

Nangia Andersen LLP

Newsflash

Key recommendations of 50th GST council meeting

July 2023





Recommendations relating to services, taxation on Casinos, horse racing and online gaming

- **Process Streamlined for Goods Transport Agencies (GTA):** GTAs will not be required to file declaration for paying GST under forward charge every year. They shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to reverse charge mechanism (RCM).
- **Taxability of Services by a Director to the Company:** Services supplied by director in his private or personal capacity for instance supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by him under capacity of director are to be taxed under RCM in the hands of the company or the body corporate.
- **Taxability of Food and Beverages in Cinema Halls:** Supply of foods and beverages in cinema halls will be taxable as restaurant service if they are supplied by way of or as part of a service and they are supplied independently of the cinema exhibition service.

Where sale of cinema ticket and food & beverages are clubbed together and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

- **Taxability of Online Gaming and Horse Racing:** The words online gaming and horse racing to be included in schedule III as taxable actionable claims. Casinos, horse racing and online gaming to be taxed at uniform rate of 28%.
- **Tax Calculation for Casinos, Horse Racing, and Online Gaming:** The tax will be applicable based on the face value of chips purchased in casinos, the full value of bets placed with bookmakers/totalisator in horse racing, and the full value of bets placed in online gaming.

Measures for facilitation of trade

- **Rules for GST Appellate Tribunal:** To introduce GST Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 for enabling smooth constitution and functioning of GST Appellate Tribunal.

The provisions of Finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre w.e.f. 1 August 2023 so that the same can be brought into operation at the earliest.

- **Relaxations in Filing GSTR-9/ GSTR-9C:** Relaxation provided in FY 2021-22 in respect of various tables of Form GSTR-9 and Form GSTR-9C to be continued for FY 2022-23.
- **Exemption from GSRT-9:** Exemption from filing of annual return for tax payers having annual turnover upto two crore rupees to be extended to FY 2022-23.
- **Mechanism of Input Services Distributor (ISD):** To provide clarification by way of circular that Input Services Distributor (ISD) mechanism is not mandatory for distribution of input tax credit of common input services procured from third parties to the distinct persons as per the present provisions of GST law.

Clarification to be issued regarding taxability of internally generated services from one distinct person to another distinct person.

To make amendment in law for making ISD mechanism mandatory prospectively for distribution of input tax credit of such common input services procured from third parties.

- **Warranty Replacement:** To provide clarification by way of circular that no GST is chargeable and no reversal of input tax credit is required to be made by the manufacturer in cases involving warranty replacement of parts and/or repair services during warranty period without any consideration from the customers.
- **Refund Related Clarifications:** To provide clarification by way of circular on various refund related issues such as:
 - Refund of accumulated ITC under section 54(3) for a tax period to be restricted to ITC on inward supplies reflected in Form GSTR-2B for any previous or same tax period.
 - The value of 'export goods' should be included in "adjusted total turnover" which is calculated as per rule 89(4).
 - Admissibility of refund in cases where export of goods, or realization of payment for export of services is made after the time limit provided.
- **Tax Collection at Source (TCS) Liability:** To provide clarification by way of circular regarding TCS liability where multiple E-commerce operators are involved in a single transaction of supply of goods or services or both.

- **Simplified Tax Invoice Requirements in case of OIDAR:** Amendment to provide for requirement of only name of the State of the recipient, and not the name and full address of the recipient, on the tax invoice in cases of supply of taxable services by or through an ECO or by a supplier of OIDAR services to an unregistered recipient.
- **Circular to be issued for providing clarification on the following issues in order to remove ambiguity and legal disputes:**
 - E-Invoice to be generated for supplies made to Government Departments, Government agencies, local authorities, and Public Sector Undertakings (PSUs) registered solely for the purpose of Tax Deduction at Source (TDS) in case of registered persons whose turnover exceeds the prescribed threshold for generation of e-invoicing;
 - Manner of calculation of interest for wrongly availed and utilized IGST credit. In case of wrong availment of IGST credit, the balance ITC of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability.
 - Mere holding of securities of a subsidiary company by the holding company cannot be treated as supply of services and therefore, cannot be taxed under GST.
- **Extension of relief with regard to ITC mismatch:** The relief provided in circular 183/15/2022, which provided special procedure regarding mismatch in ITC availed in GSTR 3B vis-a-vis available in GSTR-2A during FY 2017-18 and 2018-19, will be extended for the FY 2019-20 and FY 2020-21.
- **Special Procedure for Filing Appeals:** Special procedure to be provided to enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/TRAN-2, filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd.

To amend CGST Rules to provide for manual filing of appeal under certain specified circumstances.
- **Amnesty Schemes to be extended:** The benefit of amnesty scheme regarding non filer of Form GSTR-4, Form GSTR-9 & Form GSTR-10, Revocation of cancellation of registration and deemed withdrawal of assessment orders issued under section 62 of CGST Act, 2017 to be extended till 31 August 2023.

