

Key proposals from 53rd meeting of the GST Council

The 53rd meeting of the GST Council was held on June 22, 2024. The Council made several recommendations regarding GST rates, clarifications on various issues, amendments to the GST Law and other measures for facilitation of trade. This alert captures the key points from this meeting:

A. Legislative Changes

1. Amendment to Section 16(4) of the Central Goods and Services Tax Act, 2017 ('CGST Act') to provide a due date for availing input tax credit ('ITC') on any invoice or debit note pertaining to Financial Year ('FY') 2017-18 to FY 2020-21 ('subject period') as November 30, 2021.

Dhruva Comments

Section 16(4) was amended *vide* Finance Act, 2022 effective October 1, 2022 to provide time limit to avail ITC in respect of invoice or debit note as November 30 of the succeeding FY. Recently, Kerala High Court in the case of ***M. Trade Links v. UOI***¹ provided that the extended time limit till November 30 shall be applicable for FY 2017-18 onwards. This amendment further extends this benefit to November 30, 2021 for the entire subject period. It may therefore reduce the litigations around delayed availment of ITC for the subject period.

2. Section 16(4) of the CGST Act to be retrospectively amended from July 1, 2017 to allow ITC to recipient taxpayer subject to filing of returns within thirty days from the revocation of cancellation order.
3. Section 16(4) to be amended to provide for time limit to avail ITC on tax paid under Reverse Charge Mechanism ('RCM') on the basis of self-invoice generated by the recipient taxpayer (and not on the basis of invoice issued by the supplier).

Dhruva Comments

This proposal aims to solve interpretational issues around eligibility and its related time restrictions for availing ITC under RCM.

¹2024-VIL-559-KER



4. Interest under Section 50 of the CGST Act for late filing of returns not to be levied on amount available in Electronic Cash Ledger on the due date of filing GSTR-3B and used to pay tax for such period.

Dhruva Comments

This proposal aims to settle divergent views of various High Courts in so far as to relax the levy of interest to the extent of available amounts in cash ledger. The intent of this proposal seems to include in its ambit resolution owing to technical glitches of the portal.

5. Section 11A to be inserted in CGST Act to empower the government to regularize non-levy or short levy of GST due to common trade practices.

Dhruva Comments

This proposal provides a discretionary power to the government for regularising the general trade practices over tax payments/exemption claimed on various supplies. Similar powers existed under Section 11C of the erstwhile Central Excise Act, 1944 and Customs Act, 1962.

6. GST to not be levied on Extra Neutral Alcohol ('ENA') used to manufacture alcoholic liquor for human consumption.

Dhruva Comments

Taxability of ENA has been a raging issue. 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.**² held that ENA falls outside the phrase 'alcoholic liquor for human consumption' and the State has lost its legislative competence to enact laws to impose tax on sales of ENA, hence, subject to GST. This proposal aims to bring certainty over the taxation of ENA.

7. Introduction of a new Section 74A to the CGST Act to provide for a common time limit from FY 2024-25 onwards for issuing SCN and order under Sections 73 and Section 74 of the CGST Act, 2017. Further, time limit towards payment of tax and interest post issuance of SCN to be extended to 60 days from existing 30 days to avail the benefit of reduced penalty.
8. Section 140(7) of the CGST Act to be amended retrospectively effective July 1, 2017 to allow transitional credit for invoices related to services provided before the appointed date where invoices were also received by the Input Service Distributor (ISD) before the appointed date.

Dhruva Comments

This is a welcome proposal, as it addresses cases where service tax invoices were received by ISD before the appointed date but were not distributed prior to the introduction of GST, as required by transition provisions. Now the availment and distribution of such credits (for invoices received before the appointed date) will be permitted under Section 140(7) of the CGST Act.

9. April 1, 2025 proposed to be the sunset date for anti-profiteering provisions under GST, post which no new applications regarding anti-profiteering will be accepted. Principal Bench of the GST Appellate Tribunal (GSTAT) will be assigned for hearing anti-profiteering cases.

² 2021 (10) TMI 583



Dhruva Comments

A much-awaited amendment of introduction of sunset clause in anti-profiteering provisions.

10. Time limit of 3 months under Section 112 for filing appeal before the Appellate Tribunal to begin from a date to be notified (and not the date when the President assumes office).
11. Export refund will not be allowed on zero rated supply of goods subject to export duty. This restriction will apply equally to with payment or without payment cases.

B. GST rate changes and exemptions

1. A uniform rate of 5% on imports of aircraft parts, components, testing equipment, tools, and toolkits, regardless of their HS classification.
2. All milk cans made of steel, iron, or aluminium to be taxed at 12% regardless of their use.
3. GST rate on cartons, boxes, and cases made of both corrugated and non-corrugated paper or paperboard to be reduced to 12% from 18%.
4. Solar cookers, whether single or dual energy source to be taxed at 12%.
5. All types of sprinklers, including fire water sprinklers to be taxed at 12% GST. Past practices to be regularised on 'as is where is' basis due to interpretational issues.
6. Reduction in TCS rate from 1% to 0.5% for supplies made through Electronic Commerce Operators .
7. Services provided by Indian Railways to the public (platform tickets, retiring rooms, etc.) and intra-Railway transactions are to be exempted, with regularization from October 20, 2023 onwards.
8. Compensation Cess on imports by Special Economic Zone ('SEZ') Unit or SEZ Developers for authorised operations will be exempted effective July 1, 2017.

