



## Dhruva Alert – Update on announcements made in 31<sup>st</sup> GST Council meeting

The Goods and Services Tax (GST) Council held their 31<sup>st</sup> Meeting on December 22, 2018 in New Delhi, wherein various recommendations were announced by the Council with regard to rate changes, exemptions, changes in law, ease of compliances, clarifications, etc. The recommendations of the Council meeting have been provided in the Press Releases issued by the Ministry of Finance.

Our alert provides a broad insight into the key proposals announced by the GST Council.

### 1. Key Policy Recommendations

#### General Recommendations

- The amendments introduced by the Central Goods and Services Tax (Amendment) Act, 2018, Integrated Goods and Services Tax (Amendment) Act, 2018, Union Territory Goods and Services Tax (Amendment) Act, 2018 and Goods and Services Tax (Compensation to States) Amendment Act, 2018 and the corresponding changes in State Goods and Services Tax Acts would be notified w.e.f. 01.02.2019.
- Taxpayers who have not filed the returns for two consecutive tax periods shall be restricted from generating e-way bills. The provision shall be effective once GSTN/NIC makes available the required functionality.
- There would be a single cash ledger for each tax head. The modalities for implementation would be finalized in consultation with GSTN and the Accounting authorities.

#### Dhruva Comments

- *By announcing the effective date for the amendments in the GST law, there has been some relief brought to the tax payers as certain key amendments revolve around the definition of supply, the availability of input tax credit, no*



	<p><i>requirement for discharge of GST on supplies procured from an unregistered dealer, issuance of a single credit/debit note against multiple invoices, etc.</i></p>
<p>In-principal approval to certain changes in law</p>	<ul style="list-style-type: none"><li>• Amendment to Section 50 of the CGST Act in order to ensure that that interest is charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.</li><li>• Creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The in-principal approval granted by the GST Council with regard to levy of interest only on the net cash liability is highly progressive and has created the possibility of a more practical and logically driven interest/penalty system.</i></li><li>• <i>Regarding the in-principal approval for the creation of a Central Appellate Authority for Advance Ruling, this has assuaged the confusion faced by various tax payers in cases where Authorities for Advance Ruling in separate States have given conflicting decisions. Although, at this juncture the approval by the GST Council seems to have been given for the Central Authority to adjudicate only in cases where State Appellate Authorities have delivered diverse views, and therefore, the Central Authority may in fact play a role as an exception to the existing adjudication structure, it remains to be seen whether this Authority may ultimately function as the routine forum at a second appellate level.</i></li></ul>
<p>Refund procedures</p>	<ul style="list-style-type: none"><li>• The Council has proposed that a scheme of single authority for disbursement of the refund amount sanctioned, by either the Centre or the State tax authorities, would be implemented on pilot basis;</li><li>• In addition to the refund available on account of inverted duty structure and unutilized input tax credit pertaining to exports, refund would now also be available for the followings:<ul style="list-style-type: none"><li>- As assessed in any assessment, provisional assessment, appeal or any order;</li><li>- Tax paid on intra-State supplies which is subsequently held to be inter-State, and vice versa;</li><li>- Excess payment of tax;</li><li>- Any other refund.</li></ul></li><li>• The GST Council had indicated that clarifications shall be issued on certain refund related matters like refund of ITC accumulated on account of inverted duty structure, disbursal of refunds within the stipulated time, time allowed for availment of ITC on invoices, refund of accumulated ITC of compensation cess etc;</li></ul>



- All the supporting documents/invoices in relation to a claim for refund shall be uploaded electronically on the common portal at the time of filing of the refund application, thereby doing away with the requirement for filing physical copies.
- The Claimants who have generated FORM GST RFD-01A, on the common portal before the roll out of the online functionality but have not submitted the same with the jurisdictional tax office within 60 days of the generation of ARN shall be sent communications on their registered email IDs containing information on where to submit the said refund applications. Where the applications are not submitted within 15 days of the date of the email, the said refund applications shall be summarily rejected, and the debited amount, if any, shall be re-credited to the electronic credit ledger of the claimant.

