



Tax alert: Update on recommendations made in 50th GST Council meeting

13 July 2023

At its meeting on 11 July, the GST Council made various recommendations with respect to changes in tax rates of goods, services, taxability of online gaming, casinos and racecourses, notifying provisions pertaining to functioning of the GST Appellate Tribunal, other trade facilitation measures and on the streamlining of GST compliances.

In a nutshell



Amendment in schedule III has been proposed to include online gaming and horse racing as taxable actionable claims. Casinos, racecourses, and online gaming are to be taxed at 28% on full value of chips purchased in casinos, the bets placed in racecourses and online gaming.



GST Council recommended to notify the provisions of GST Appellate Tribunal with effect from 1 August 2023. GST Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 have been recommended for smooth functioning. State benches will start in a phased manner.



To streamline compliances, on Council's recommendation, amendment in rules is proposed to enable states to enforce e-way bill on gold/ precious stones, facilitate capacity-based taxation and special composition scheme for manufacturers of tobacco, pan masala and other related items.



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Recommendations of the GST Council at its 50th meeting held on 11 July 2023

GST Council has made various recommendations which includes changes in tax rates of goods and services, regularising past cases by issuing circulars, extension of amnesty and various trade facilitation measures.

Changes in GST rates on goods and services

- Change in GST rates of goods and clarifications thereof

- Reduction in GST rates

| Description of goods | Existing tax rate | Reduced tax rate |
|---------------------------------|-------------------|------------------|
| Uncooked/ unfried snack pellets | 18% | 5% |
| Imitation zari thread or yarn | 12% | 5% |
| Linz donawitz slag (LD slag) | 18% | 5% |
| Fish soluble paste | 18% | 5% |

- Exemption

GST Council recommended to provide IGST exemption on the following:

- Dinutuximab (Quarziba) medicine when imported for personal use
- Medicines and food for special medical purpose (FSMP) used in treatment of rare disease enlisted under National Policy for Rare Disease, 2021 when imported for personal use subject to conditions
- Imports of FSMP by Center of Excellence (CoE) for rare disease or any person or institution recommended by CoE

- Clarifications

- Amendment in compensation cess rate notification has been proposed to include all utility vehicles by whatever name called. Parameters to qualify as utility vehicles are based on length exceeding 4000 mm, engine capacity exceeding 1500 cc and ground clearance of 170 mm and above (un-laden condition)
- Regularisation on as-is-basis – clarification will be issued to regularise the following matters for past period on as-is-basis
 - i. GST on trauma, spine and arthroplasty implants for period prior to 18 July 2022
 - ii. GST on biomass briquettes for the period 1 July 2017 to 12 October 2017

- Other amendments

- For levy of compensation cess on pan masala, tobacco products where it is not legally required to declare the retail sale price on said products, amendment in notification is proposed to tax it at ad valorem rate as applicable on 31 March 2023
- RBL Bank and ICBC bank to be entitled to claim exemption on import of gold, silver or platinum. To enable such banks to claim exemptions amendment in list of specified banks is to be made in relevant annexure of Foreign Trade Policy 2023 (FTP)

- Change in GST rates of services and clarifications thereof

- Taxability of casinos, racecourses, and online gaming

GoM was constituted to recommend tax rate and valuation methodology in case of GST on casinos, racecourses, and online gaming. After detailed deliberations, GST Council recommended:

- Online gaming and horse racing to be included as taxable actionable claims by way of an amendment in schedule III of CGST Act

- Online gaming, horse races and casinos would be taxable at 28%
- GST will be applied on full value of bets placed in case of online gaming and horse racing and on the face value of chips purchased in case of casinos
- Exemption

