



Tax alert: Update on recommendations made in 52nd GST Council meeting

9 October 2023

At its meeting on 7 October 2023, the GST Council made recommendations with respect to changes in the tax rates on goods and services, measures for facilitation of trade and other measures including amnesty scheme for filing appeals, issuance of clarification regarding guarantee on loans provided by directors in their personal capacity and by related persons, and amendment in the GST law for making input service distributors (ISD) mechanism mandatory, prospectively, for distribution of input tax credit (ITC) on common services.

In a nutshell



Amnesty scheme for filing appeal

Amnesty scheme proposed for filing appeals against demand orders passed on or before 31 March 2023 on the condition of enhanced pre-deposit of 12.5% of disputed tax amount. Appeals solely rejected on account of limitation will also be eligible for such amnesty scheme.



Clarification on taxability of personal and corporate guarantee

Circular proposed to be issued providing clarity that no tax shall be payable on personal guarantee extended by directors without consideration. Valuation of corporate guarantee extended between related parties for applicability of GST, also recommended



Clarification place of supply of certain services

Clarification proposed to be issued on place of supply of certain services such as advertising services, co-location services and transportation of goods, including by mail / courier where either the supplier or recipient is outside India



Amendment in GST law regarding ISD mechanism

Prospective amendments in GST law proposed regarding definition of ISD and procedure of distribution of ITC of common expenses procured by head office/ branch office



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Recommendations of the GST Council at its 52nd meeting held on 7 October 2023

GST Council has made various recommendations which include changes in tax rates of goods and services, introduction of amnesty scheme for filing of appeals, issuance of clarification on guarantees provided by directors and related persons and various trade facilitation measures.

Change in GST rates for goods and clarifications thereof

- Amendment proposed in GST rate notification to include extra neutral alcohol (ENA) for industrial use' in line with the HS code in Customs tariff and taxable under GST at 18%
- ENA used for manufacture of alcoholic liquor for human consumption proposed to be out of purview of GST. Suitable amendment in the law will be suggested by the Law Committee in this regard
- GST rate on “food preparation of millet flour in powder form, containing at least 70% millets by weight” proposed to be changed as:
 - 0% if sold in other than pre-packaged and labelled form
 - 5% if sold in pre-packaged and labelled form
- As of now, IGST is applicable at 5% on value of the vessel of foreign going vessel if it converts to a coastal run. A conditional IGST exemption is recommended on foreign flag foreign going vessel when it converts to a coastal run subject to its reconversion to foreign going vessel in six months
- GST rate on molasses proposed to be reduced from 28% to 5%
- GST Council recommended a clarification to tax imitation zari thread or yarn out of metallised polyester film/ plastic film at 5%. No refund will be allowed on metallised polyester film/ plastic film under inverted duty structure

Changes in GST rates on services and clarifications

- Liability to pay GST on bus transportation services supplied through ECOs was placed on such ECOs from 1 January 2022. Bus operators organized as companies proposed to be excluded from the purview of section 9(5) of CGST Act where ECOs have been made liable to pay GST instead of a supplier of service
- Supply of all goods and services by Indian Railways shall be taxed under forward charge
- Services of water supply, public health, sanitation conservancy, solid waste management and slump improvement and upgradations supplied to government authorities proposed to be exempted from GST
- Proposed to issue a clarification with respect to services for processing of barley into malts at 5% instead of 18%

Trade facilitation measures

- Amnesty scheme proposed for appeals in following cases:
 - Where taxpayers were unable to file appeals within the prescribed time limit against orders issued under specified provisions of GST law on or before 31 March 2023, or the appeals against the said orders were rejected solely on the ground of limitation
 - Taxpayers will be allowed to file appeal until 31 January 2024 only upon payment of enhanced pre-deposit equivalent to 12.5% of tax under dispute out of which at least 2.5% to be paid in cash
- Clarification proposed regarding taxability of personal or corporate guarantee providing clarity that:
 - Personal guarantee given by a director will be subject to GST if a company pays consideration in lieu of obtaining such guarantee from a director. If no consideration is paid by the company, then the open market value of such service shall be zero. Hence, no GST will be payable on personal guarantee

- Corporate guarantee will be subject to GST. The value will be higher of 1% of amount of guarantee or the consideration payable, irrespective of whether full input tax credit (ITC) is available to the recipient of services or not
- Suitable amendment in rule is proposed with respect to prescribing the above valuation methodology of corporate guarantee
- Amendment in GST Rules proposed to facilitate automatic restoration of provisionally attached property after completion of one year
- Circulars proposed to be issued to clarify the place of supply of the following services:
 - Service of transportation of goods, including by mail or courier, in cases where the location of supplier/ recipient of services is outside India
 - Advertising services
 - Co-location services
- Remittance received in special INR vostro account (as permitted by RBI) for services to qualify as export of service. A clarification in this regard is recommended by GST Council
- Suppliers of goods or services (except the commodities like pan masala, tobacco, gutkha, etc.) to a Special Economic Zone (SEZ) developer/ unit for authorised operations to be allowed for effecting such supplies on payment of IGST and claim the refund of tax so paid

Other recommendations

- GST law proposed to be amended regarding the definition of ISD and the manner and procedure of distribution of ITC through ISD to make distribution of ITC pertaining to common services, mandatory through the ISD mechanism
- Minimum and maximum age limit of President and members of GST Appellate Tribunal proposed to be amended. Further, an advocate with 10 years of substantial experience in litigation under indirect tax laws in VAT Tribunals/ CESTAT/ High Court/ Supreme Court, proposed to be eligible for the appointment as judicial member

Comments

There was considerable ambiguity regarding valuation of guarantees provided by directors in their personal capacities (where no consideration was being charged) and by related parties, including guarantee provided by holding company for subsidiary company, leading to varied approaches being adopted by taxpayers and demands being raised by authorities on this issue. The clarification on this issue would remove the ambiguity surrounding the valuation of such services. It will also be important to understand and analyse the possible impact of the clarification on other similar related party transactions being disputed.

The clarifications on place of supply are also important to look out for. The clarification regarding export position on cross-border transportation by mail/ courier is a much awaited one. The clarifications regarding place of supply for advertising services are also awaited, although it is unclear if the same pertains to cross-border or domestic transactions.

Also, given that the provisions around ISD are soon to be amended for distribution of ITC on common services through ISD mechanism only, businesses should commence a review process for adopting this mechanism in an effective manner.

The issue of advocates being eligible as members of the GST appellate tribunal was being challenged before the Supreme Court, due to which there was a delay in setting up the tribunals. The recommendations regarding the

age limit of president and members as well as inclusion of advocates as judicial members would speed up the establishment process, which is the need of the hour.



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