Recommendations to strengthen the registration process

- To reduce the time limit of furnishing the Bank details of new registration from 45 days to 30 days from the date of grant of registration or before filing of statement of outward supply in Form GSTR-1, whichever is earlier;
- System based suspension of registration in respect of registered person who do not furnish valid bank account details with time limits prescribed under Rule 10A and automatic revocation of such system based suspension upon Compliance of Rule 10A;
- If a registered person has not furnished the bank details in terms of Rule 10A, said person shall not be allowed to furnish the details in GSTR1/IFF;
- Presence of the applicant at the time of Physical verification of business premises would not be mandatorily required. Further, physical verification to be conducted in high risk cases even where aadhaar authentication has been completed;

Other recommendations

- **Recovery of Tax and Interest:** Manner of recovery of tax and interest in respect of the differential amount of output tax liability as per GSTR-3B and GSTR-1, intimated under Rule 88C, which has not been paid and for which no satisfactory explanation has been furnished by registered person;
- **System-Based Intimation Mechanism:** System-based intimation to taxpayers in case of excess availment of ITC in Form GSTR3B vis a vis that is available in GSTR2B above a certain threshold. Taxpayers would be required to explain the reasons of the differences or take remedial action in respect of such difference;
- **Failure in filing of GSTR-9/9A:** Notice in Form GSTR3A would be issued to taxpayers who fail to furnish Annual Return in Form GSTR 9 and GSTR 9A within prescribed due date.
- **Reporting of OIDAR Supplies to Registered Persons in India:** OIDAR Service providers is required to provide details of supplies made to registered persons in India in return Form GSTR 5A. It will help in ensuring payment of tax on reverse charge basis by registered person in India in respect of supplies received from OIDAR service providers;
- **Supply from Duty-Free Shops:** To include the value of supply of goods from Duty Free shops at arrival terminal at international airports to the incoming passengers in value of exempt supplies for the purpose of reversal of ITC;
- **Biometric-Based Aadhaar Authentication:** A Pilot project for risk-based biometric-based Aadhar Authentication of registered applicants in Puducherry and Andhra Pradesh.
- **Account Aggregators:** Manner and conditions of consent based sharing of information of registered persons available on the common portal with other systems. The Council further has recommended insertion of section 158A of CGST Act 2017 for notifying Account Aggregators as the systems with which information of registered persons will be shared by the common portal.
- **Clarification on Place of Supply:** Clarification with regard to the place of supply in case goods are supplied to an unregistered person in India.
- **State level coordination committee:** The Council proposed the incorporation of a State level coordination committee. This committee will include GST officers from both State and Central GST administrations. The committee will emphasise on sharing the knowledge of GST matters and work together to implement the respective administrative and preventive measures effectively.
- **Measures to curb frauds:** Recommendations to initiate effective measures to curb frauds in GST through system-based reforms/ measures. Such measures include strengthening the registration process, using third-party data for risk management, and controlling flow of fake Input Tax Credit along the supply chain. These reforms seek to enhance the efficiency, transparency, and integrity of the GST system along with streamlining the compliance system.

Recommendations relating to GST Rates on Goods

- **Vehicles included in Compensation Cess Notification:** All utility vehicles by whatever name called having length exceeding 4000, engine capacity exceeding 1500cc and having ground clearance of 170mm & above will be included under entry 52B in compensation cess (Compensation cess @ 22%).
- **IGST Exemption on Imported Medicine:** The proposal suggests exempting IGST on Dinutuximab (Quarziba) medicine imported for personal use.
- **IGST Exemption for Medicines and Food for Special Medical Purposes:** In accordance with the National Policy for Rare Diseases, 2021, IGST exemption will be extended to medicines and Food for Special Medical Purposes (FSMP) used in treatment. The exemption will also include FSMP imported by Centres of Excellence for Rare Diseases.
- **Regularization of Trauma, Spine, and Arthroplasty Implants:** Matters concerning trauma, spine, and arthroplasty implants that were prior to 18 July 2022 will be regularized on an "as is basis."
- **Tax on Uncooked/Unfried Snack Pellets reduced:** The proposal to reduce the tax on uncooked/unfried snack pellets to 5% has been put forth. Additionally, the GST on these snack pellets during the past period will be regularized on an "as is basis."
- **Inclusion in the list of banks for IGST Exemption on Gold/Silver/Platinum Imports:** RBL and ICBC bank will be included in the list of specified banks for which IGST exemption is available on imports of gold, silver or platinum and thereby the list of banks/ entities eligible for such exemption as per Annexure 4B (HBP) of the Foreign Trade Policy (FTP), 2023 will also be updated.

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