GST Council recommended to provide exemption on satellite launch services supplied by organisations in private sector to encourage start-ups
- Other changes
 - It has been proposed that goods transportation agencies (GTA) will not be required to file declaration for opting to pay GST under forward charge every year. The exercise of option will continue unless the declaration for moving to reverse charge is filed by GTAs. Last date to exercise the option shall be 31st March of preceding financial year. The option will be enabled from 1st January of preceding financial year
 - Services supplied by a director of a company, to the company, in his personal or private capacity (such as renting of immovable property) will not be taxable under reverse charge
 - Food and beverages supplied in cinema is taxable as restaurant service when supplied independently of cinema exhibition services. Where the sale of cinema ticket and supply of food and beverages are clubbed together, the same shall be taxable as composite supply with cinema exhibition service as principal supply

Trade facilitation measures

- GST Appellate Tribunal

Government intends to make GST Appellate Tribunal functional at the earliest. To ensure prompt functioning, following recommendations have been made:

- Provisions of Finance Act 2023 in relation to GST Appellate Tribunal may be notified with effect from 1 August 2023
- To enforce rules governing appointment and conditions of service of president and members of GST Appellate Tribunal
- Chief secretary of Maharashtra to be one of members of the search-cum-selection committee
- State benches will start in phased manner

- Other recommendations

GST Council has clarified on the following issues, and has proposed to issue circulars:

- ISD - ISD is not mandatory for distribution of input tax credit (ITC) of common input services procured from third parties to distinct persons, as per the present provisions of GST law. Amendment in law is proposed to make it mandatory prospectively. Clarification would also include issues regarding taxability of internally generated services provided by one distinct person to another distinct person
- Warranty contracts - Manufacturers are not required to charge tax on replacement of parts/ or repair service and no reversal of ITC is required for such replacements under warranty contracts
- Refunds -
 - Refund of accumulated ITC is to be restricted to ITC appearing in GSTR 2B
 - Value of export goods as defined in explanation to Rule 89(4) to be part of the 'adjusted total turnover'
 - Admissibility of refund cases, where the export of goods or realisation of proceeds of export of service is made after a specified time limit

- E-commerce operators (ECO)
 - Clarification regarding TCS applicability where multiple ECOs are involved in single transaction
 - In case of supply of service by or through ECO/ by a supplier of OIDAR services to an unregistered recipient, an amendment has been proposed to provide for requirement of only the 'state' of the recipient instead of name and full address on the tax invoice
- E-invoice – e-invoices are required to be issued by taxpayers (whose turnover exceeds prescribed threshold) for supplies to government departments or establishment/ government agencies/ local authorities/ public sector undertakings etc. who are solely registered for the purpose of tax deduction at source
- Interest – for computing interest in respect of wrongly availed and utilised IGST credit, balance of ITC in electronic credit ledger under IGST, CGST and SGST to be taken together
- Services of holding securities – mere holding of securities of a subsidiary company by a holding company cannot be treated as supply of services and therefore, cannot be taxed under GST
- Verification of ITC – circular will be issued to provide procedure for verification of ITC in cases involving mismatch between GSTR 3B vis-à-vis GSTR 2A during the period from 1 April 2019 to 31 December 2021
- Amnesty scheme extension

GST Council has recommended to extend the amnesty schemes to file application for revocation of cancellation of registration, waiver/ reduction of late fees in respect of composition return (GSTR 4), annual return (GSTR 9) and final return (GSTR 10) and withdrawal of assessment orders where return has been filed with interest and late fees till 31 August 2023
- Annual return
 - Relaxations provided in FY 2021-22 for various tables of annual return (GSTR 9) and reconciliation statement (GSTR 9C) to continue for FY 2022-23
 - Taxpayers having aggregate annual turnover up to INR 2 crores are not required to file annual return (GSTR 9)
- Manual filing of appeal
 - Special procedure will be provided to enable manual filing of appeals against the orders passed by proper officers in respect of TRAN 1/ TRAN 2 claims in pursuance of directions of the Supreme Court
 - Amendment in rules to be carried out to provide for manual filing of appeal under specified circumstances