#### **Dhruva Comments**

- *The clarifications with regard to the availability of refund in various scenarios, such as the excess payment of tax and the payment of integrated tax instead of central tax and state tax, or vice versa, has effectively provided a way forward, instead of the tax payers having to debate between applying for a refund vis-a-vis availing and utilizing the credit of tax paid.*
- *In keeping with the ease of doing business under the GST law, the online utility for refund will be introduced and the requirement of submission of physical copies will be done away with.*

#### **Reverse Charge**

The GST Council has clarified that the following services shall be liable to GST under reverse charge mechanism (RCM):

- Services by the Parliament and State legislatures shall be extended the same tax treatment with regard to payment of tax under RCM as available to Central and State Governments;
- Security services (supply of security personnel) provided to a registered person, except Government Departments which have taken registration for TDS and entities registered under composition scheme;
- Services provided by unregistered Business Facilitator (BF) to a bank and agent of Business Correspondent (BC) to a BC. In this regard, it is further clarified that the banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

#### **Dhruva Comments**

- *There are no definitions in the GST law regarding a 'business facilitator' or a 'business correspondent' and therefore these terms would need to be evaluated given the ordinary business understanding of the same. The activities of a business correspondent typically would include identifying potential customers, enabling customers at various Customer Service Points.*



The activities of a business correspondent may or may not overlap with the activities of a business facilitator and currently there is no clear demarcation on the roles performed by each. This ambiguity would create confusion on chargeability and a suitable circular/notification would need to clarify the scope.

## 2. Rate changes with respect to goods and services

Sr. No.	Description of goods / services	Present rate (%)	Revised rate (%)
<b>Goods</b>			
1	Pulleys, transmission shafts and cranks, gear boxes etc., falling under HS Code 8483	28	18
2	Monitors and TVs of upto screen size of 32 inches	28	18
3	Power banks of lithium ion batteries	28	18
4	Digital cameras and video camera recorders	28	18
5	Video game consoles and other games and sports requisites falling under HS code 9504	28	18
6	Parts and accessories for carriages for disabled persons	28	5
7	Music Books	12	NIL
8	Vegetables, (uncooked or cooked by steaming or boiling in water), frozen, branded and put in a unit container	5	NIL
<b>Services</b>			
9	Cinema tickets above ₹ 100	28	18
10	Cinema tickets upto ₹ 100	18	12
11	Third party insurance premium of goods carrying vehicles	18	12

## 3. Extension of due dates for filing various GST returns

Sr. No.	Returns	Earlier Due Date	Revised Due Date
1.	<b>FORM GSTR-9, FORM GSTR-9A</b> (Annual Returns), <b>FORM GSTR-9C</b> (Reconciliation Statement) for the Financial Year 2017 – 2018	31 <sup>st</sup> December, 2018	30 <sup>th</sup> June, 2019
2.	<b>FORM GSTR-8</b> (E-commerce operator) for the months October, November and December, 2018	10 <sup>th</sup> of subsequent month	31 <sup>st</sup> January, 2019
3.	<b>FORM GST ITC-04</b> (Goods/Capital Goods sent/received to Job-Worker) for the period July 2017 - December 2018	31 <sup>st</sup> December, 2018	31 <sup>st</sup> March, 2019



