the Appellate Authority / Appellate Tribunal / Court holds that the SCN issued under Section 74 of the CGST Act is not sustainable for reason that the charges of fraud / wilful misstatement/ suppression of facts to evade tax have not been established, the proper officer shall re-determine the tax liability as per Section 73.</li> <li>The proper officer is required to issue the order of re-determination of tax payable (including interest and penalty) within 2 years from the date of communication of the said direction by Appellate Authority / Appellate Tribunal.</li> <li>In such cases, tax payable shall be re-determined as follows: <ul style="list-style-type: none"> <li>Tax can be re-determined only if the SCN is within the normal period of limitation (i.e., within 2 years and 9 months from the due date of furnishing of annual return).</li> <li>Where SCN is beyond the normal period of limitation, the entire proceeding will be dropped.</li> </ul> </li> <li>Where multiple FYs are involved, tax can be determined for the FYs which are within the limitation period.</li> </ul>

### 4. Taxability of no claim bonus offered by insurance companies and applicability of e-invoicing<sup>5</sup>

Issue	Particulars
<b>Taxability of no claim bonus</b>	<ul style="list-style-type: none"> <li>No claim bonus ('NCB') is a deduction from gross insurance premium when no claim is made by the insured person during the previous insurance period(s).</li> <li>There is no supply by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim. NCB therefore cannot be considered as a consideration for any supply.</li> </ul>

<sup>4</sup> Circular No. 185/17/2022-GST, December 27, 2022

<sup>5</sup> Circular No. 186/18/2022-TRU dated December 2022



Issue	Particulars
<b>Deduction of NCB</b>	<ul style="list-style-type: none"> <li>NCB is a permissible deduction under Section 15(3)(a) of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured.</li> <li>Accordingly, when the NCB is provided in the invoice, GST shall be payable on the net amount (i.e., gross premium less NCB).</li> </ul>
<b>Applicability of e-invoice</b>	<ul style="list-style-type: none"> <li>It is clarified that the exemption from generation of e-invoices is applicable for entity as a whole and is not restricted by the nature of supply being made by the said entity.</li> </ul> <p><b>Illustration:</b> A banking company will not be required to generate e-invoice for supply of other goods like bullion or furniture.</p>

#### 5. Treatment of statutory dues under GST law for proceedings finalised under IBC<sup>6</sup>

Issue	Particulars
	<ul style="list-style-type: none"> <li>As per Section 84 of CGST Act, if the GST dues against any person are reduced as a result of any appeal, revision or other proceedings, an intimation for such reduction has to be given by the Commissioner to the taxpayer and to the appropriate authority (with whom the recovery proceedings are pending). The recovery proceedings can be continued in relation to such reduced amount of government dues.</li> <li>As the proceedings conducted under IBC also adjudicate the government dues (including GST), the same is covered under the term 'other proceedings'.</li> <li>Consequently, in case of such reduction under IBC, the jurisdictional commissioner shall issue an intimation in Form GST DRC-25 to the taxpayer and the appropriate authority with whom recovery proceedings are pending, for recovery of such reduced demand.</li> </ul>

### D. Other (GST Council) proposals not yet operationalised

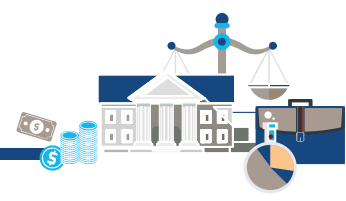
#### 1. GST rate changes

- Compensation Cess of 22% is applicable to motor vehicle which fulfils all four conditions, namely (a) popularly known as SUV, (b) has engine capacity exceeds 1500 CC, (c) has length exceeding 4000 mm, and (d) has a ground clearance equal to or more than 170 mm.

#### 2. GST Law

- Insertion of merchanting sales, bonded warehousing sales and high-seas sales, described in Schedule III of the CGST Act to have a retrospective effect from July 1, 2017. No refund available on tax paid on such transactions (from July 1, 2017 to January 31, 2019).
- Proviso to Section 12(8) of the IGST Act, which provides the place of supply of transportation of goods to a place outside India, to be omitted.

<sup>6</sup> Circular No. 187/19/2022-GST, December 27, 2022

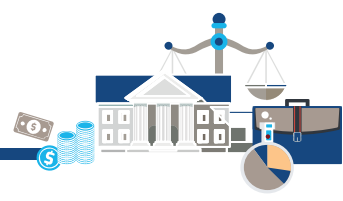


- Rationalization of penal provisions

- Minimum threshold for launching prosecution increased from INR 1 crore to INR 2 crores, except for case where invoices are issued without supply of goods or services (limit of INR 1 crore shall continue to operate for such an offence).
  - No prosecution against specified offences including (a) obstruction or preventing any officer in discharge of his duties, (b) deliberate tempering of material evidence, and (c) failure to supply information.
- Compounding amount to be reduced from the range of 50% to 150% of tax amount to 25% to 100% of tax amount.

### 3. Streamlining compliances

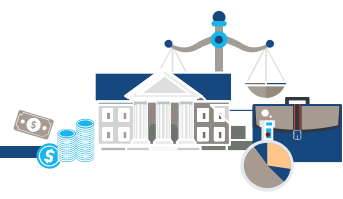
- Time limit of three (3) years, from the concerned due date, to be enforced for filling GSTR-1, GSTR-3B, Form GSTR-9 and 9C and Form GSTR-8.





## Glossary

Abbreviation	Meaning
<b>CBIC</b>	Central Board of Indirect Taxes and Customs
<b>CGST Act</b>	Central Goods and Services Tax Act, 2017
<b>CGST Rules</b>	Central Goods and Services Tax Rules, 2017
<b>FY</b>	Financial Year
<b>GST</b>	Goods and Services Tax
<b>GSTN</b>	GST Network
<b>IBC</b>	Insolvency and Bankruptcy Code, 2016
<b>IGST Act</b>	Integrated Goods and Services Tax Act, 2017
<b>OIODAR</b>	Online Information Database Access and Retrieval services
<b>ITC</b>	Input Tax Credit
<b>POS</b>	Place of Supply
<b>SCN</b>	Show Cause Notice





## 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: +91-33-6637 1000

### 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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