



Tax Flash News



23 June 2024

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Key recommendations of the 53rd GST Council meeting

Executive summary



The new Government took over in early June after the General election and it was expected that the GST council meeting on 22 June would take up some important issues being faced by the industry especially as it was meeting after a gap of eight months. The decisions made in this 53rd council meeting will primarily benefit the industry whether it be an amnesty of sorts waiving interest and penalty in specific cases if tax is paid by 31 March 2025 or an extended time limit for availment of credit in the initial years after GST rollout. Since the roll-out of GST, the union budget has merely been restricted to amendments in the GST Act while GST council meetings remain at the heart of GST changes and clarifications and this meeting proved this in more than one way.

Amendments to GST law



- a. *Waiver of interest and penalty where full tax is paid before 31 March 2025, relating to demand notices issued under Section 73 for FY 2017-18 to FY 2019-20 [by introducing Section 128A to CGST Act].*
 - The said waiver would not apply to cases of demand pertaining to erroneous refunds.
- b. *Power to Regularize non-levy or short levy of GST*
 - New Section 11A to be introduced in the CGST Act to give power to the government to regularize non-levy/short levy of GST where tax was being short paid/not paid due to common trade practices.
- c. *Common time limit for issuance of demand notices and orders*
 - New Section 74A to be introduced in the CGST Act to provide for the common time limit for the issuance of demand notices and orders from FY 2024-25 onwards irrespective of whether the case involves fraud, suppression, willful misstatement etc., or not.
- d. *Anti-profiteering*
 - The time limit for the taxpayers to avail the benefit of reduced penalty, by paying the tax along with interest, is to be extended from the present 30 days to 60 days.
 - Amendments to be made in section 171 and section 109 of the CGST Act to provide a sunset clause for anti-profiteering under GST and that the principal bench of GST Appellate Tribunal (GSTAT) to handle the pending cases.
- e. *Following transactions are to be declared as “no supply” under Schedule III of the CGST Act*
 - Apportioning of co-insurance premium by the lead insurer to the co-insurer
 - Ceding commission/re-insurance commission between the insurer and the re-insurer.

f. Reduction in pre-deposit before filing appeals

- Appellate Authority: The maximum pre-deposit is to be capped at INR 20 Crore CGST and SGST each.
- Appellate Tribunal: The maximum pre-deposit is reduced from the present 20% to 10% (to be capped at INR 20 Crore CGST and SGST each).

g. Amendment to exclude Extra Neutral Alcohol (ENA) from GST

Section 9(1) of the CGST Act is to be amended for not levying GST on Extra Neutral Alcohol used for the manufacture of alcoholic liquor for human consumption.

h. Time limit for filing an appeal in GST tribunals

Section 112 of the CGST Act to provide that the time limit for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government.

i. Amendment to penal provisions under Section 122(1B)

- Section 122(1B) provides for penalties for offences by e-commerce operators.

- Retrospective amendment in said Section w.e.f., 1 October 2022 to clarify that the said penal provisions will apply only to e-commerce operators liable for TCS [Section 52 of CGST Act].

j. Availment of Input tax credit

- Retrospective amendment in Section 16(4) of the CGST Act w.e.f., 1 July 2017 to provide that the time limit to avail input tax credit in respect of any invoice/debit note for FY 2017-18 to FY 2020-21 shall be upto 30 November 2021.
- Retrospective amendment w.e.f., 1 July 2017 in Section 16(4) of the CGST Act to conditionally relax the time limit for availing ITC in cases where returns for the period from the date of cancellation of registration till the date of revocation of such cancellation are filed within thirty days of the order of such revocation.

k. *Curtailling refund of IGST in cases where export duty is payable*

- Section 16 of the IGST Act and Section 54 of the CGST Act to be amended to provide that the refund in respect of goods liable to export duty, is restricted in both cases viz., goods exported without payment of taxes or with payment of taxes.
- Such restrictions apply also to goods supplied to an SEZ unit/developer for authorized operations.

l. *Transitional credit*

- Section 140(7) to be retrospectively amended w.e.f., 1 July 2017 to provide for cases where ISD would have received the invoices before 1 July 2017.

Amendments to GST Rules



- a. Amendment in rule 142 of CGST Rules and issuance of a circular to prescribe a mechanism for adjustment of an amount paid in respect of demand through FORM GST DRC-03 against the amount to be paid as pre-deposit for filing an appeal.

- b. Amendment in rule 88B of CGST Rules to provide that the amount available in the Electronic Cash Ledger on the due date of filing of return in FORM GSTR-3B and debited while filing the return will not be included while calculating interest under section 50 of the CGST Act in respect of delayed filing of the said return.
- c. Change in due date for filing of GSTR-4 (returns by composition taxpayers) from 30 April to 30 June following the end of the financial year from FY 2024-25.
- d. Threshold for reporting invoice level inter-state B2C supplies in GSTR-1 to be reduced from INR 2.5 lacs to INR 1 lac.
- e. TDS return to be filed every month even in case of no supplies liable to TDS; no late fee on delayed filing of nil GSTR-7; invoice-wise details required to be furnished in GSTR-7.