4.	<b>FORM GST REG-26</b> – For taxpayers who could not complete the registration migration procedure from the old regime into the new regime.	-	31 <sup>st</sup> January 2019
5	<b>GSTR-3B &amp; GSTR-1</b> for the period July 2017 to February 2019 / quarters July 2017 to December 2018 for the above taxpayers mentioned in Sr. No. 4	-	31 <sup>st</sup> March, 2019
6	<p>Claiming of ITC in relation to invoices issued by the supplier during FY 2017-2018</p> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"> <li>• <i>A Press Release dated 18 October, 2018 was issued by the Govt. wherein it was stated that a registered person is not entitled to take ITC after the due date of furnishing the return under Sec. 39 for the month of Sept. following the end of financial year, i.e. 20<sup>th</sup> October, 2018 for the financial year 2017-18 or furnishing the relevant annual return, whichever is earlier.</i></li> <li>• <i>Further, a writ petition was also admitted in the Gujarat HC contesting the validity and legality of the press release where it was argued that as per the GST law and relevant notifications issued by the Govt., Form GSTR-3B is not a substitute of Form GSTR 3. Thus, since GSTR 3 has been currently deferred by the Govt., the last date to avail ITC as mentioned in the press release is bad in law.</i></li> <li>• <i>Accordingly, the last date to take input credit of the last financial year can be only on the basis of last date of furnishing of annual return, i.e. Form GSTR-9.</i></li> <li>• <i>Considering the disparity in the extension for claiming ITC and the extension for the filing of the GSTR-9, the issue of determining the last date under Section 16(4) of the CGST Act for claiming ITC would still continue.</i></li> </ul>	20 <sup>th</sup> October 2018 – at the time of filing of GSTR-3B for the month September 2018	20 <sup>th</sup> April 2019 - at the time of filing of GSTR-3B for the month March 2019

#### 4. Clarifications / exemptions recommended

Clarification on rate of solar power generating plant and other renewable energy plants (SPGS)

- Valuation mechanism prescribed in respect of EPC contracts of SPGS i.e. construction of solar power plants where there is supply of goods and services:
  - 70% of the gross value shall be deemed to be the value of supply of goods attracting GST @ 5%;
  - Remaining portion i.e. 30% of the aggregate value of such EPC contract shall be deemed to be the value of service which shall attract standard GST rate.



	<p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>Recently, divergent advance rulings have been pronounced by various State AAR's in respect of taxability of EPC contracts of SPGS which led to dispute / confusion in solar industry. The said clarification seeks to settle the dispute and would provide a major relief to the industry. Consequent to this clarification, the effective GST rate would be 8.9%.</i></li></ul>
Other clarifications in relation to rate of goods	<ul style="list-style-type: none"><li>• Movement of rigs, tools &amp; spares and all goods on wheels on own account where such movement is not intended for further supply of such goods, but for the provision of service (e.g., movement of testing equipment etc.) – Not a supply and shall not be liable to GST;</li><li>• Turbo charger shall be classifiable under heading 8414 and GST @ 18% shall apply and not 5%.</li></ul>
Clarifications with respect to Services	<ul style="list-style-type: none"><li>• Services provided by International Finance Corporation (IFC) and Asian Development Bank (ADB) shall be exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act, 1966;</li><li>• Rate of 12% for multi-modal transport inserted w.e.f. 26.07.2018 applicable only for transport of goods from a place in India to another place in India, i.e. only domestic multi-modal transport;</li><li>• The nature of business establishment making supply of food, drinks and other articles for human consumption shall not determine whether the supply by such establishments is a supply of goods or services. It will depend on the constituents of each individual supply and whether same satisfies the conditions / ingredients of a “composite supply” or “mixed supply”;</li><li>• The activity of “Printing of pictures” falls under service code “998386: Photographic and videographic processing services” of the scheme of classification of services and shall;</li><li>• Clarification to Food Corporation of India (FCI) - Service provided by godown owner in case of lease with services, where the godown owner in addition to leasing the warehouse also undertakes activities of storage and preservation of stored food grains, shall be regarded as service of storage and warehousing of agricultural produce and the same shall be exempt;</li><li>• Supply of food and drinks by an educational institution to its students, faculty and staff shall be exempt from GST, when provided by the institution itself. GST @ 5% shall be leviable only when such services provided by any other person based on a contractual arrangement with such institutions.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>Similar clarification was provided vide an earlier Circular<sup>1</sup> which was subsequently withdrawn consequent to amendment in Notification No. 11/2017-Central tax (Rate). However, the said amendment in the Rate Notification did not</i></li></ul>

