



Key Proposal from 50th Meeting of the GST Council

The 50th meeting of the GST Council was held on July 11, 2023. The Council made several recommendations regarding GST rates including for online gaming, clarifications on various issues, tax distribution, announcement on setting up of GST Appellate Tribunal, amendments to the GST Law and other measures for facilitation of trade. This Dhruva alert captures the key points from this meeting:

A. Proposed Legislative changes:

- Place of supply provision to be prescribed for supply of goods to an unregistered person.

Dhruva Comments

Place of supply for unregistered person will address issues around B2C supplies effected in automobiles, e-commerce industry, amongst others.

- Clarification to be provided for admissibility of refund where export of goods or forex realisation (for export of services) is made after prescribed time limits.

Dhruva Comments

The clarification for admissibility of refunds in cases where the goods/consideration for services are made after prescribed time limit is expected to settle the ambiguity around correctness of refund, post restoring conditions precedent.

- Special procedure is to be provided for the manual filing of appeals, against the orders passed, in respect of Tran-1/Tran-2 claims.
- Provisions of Finance Act, 2023 pertaining to constitution of GST Appellate Tribunal (GSTAT) to be notified with effect from August 1, 2023. Also, rules for appointment and conditions of President and Members, i.e., GST Appellate Tribunal (Appointment and Condition Rules for the President and Members), 2023 to be notified.
- Mechanism to deal with ITC differences between Form GSTR-2B and Form GSTR-3B to be provided. System driven initiation notice (above a prescribed threshold) to be sent to taxpayers to explain reasons or take remedial action of the identified differences.



Dhruva Comments

Introduction of mechanism to deal with differences in ITC is on similar lines as that introduced for output tax liability discrepancy. While this shall safeguard the revenue, it will add to the compliance burden on the taxpayers.

B. GST rate changes:

- Rate of uncooked / unfried snack pellets reduced to 5%.
- Cess on all Utility Vehicles having Engine capacity exceeding 1500 cc, length exceeding 4000 mm and having ground clearance of 170 mm to be taxed at 22% (with ground clearance to be measured in unladen condition).
- Services provided by a director to a body corporate in his personal/private capacity such as renting of immovable property will not be subject to Reverse Charge Mechanism ('RCM') in the hands of a body corporate.
- Supply of food and beverages, on a standalone basis, in cinema halls to be taxed as restaurant services and taxed at 5%. In cases where food and beverages are clubbed with the cinema ticket, it shall be recognized as bundled supply, with the principal supply being cinema exhibition.

Dhruva Comments:

Taxing supply of food and beverages by a cinema exhibitor as a restaurant will require maintaining separate records and input tax credit (ITC) eligibility constrains vis-à-vis their supply of cinema ticket.

- Casino, Horse Racing and Online Gaming to be taxed at 28%, at full value of chips and bets. Consequent amendment in Schedule III to provide exclusion to Online Gaming, Horse Racing from actionable claims.

Dhruva Comments:

*Bringing online gaming under the tax net, and that of 28%, neutralizes the recent Karnataka High Court ruling in case of **Gameskraft Technologies Private Limited vs. Directorate General of Goods Services Tax Intelligence, New Delhi** and enhances taxable value and burden on the full bet amount. This amendment shall have a prospective implication; hence, past litigations could continue.*

C. GST procedural changes:

- Declaration for option to pay tax under forward charge filed by GTA remains valid and shall continue until such taxpayer opts to pay tax under reverse charge.
- Relaxations of various reporting requirements of Form GSTR-9 and Form GSTR-9C as provided in the FY 2021-22 shall continue for FY 2022-23. Also, exemption from filing GSTR 9/ GSTR 9A (annual return) continues for FY 2022-23 for taxpayer with aggregate turnover of INR 2 crores.
- Form DRC-01D prescribed for recovery of the tax and interest for amount intimated under Rule 88C (i.e., for difference in liability between Form GSTR-1 and Form GSTR-3B). Likewise, Form DRC-01C prescribed for recovery of difference in ITC between Form GSTR-3B and Form GSTR-2A.
- Amnesty scheme for non-filers of Form GSTR-4, Form GSTR-9 and Form GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders proposed to be extended till August 31, 2023.
- Form GSTR-3A (notice for failure to furnish Annual return) prescribed to improve discipline of filing such returns.



- OIDAR service providers, to provide details of their supplies made to registered persons in India in Form GSTR-5A This will help in tracking due payment of tax on Reverse Charge Mechanism basis by such registered persons in India.

D. Clarifications to be issued:

- Distribution of ITC (for common input services from third party) through ISD is not mandatory, for the past period. The same will be made mandatory prospectively. Also, clarification is to be provided for taxability of internally generated (i.e., cross charge) services between distinct persons.

Dhruva Comments:

Clarification making ISD optional comes as a needed relief given the tax authorities were seeking tax demands wherein common ITC was passed through a cross-charge mechanism. Also, a clarity on inclusions / exclusions for the purposes of cross charge invoicing shall (hopefully) clear the air on inclusion / exclusion of salary cost for cross charge purposes.

- Neither GST liability nor ITC reversal is required in case of free of cost warranty replacement of parts and repair services provided during warranty period by the manufacturer.
- Procedure to be prescribed for verification of difference in ITC claimed in Form GSTR-3B and GSTR-2A, for the period of April 2019 to December 2021. The procedure to be in similar lines as earlier provided for the FY 2017-18 and FY 2018-19.
- Interest to be calculated on wrong utilisation of IGST ITC after considering the balance of ITC ledger of IGST, CGST and SGST heads taken together i.e., totally.
- Mere holding of securities of a subsidiary company by a holding company cannot be treated as a supply of services, hence it is not taxable.

Dhruva Comments:

This is welcome clarification, however position regarding ITC will have to be evaluated.

- Supply of goods from Duty Free Shops at arrival terminals shall be treated as exempt supplies for the purpose of reversal of ITC.

Dhruva Comments:

*Reversal of ITC by DFS at arrival terminal contradicts the judgment of the Supreme Court in the case of **Comm. of CGST and CE vs. Flemingo Travel Retail Ltd.**, wherein it was held that both arrival and departure terminals are eligible for refund of inputs since they are located outside the customs frontier of India.*

- Adjusted total turnover for the purposes of refund computation shall include value of export as provided in Explanation to 89 (4) CGST Rule (i.e., lower of FOB value as per shipping bill or value declared in tax invoice).
- Only state code of the recipient is required in case of supply by or through an e-commerce operator or by a supplier of OIDAR services to an unregistered recipient instead of complete name and address.

E. Trade facilitation:

- State level co-ordination Committee comprising of State and Central GST officers for Knowledge sharing on GST matters, to be formed.
- Council has recommended to strengthen the IT system to curb frauds in GST.
- Rule 163, CGST Rules 2017 outlining the manner and conditions of consent-based sharing information of registered persons with other “Account aggregators” (systems) to be inserted.





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