

Key Proposal from 52nd Meeting of GST Council

The 52nd meeting of the GST Council was held on October 7, 2023, in New Delhi. The GST Council made recommendations on rates, clarification on issues like levy of GST on personal guarantee, corporate guarantee, amendments to the GST Law and other measures for facilitation of trade. This Dhruva Alert encapsulates the key proposals/recommendations from this meeting:

A. Legislative changes:

1. GST law to be amended to make ISD mechanism mandatory prospectively.

Dhruva Comments:

Reinforcing the recommendations made in the 50th meeting of GST Council regarding mandatory applicability of ISD mechanism, the Council proposed amendments in the GST law.

2. Section 110 of the Central Goods and Services Tax Act, 2017 ('CGST Act') providing for appointment of president and members of the proposed GST Appellate Tribunals, to be amended as follows:
 - An advocate for ten years, with substantial experience in litigation in Indirect Tax Laws in the Appellate Tribunals (CESTAT/VAT Tribunals/High Courts/Supreme Court) shall be eligible for the appointment as judicial member.
 - Minimum age for appointment shall be 50 years.
 - President and members shall have tenure up to a maximum age of 70 years and 67 years, respectively.
3. Sub-rule (2) to be inserted in Rule 28 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') to provide that the value of supply of corporate guarantee provided between related parties shall be higher of 1% of such guarantee amount or, the actual consideration charged.

B. Changes in GST rate:

1. Rate of 'Food preparation of millet flour in powder form, containing at least 70% millets by weight' when sold in:
 - Loose form to be Nil.



- Prepacked and labelled form to be retained at 5%.
2. Extra Neutral Alcohol ('ENA') used for manufacture of alcoholic liquor for human consumption to remain outside GST.

Dhruva Comments:

Taxability of ENA, which is a primary raw material for alcoholic beverages has been a raging issue. The matter has been discussed several times in the earlier GST Council meetings, but a closure has eluded. Courts have taken conflicting views leading to confusion over its taxability. Allahabad High Court in the case of **Jain Distillery Private Limited & Ors. v. State of U.P. & Ors., 2021 (10) TMI 583**, held that ENA falls outside the phrase 'alcoholic liquor for human consumption' and so, the State has lost its legislative competence to enact laws to impose tax on sales of ENA, hence, is subject to GST. Following this, the State of Uttar Pradesh not only quashed all assessments under VAT/CST but initiated recovery proceedings against taxpayers to collect GST along with interest and parallelly challenged the order of High Court before the Supreme Court. This proposal shall bring certainty over the taxation of ENA. Law Committee to examine suitable amendment to be made in Law to exclude ENA (used for manufacturing of alcoholic liquors for human consumption) from ambit of GST.

3. Rate of molasses to be reduced from 28% to 5%.
4. IGST exemption to foreign flag foreign going vessel when it converts to coastal run, subject to its reconversion to foreign going vessel in six months.
5. Exemption to pure and composite services provided to Central/State/UT Governments and local authority in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India to be continued.
6. GST shall not apply on the supply of services by way of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation to Governmental Authorities.
7. Job work of processing barley into malt to be taxed at 5%.
8. Bus operators organised as companies to be excluded from the ambit of Section 9(5) of the CGST Act (concerning Ecommerce operators to discharge GST by treating them as supplier of such services) to enable them to pay GST on supplies using ITC.

C. Clarifications to be issued:

1. Clarifications to be provided for the place of supply in respect of following supply of services:
 - Transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India.
 - Advertising services.
 - Co-location services.
2. Export remittances received in special Rupee Vostro account, as permitted by the RBI, would qualify a consideration in order to qualify as export of services for the purpose of Section 2(6)(iv) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act').
3. To notify suppliers undertaking supplies to SEZ units or developer for authorised operations as a class of persons for IGST refund by amendments in Notification no. 01/2023-Integrated Tax dated July 31, 2023.



Dhruva Comments:

Section 16 of IGST Act, 2017 was amended vide Finance Act, 2021 with effect from October 1, 2023, to allow the claim of refund of unutilised ITC on exports only under the route without payment of IGST, under bond or Letter of Undertaking and empowering government to notify the class or persons & goods or services of which export can be done on payment of IGST. In line with this, Central Government vide Notification No. 01/2023-Integrated Tax dated July 31, 2023, notified the goods or services as the class of goods or services, which may be exported on payment of IGST and on which the supplier may claim refund of tax so paid. However, no such notification was issued for class of persons which created an issue for supplies made to SEZ. Therefore, Council has recommended to amend the said notification to notify the suppliers supplying to SEZ units/developer for authorized operations as the class of suppliers who can supply the goods or services on payment of IGST and claim refund.

4. Valuation of personal guarantee and corporate guarantee (given to the bank/ financial institution):
 - In case of personal guarantee given by a director, without any consideration, the open market value shall be treated as zero, and no tax shall be payable thereon.
 - In case of corporate guarantees between related person, the valuation shall be governed by the proposed Rule 28(2), irrespective of availability of full input tax credit ('ITC') to the recipient.

Dhruva Comments:

Taxability of guarantees has been an issue of concern for the industry with a viewpoint that it is a shareholder function to facilitate the operations of its related party (subsidiary) and not a taxable supply. With this proposal, the GST Council clears the Government's position on taxability of such guarantee transactions. However, recommending a minimum value for corporate guarantees of 1% of the guarantee amount is higher than the value of 0.5% as held by Tribunal and Courts in Income Tax cases.

5. District Mineral Foundations Trusts (DMFT) established by State Governments under the Mines & Minerals (Development Regulation) Act, 1957, to be considered as governmental authorities eligible for GST exemptions.

Dhruva Comments:

Council's clarification to treat DMFT at par with the governmental authorities will help resolve the bemused issue of not categorising DMFT as a governmental or local authority.

D. Trade Facilitation:

1. Introduction of amnesty scheme for the taxpayers who could not file an appeal under Section 107 of the CGST Act against an order passed under Section 73 or 74, on or before March 31, 2023. In terms of the said proposed scheme:
 - Taxpayers will be allowed to file appeal against such orders up to January 31, 2024
 - This facilitation shall be subject to the payment of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e., 2.5% of the tax) should be debited from Electronic Cash Ledger.
Note: the prescribed statutory pre-deposit is 10%.
2. Necessary amendments proposed in CGST Rules in line with amendments in Section 83 of the CGST Act effective from January 1, 2022, for automatic restoration of provisionally attached property after completion of one year.



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