Notifications / Circulars



- a. Retrocession is 're-insurance of re-insurance' and therefore, eligible for the exemption to Re-insurance of specified insurance schemes [Sl. No. 36A of Notification No. 12/2017-CTR dated 28 June 2017].
- b. Statutory collections made by the Real Estate Regulatory Authority (RERA) to be exempt, being services by the Government Authority under Article 243 of the Constitution [Entry 4 of Notification No.12/2017-CTR dated 28 June 2017].
- c. Further sharing of the incentive by acquiring bank with respect to RuPay Debit Cards and BHIM-UPI transactions not to be taxable, subject to conditions .
- d. In case of import of certain services from foreign related parties value declared on the invoice is to be accepted as open market value under second proviso to Rule 28(1) of CGST Rules. Further where full ITC is available to the recipient and if the invoice is not issued, then the value to be deemed nil.
- e. ITC available in respect of ducts and manholes used for optical fiber cables (OFCs) during construction/works contract services [Clause (c)/(d) of section 17(5) of CGST Act].
- f. Place of supply of Custodial services supplied by Indian Banks to Foreign Portfolio Investors to be the location of the recipient. [Section 13(2) of the IGST Act].
- g. Various issues regarding taxation of corporate guarantees between related parties are to be clarified. Rule 28(2) of CGST Rules not to apply to export of such services and where the recipient is eligible for full ITC. Retrospective amendment to be made to Rule 28(2) accordingly w.e.f. 26 October 2023.
- h. For supplies received from unregistered suppliers, where the recipient is liable to pay tax under reverse charge mechanism, the time limit for availing of the ITC is to be determined based on the financial year in which the self-invoice has been issued by the recipient.

Clarifications to be issued



- a. Taxability of reimbursement of securities/shares as ESOP/ESPP/RSU provided by a company to its employees.
- b. Reversal of ITC in respect of the amount of premium in Life Insurance services, which is not included in the taxable value as per Rule 32(4) of CGST Rules.
- c. Taxability of wreck and salvage values in motor insurance claims.
- d. Warranty/ Extended Warranty provided by manufacturers to the end customers.
- e. Availability of ITC on repair expenses incurred by the insurance companies in case of reimbursement mode of settlement of motor vehicle insurance claims.
- f. Taxability of loans granted between related persons/group companies.
- g. Time of supply on annuity payments under Hybrid Annuity Model (HAM) Projects.
- h. Time of supply in respect of allotment of Spectrum to Telecom companies in cases where payment of licence fee and Spectrum usage charges is to be made in instalments.
- i. Place of supply of goods supplied to unregistered persons, where the delivery address is different from the billing address
- j. A mechanism for providing evidence by the suppliers regarding reversal of ITC pertaining to post-sale discounts [Section 15(3)(b)(ii) of CGST Act]
- k. Various issues pertaining to special procedures for the manufacturers of the specified tobacco products.

GST Rate Changes



Following changes will be made in GST rates:

- a. IGST on imports of 'Parts, components and specified equipments generally required for MRO activities (subject to conditions) – 5%
- b. Milk cans of steel, iron and aluminium – 12%
- c. Cartons, boxes, etc. (corrugated/non-corrugated paper or paper board) – 12%
- d. All solar cookers (single/dual energy source) – 12%
- e. Sprinklers including fire water sprinklers – 12%¹
- f. Parts of poultry keeping machinery – 12%¹

¹ To regularize the past practice on an 'as is where is' basis in view of genuine interpretational issues

Exemptions



Proposed exemptions relating to goods:

Compensation cess:

- a. Retrospective exemption with effect from 1 July 2017 on compensation cess on the imports by SEZ Units/developers for authorized operations.
- b. Compensation cess on supply of aerated beverages and energy drinks to authorized customers by Unit Run Canteens under the Ministry of Defence.

IGST exemption on imports:

- a. Ad-hoc IGST exemption on technical documentation for AK-203 rifle kits imported for Indian Defence.
- b. Conditional IGST exemption on imports of research equipment/buoys under the RAMA² programme.
- c. Extension of IGST exemption on imports of specified items for defence till 30 June 2029.

² Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction

Exemptions relating to Services:

Other exemptions:

- a. Exemption on the services provided by SPV to the Indian Railways
- By way of allowing them to use infrastructure built & owned by SPV during the concession period;
 - Maintenance services supplied by Indian Railways to SPV

(Issues for the past period are to be regularized on an 'as is where is' basis for the period from 1 July 2017 till the date of issuance of exemption notification)

- b. Exemption on hostel accommodation services supplied for a minimum continuous period of 90 days and having a value of supply up to INR twenty thousand per month per person

(Similar benefit to be extended for past cases)

- c. Exemption on services provided by Indian Railways to general public, namely,
- sale of platform tickets
 - facility of retiring rooms/waiting rooms
 - cloak room services
 - battery-operated car services

- d. Exemption on the Intra-Railway transactions

(Issues for the past period to be regularized from 20 October 2023 till the date of issuance of exemption notification)

Measures for trade facilitation



- a. TCS rate applicable to Electronic Commerce Operates (ECOs) to be reduced from present 1% to 0.5%.
- b. New mechanism for claiming refund of additional IGST paid subsequent to exports on account of upward price revision post exports.
- c. New optional facility (Form GSTR-1A) to help taxpayers to amend/declare additional details in Form GSTR-1 before filing of return in Form GSTR-3B for the said tax period to ensure that correct liability is auto-populated in Form GSTR-3B.
- d. Filing of annual return in Form GSTR-9/9A for the FY 2023-24 to be exempted for taxpayers having aggregate annual turnover up to two crore rupees.
- e. Biometric-based Aadhaar authentication for registration to be rolled out across the Country in a phased manner which is expected to help in combating fraudulent ITC claims made through fake invoices.

f. Fixing monetary limits for filing appeals by the Government:

- GSTAT: INR 20 lacs
- High Court: INR 1 crore
- Supreme Court: INR 2 crores

Our comments



The recommendations made by the council during the 53rd GST Council meeting have significant implications that require a thorough examination of the fine print of notifications, circulars and proposed amendments to the Acts. Overall, it appears that the council has addressed industry concerns and walked towards providing ease of compliance, clarity on tax positions, towards reducing the burden of tax, interest and penalties for honest taxpayers while also trying to reign in, through technology, unscrupulous acts of some.

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