



## CBIC issues enabling Notifications pursuant to the 37<sup>th</sup> GST Council meet held on September 20, 2019

Our tax alert provides an insight into some of the key amendments / clarifications made pursuant to 37<sup>th</sup> GST Council meeting held on September 20, 2019:

### 1. Rate changes with respect to key services - effective from October 01, 2019

#### A. Rate change for hotel and restaurant services

Sr. No.	Amended Entry		Erstwhile Entry	
	Particulars	GST Rate	Particulars	GST Rate
1	- Supply of "hotel accommodation" having value > INR 1,000 and <= INR 7500 per unit per day	12%	- Supply of accommodation services having value > INR 1,000 and < INR 2500 per unit per day	12%
	- Supply of hotel accommodation services with food [Residuary entry]	18%	- Supply of accommodation services having value >= INR 2,500 and < INR 7500 per unit per day	18%
			- Supply of accommodation services having value >= INR 7,500	28%
			- Supply of goods [being food or any other article] in a premise of hotels, inns, guest house etc. having declared tariff of any units of accommodation for INR 7500 or more	18%
<b><i>Dhruva Comments - The amendment has simplified and re-</i></b>				





- HSN 9986 to include Support services to agriculture, hunting, forestry, fishing, mining and utilities
- New sub-entry (id) inserted under HSN 9988 to prescribe the residuary rate for supply of job work services at 12%.

**Dhruva comments** – This entry overlaps with the sub-entry 9988(iv) wherein the residuary rate for Manufacturing job work services continues to be at 18%. Pursuant to the 37<sup>th</sup> GST Council press release, only supply of machine job work services such as in the engineering industry was intended to be reduced to 12%, however, the notification amending the said HSN 9988 does not indicate the said intent.

### C. Exemption for services

- The time limit for below exemptions have been extended **till 30<sup>th</sup> September 2020**:
  - Services by way of transportation of goods by a **vessel** from customs station of clearance in India to a place outside India
  - Services by way of transportation of goods by an **aircraft** from customs station of clearance in India to a place outside India
- The Government has **exempted services** by a hotel, inn, guest house, club or campsite, for residential or lodging purposes, where value of supply of a unit of accommodation **is less than or equal** to INR 1000. Earlier the exemption was only for services **below** INR 1000.
- Exemption extended to services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea [**Heading 9967 or Heading 9985**]
- Services provided by an intermediary to a supplier or recipient of goods when both the supplier and recipient of goods are outside taxable territory, subject to condition that specified documents (as prescribed) are maintained for minimum 5 years

**Dhruva comments** – Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India has already been excluded from the purview of GST by amending Schedule III. Such transactions are neither treated as supply of goods or supply of services. The aforesaid amendment has now extended the exemption to intermediary services provided with respect to such transactions.

It may be noted that transactions under Schedule III have been excluded from the value of exempt supply and therefore do not entail any reversal of credit. However, the aforesaid exempt services would have to be considered as part of the value of exempt supply for the purposes of reversal of credit.

## 2. Amendments to Reverse Charge Mechanism - effective from October 01, 2019

Sr. No.	Description of Services	Supplier of Service	Recipient of Service
(a)	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business.	Any body corporate located in the taxable territory



		<b>Dhruva comments - The Reverse charge is only applicable to a service provider, other than a body corporate, who is currently liable to GST @5% with respect to services provided by way of renting of motor vehicle to a body corporate</b>	
(b)	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI.	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI

- (c) Modifications made to the existing RCM entries so as to permit the registered authors an option by filing a declaration in specified Form to pay GST on royalty charged from publishers under forward charge and observe regular GST compliance.