Measures for streamlining compliances

- Recommendations have been made to amend rules to enable implementation of e-way bill requirement for movement of gold/ precious stones
- Capacity based taxation and special composition scheme
 - To plug leakages and improve revenue collection, on recommendations of Group of Ministers (GoM), the Council has proposed to issue a notification to prescribe a special procedure for registration of machines and filing of special monthly returns by 'manufacturers of tobacco, pan masala and other similar items. Provision for special penalty will be inserted for non-registration of machines
 - Notification to be issued to restriction for IGST refund route in respect of exports of tobacco, pan masala and other similar items and mentha oil
- Refund under IGST payment route will not be available with effect from 1 October 2023. All taxpayers will have to follow the route of refund of unutilised ITC on zero rated supplies except if supplies of goods or services have been notified to make zero rated supplies on payment of IGST

- Amendment in rules pertaining to registration

Following amendments in rules have been recommended to effectively deal with menace of fake and fraudulent registrations and strengthening the registration process:

- Bank account details of registered person (having the name and PAN of such person) to be furnished within 30 days of grant of registration or before filing the statement of outward supplies (GSTR 1/ IFF)
 - System based suspension of registration to be enabled where the taxpayer does not furnish the details of the bank account within the specified time. Registration will be automatically resumed on furnishing of bank account details
 - Registered person will not be able to furnish statement of outward supplies (GSTR 1 / IFF) if bank account details are not furnished
 - Physical verification of business premises can be done even if Aadhar authentication has been done in high-risk cases
 - To do away with the requirement of availability of applicant at the time of physical verification of the premises for allotting the registration
 - Pilot for risk based biometric based Aadhaar authentication to be conducted in UT of Puducherry. Andhra Pradesh may join in pilot project
- Form DRC 01D to be introduced to provide for manner of recovery of tax and interest in respect of the amount intimated on account of difference in tax liability reported in statement of outward supplies (GSTR 1) vis-à-vis monthly return (GSTR 3B)
 - System based mechanism to be introduced to issue intimation to taxpayers in respect of the excess avilment of ITC in monthly returns (GSTR 3B) compared with GSTR 2B, above a specified threshold. Taxpayers will be provided with the procedures to comply with such intimations. Form DRC 01C to be introduced to provide for manner of recovery of tax and interest in respect of such mismatch of ITC
 - An explanation will be inserted to include value of supply of goods from duty free shops at arrival terminal in value of exempt supplies for the purpose of computation of ITC reversal
 - Amendment in forms
 - Notices to be issued in Form GSTR 3A for taxpayers who fail to furnish annual return (GSTR 9/ 9A) by due date. Form GSTR 3A is to be amended accordingly
 - Return of OIDAR (Form GSTR 5A) to be amended in order to furnish the details of the registered person to whom services have been rendered by OIDAR service provider. This will enable tracking of the registered persons who are required to discharge tax under reverse charge on OIDAR services
 - Other measures
 - A rule to be introduced to provide for manner and conditions of consent-based sharing of information of registered person available on common portal with other systems. Account Aggregators will be notified which will be imparted information from the common portal
 - Offences eligible for compounding will be introduced by way of insertion of a rule
 - An amendment in law is proposed to clarify the place of supply in cases where supply of goods is made to an unregistered person
 - State level coordination committee to be formed for knowledge sharing on GST matters and coordinated efforts towards administrative and preventive measures
 - GoM has recommended various measures to curb frauds in GST. System based measures for registration,

use of third-party data for risk management and controlling flow of fake ITC down the supply chain, to be introduced

Our Comments:

GST Council has recommended various changes and clarifications on ongoing issues. Among such changes, tax on online gaming has been recommended to be taxed at higher GST rate of 28% on the entire value of bets. It will require the online gaming industry to re-look at their business models to adapt with such recommendations of changes in law.

Steps taken by the GST Council towards functioning of GST Appellate Tribunal will enable taxpayers to follow the appellate remedy without approaching the courts; the entire appellate system will be functional. Clarifications with respect to holding securities of subsidiary company, mandate of ISD mechanism and services of director in personal capacity will help industry in investigation or adjudication proceedings.



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