Dhruva Comments

This amendment will reduce the overall costs for SEZ Units and Developers leading to significant savings. It's a welcome step following the Andhra Pradesh High Court's ruling in the case of **Maithan Alloys Ltd. vs. UOI³** which held that SEZ Units are liable to pay GST compensation cess on imported coal.

9. A new entry will be inserted in **Notification No. 12/2017-Central Tax (Rate)** dated **June 28, 2017** ('Service Exemption Notification') to exempt accommodation services provided for a minimum continuous period of ninety days, where consideration is up to Rs. 20,000 per month per person. The benefit will be applicable for past cases as well.

³(2024) 14 Centax 67 (A.P.)



C. Trade Remedial Measures

1. Section 128A to be inserted in the CGST Act to waive interest and penalties on demands raised under Section 73 of CGST Act, for FY 2017-18 to FY 2019-20 upon payment of tax demand up to March 31, 2025.

Dhruva Comments

Much awaited amnesty scheme to reduce the pending litigations. Several modalities as to the inclusions and limitation of the matters under this proposed Amnesty is to be seen.

2. Reduction in pre-deposit amount for filing an appeal, amendment in Section 107 and 112 of CGST Act:
 - Before the Appellate Authority, capped at Rs. 20 crores under CGST and SGST each from existing Rs. 25 crores each
 - Before the Appellate Tribunal to be reduced from 20% to 10% (with a maximum of Rs. 20 crores CGST and SGST from Rs. 25 crores each).
3. Prescription of monetary limits for filing appeals by department with certain exclusions:
 - Rs. 20 lakhs for GST Appellate Tribunal (GSTAT)
 - Rs. 1 crore for High Court and
 - Rs. 2 crores for Supreme Court.
4. GSTR-1A to be introduced for amending GSTR-1 of a particular period before filing its GSTR-3B.

Dhruva Comments

Allowing amendment of GSTR-1 is a welcome step. This process change is to be tested on stringent timeline available for reconciliation of ITC with that available in GSTR-2B.

5. Mechanism to be provided for claiming refunds of additional IGST paid due to price revisions after goods are exported.
6. Mechanism to adjust the amount paid *via* Form GST DRC-03 against pre-deposits required for filing appeals is to be provided.

Dhruva Comments

This proposal regularises the burden of compliance in case of inadvertent payments of pre deposits of appeal made through GST DRC-03. The issues around admitted liabilities paid through GST DRC-03 still remains contentious.

D. Compliance Related Changes

1. Biometric based Aadhaar authentication in GST registration to be implemented on All India basis in a phased manner.
2. Threshold for reporting invoice-wise B2C inter-State supplies in Table 5 of FORM GSTR-1 to be reduced from Rs. 2.5 Lakhs to Rs. 1 lakh.



3. Monthly filing of Form GSTR-7 proposed irrespective of TDS deduction, with a relaxation in late fee for NIL returns.
4. Relaxation in filing annual return of FY 2023-24 in GSTR-9/9A, to taxpayers having turnover up to 2 crores.
5. Due date for filing GSTR-4 for composition taxpayers to be extended from 30th April to 30th June, effective from FY 2024-25 onwards.

E. Proposed Clarifications

1. Invoice value for supply of specific services provided by foreign affiliate to a related domestic entity (where the domestic entity is eligible for full ITC) shall be deemed to be Open Market Value or NIL in case no invoice is issued by the domestic entity.

Dhruva Comments

Again a welcome clarification, as there are several instances of non-payment of GST under reverse charge transactions where consideration is not paid to foreign affiliate like transfer of trademark, royalty payments etc. It is important to watch and analyse the set of services that may be proposed in the clarification.

2. Rules related to valuation of Corporate Guarantees between related parties to be applicable from date of insertion, i.e. October 26, 2023 and shall not be applicable in scenarios of export of such services and also where the recipient is eligible for full ITC. Further, clarifications on valuation issues to be issued.
3. Activity of apportionment of premium between lead insurer and co-insurer to be covered under Schedule III of the CGST Act and accordingly not to be considered as a supply. Past cases to be regularized on 'as is where is' basis. Similar treatment to be given to transaction of ceding commission/re-insurance commission between insurer/re-insurer.

Dhruva Comments

The legacy under the Service Tax regime has been proposed to be carried forward. Importantly, the co-insurer does not render any separate service to the lead insurer; the arrangement involves only the sharing of expenses. The insurance premium is collected in full by the lead insurer, who pays GST on the entire amount before distributing the remainder to the co-insurers according to their agreed shares.

4. ITC reversal in respect of premium in Life insurance services, where a portion of premium is not included in the taxable value.

Dhruva Comments

The issue centres on how GST authorities treat the non-taxable portion of insurance premiums in traditional life insurance policies and endowment plans i.e. whether it is reduction in valuation or provision of exempt supplies or otherwise.

5. Statutory collection made by RERA to be exempted from GST.
6. Taxability of securities/shares as ESOP/ESPP/RSU re-imbursed by a company to its employees.



7. Warranty/extended warranty provided by manufacturers to the end customers.
8. Taxability of loans granted between related person or between group companies to be provided.
9. Time of supply to be provided in case of annuity payments under Hybrid Annuity Model (HAM) projects.
10. Time of supply to be provided in respect of allotment of Spectrum to Telecom companies in cases where payment of license fees and spectrum usage charges are made in instalments.
11. Place of supply of goods supplied to unregistered persons, where delivery address is different from the billing address.
12. Mechanism to be followed for the suppliers to ensure reversal of ITC by the recipient on credit notes in respect of post-sale discounts.
13. Place of supply for custodial services provided by Indian banks to Foreign Portfolio Investors to be determined as per Section 13(2) of the IGST Act, 2017.





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