<sup>1</sup> Circular No. 28/02/2018-GST dated 08-01-2018



	<p><i>explicitly highlight the exemption and therefore, to avoid any confusion in future on the applicability of the exemption, the above clarification seems to have been brought in.</i></p>
Other announcements	<ul style="list-style-type: none"><li>• Supply of gold by Nominated Agencies to exporters of article of gold jewellery shall be exempted from GST;</li><li>• GST @ 5% / 18% on supply of footwear to be levied on the transaction value.</li></ul>
Exemption related to Services	<ul style="list-style-type: none"><li>• Services provided by GTA to government departments / local authorities which are registered under GST only for the purpose of deducting tax in terms of Section 51 of CGST Act shall be excluded from payment of tax under RCM and the same shall be exempted</li></ul>
Clarifications with respect to filing of GST returns	<ul style="list-style-type: none"><li>• All <b>GSTR-1 and GSTR-3B</b> must be filed before filing GSTR-9 &amp; GSTR-9C, and all <b>GSTR-4</b> must be filed before filing GSTR-9A.</li><li>• ITC cannot be availed through GSTR-9 &amp; GSTR-9C, and additional payments, if any, required to be paid can be done through Form GST DRC-03 only in cash;</li><li>• Amendments to be made in the headings in Form GSTR-9 &amp; GSTR-9A to specify that the returns would be in respect of supplies etc. 'made during the year' and not 'as declared in the returns filed during the year' To explain further, in case certain invoices pertaining to FY 2017-18 were reported in the returns filed in the FY 2018-19, the same will now have to be disclosed in Form GSTR-9 &amp; GSTR-9A to be filed for FY 2017-18, which was not the case earlier.</li><li>• Late fee has been waived for all taxpayers where <b>GSTR-1, GSTR-3B</b> and <b>GSTR-4</b> returns for the months / quarters July 2017 to September 2018, has been furnished after 22.12.2018 but on or before 31.03.2019.</li></ul>

## 5. Matters referred to various Committees / GoM

	<ul style="list-style-type: none"><li>• Composition scheme for small service providers - Law Committee and Fitment Committee</li><li>• Tax rate on lotteries – Committee of States</li><li>• Taxation of residential property in real estate sector - Law Committee and Fitment Committee</li><li>• Threshold limit of exemption under GST regime – GoM on MSMEs</li></ul> <p><i>(A view on the above issues would be taken by GST council in its next meeting)</i></p>
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## ADDRESSES

### Mumbai

1101, One IndiaBulls Centre,  
11th Floor, Tower 2B,  
841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahlanagar, Corporate Road,  
Ahmedabad - 380 015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart,  
Baner, Pune - 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal – 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
U-Bora Tower 2, 11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel: + 971 56 900 5849

### Bahrain

WTS Dhruva Consultants  
Bahrain Financial Harbour, East Tower - Floor 23,  
Office 2301, Building 1398, Road 4626, Block 346.  
Manama, Kingdom of Bahrain  
Tel: +973 1663 1921

### New York

Dhruva Advisors USA, Inc.  
340 Madison Avenue, 19th Floor, New York,  
New York 10173 USA  
Tel: +1-212-220-9494

### Silicon Valley, USA

Dhruva Advisors USA, Inc.  
5201 Great America Parkway,  
Santa Clara, California 95054  
Tel: +1 408 930 5063

## KEY CONTACTS

### Dinesh Kanabar (Mumbai)

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Ritesh Kanodia (Mumbai)

ritesh.kanodia@dhruvaadvisors.com

### Niraj Bagri (Mumbai)

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani (Mumbai)

ranjeet.mahtani@dhruvaadvisors.com

### S Srinath (Bangalore)

srinath.s@dhruvaadvisors.com

### Pratik Shah (Dubai)

pratik.shah@dhruvaadvisors.com

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