### 3. Other amendments / clarifications - effective from October 01, 2019

<b>Other amendments</b>	<ul style="list-style-type: none"> <li>Manufacturers of aerated water excluded from the purview of composition scheme</li> <li>Notification issued under section 7(2) of the CGST Act to provide that granting of liquor license by State Government against payment of license or application fee is neither supply of goods nor services</li> <li>The place of supply for Research &amp; Development (R&amp;D) services related to the pharmaceutical sector provided by an Indian service provider to foreign service recipient would be the location of service recipient (unlike the place of performance in case of R&amp;D services generally). Accordingly, such R&amp;D services related to the pharmaceutical sector could qualify as 'export of services' subject to fulfillment other conditions under the GST law.</li> </ul> <p><b>Dhruva comments - There has been a dispute regarding taxability of clinical research services in the pre-GST regime whereby, the tax authorities have alleged classification as 'intermediary services'. Also, where sample products are provided by the foreign recipient to the Indian service provider for carrying out R&amp;D, the issue was whether that would qualify as a performance-based service and therefore, not an export. While the issue stands addressed for the Pharmaceutical sector, the dispute would continue for other sectors carrying out R&amp;D activities.</b></p>
<b>Clarifications / Circulars</b>	<ul style="list-style-type: none"> <li>Ab-initio withdrawal of Circular No. 105/24/2019-GST wherein certain clarifications were given in relation to treatment of secondary or post-sales discounts under GST</li> </ul> <p><b>Dhruva comments - There is an on-going litigation under the service tax regime whereby, the tax authorities have alleged levy of service tax on discounts / incentives received by dealers on the basis that the dealer is providing promotion / marketing services to the manufacturer. There are positive judicial precedents on the issue.</b></p>



	<p><i>While the Circular has been withdrawn, until a new circular is issued clarifying the position, the authorities are likely to raise demand notices on the issue involved. In certain situations, this being a tax neutral exercise whereby, manufacturers are entitled to take credit, dealers have decided to charge GST.</i></p> <ul style="list-style-type: none"><li>• Clarification issued regarding procedure for claiming refund subsequent to favorable order in appeal</li><li>• Clarification issued on re-filing of refund application in Form GST RFD-01A/RFD-01 where 'NIL' claim was opted inadvertently</li></ul>
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#### 4. Amendments under Customs Law

<b>Customs-IGST exemption for goods imported under lease and treated as supply of services under GST</b>	<ul style="list-style-type: none"><li>• Scope of Customs-IGST exemptions under Sr. No. 557A and 557B of Notification No. 50/2017 – Customs dated 30.06.2017 amended to align the description of the exemption entries to the description under the GST law<ul style="list-style-type: none"><li>– <b>557A.</b> Rigs and ancillary items imported for oil or gas exploration and production <b>under a transaction covered by item 1(b) or 5(f) of Schedule II of the CGST Act</b></li><li>– <b>557B.</b> All goods, vessels, ships [other than motor vehicles] imported <b>under a transaction covered by item 1(b) or 5(f) of Schedule II of the CGST Act</b></li></ul></li></ul> <p><i><b>Dhruva comments</b> - Earlier the above entries used the phrase “taken on lease by the importer for use after import”, which led to an interpretation that only items used for self-use would get covered under the said description. This interpretation led to the denial of the benefit to various leasing companies who used the imported goods for onward leasing to customers in India. The amendment has broadened the scope of the entry to extend the exemption to cover all transactions wherein the goods are imported under lease and IGST is paid on such procurement under reverse charge mechanism under the GST law.</i></p>
<b>New Regulations for monitoring movement of goods to Nepal</b>	<ul style="list-style-type: none"><li>• The new Electronic Cargo Tracking System Regulations, 2019 have been issued in relation to monitoring physical movement of goods transshipped to Birjung and Biratnagar ports of Nepal from ports located at Kolkata, Haldia and Visakhapatnam in India, in case of transportation by rail and from Batnaha port in India in case of transportation by road.</li><li>• The regulations are applicable to “authorised carriers” i.e. an authorized sea carrier, an authorized train operator, shipping line or a custodian, registered under regulation 3 of the Sea Cargo Manifest and Transshipment Regulations, 2018 or his authorised agent, and provide guidelines relating to documentation and sealing of containers for movement of goods.</li></ul>



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