

UPDATE

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Key Highlights of the 50th GST Council Meeting

The 50th meeting of the Goods and Services Tax (GST) Council was held on 11th July 2023 in New Delhi. The GST Council *inter-alia* made certain recommendations relating to GST tax rates, measures for facilitation of trade and measures for streamlining compliance in GST. The key changes of the 50th GST Council Meeting are as under:

A. Changes in Rates

1. GST on imitation zari thread reduced to 5% from 12%. Past period regularized on “as is basis”.
2. The scope of levy of Compensation Cess of 22% extended to all motor vehicles having a length exceeding 4000mm, engine capacity exceeding 1500 cc, and ground clearance of 170 mm and above in as is condition. Earlier this entry was restricted to SUVs only.
3. The GST rate on LD Slag (solid waste of steel manufacturing plants) which otherwise is used in the construction industry by mixing the same with concrete/cement is reduced from 18% to 5% with the aim of promoting environmental protection.

B. Changes relating to Services

1. Goods Transport Agency (GTA) are no longer required to submit an annual declaration for GST payment under the forward charge system. Once they have chosen this option for a specific financial year, it will be assumed that the said option will continue in the subsequent financial years unless a specific declaration is filed to switch back to reverse charge mechanism (RCM).
2. The deadline for GTAs to exercise the option and pay GST under the forward charge system will now be March 31st of the preceding financial year, instead of March 15th. Additionally, GTAs can begin exercising this option starting from January 1st of the preceding financial year.
3. It is clarified that services provided by a director of a company to the company in their personal capacity like renting of immovable property etc. will not be chargeable to GST under the RCM. This otherwise means that such services will attract GST under forward charge. However, it is not clarified as to whether or not such clarification has a retrospective effect or not which might open gates for litigation.
4. Services provided by a director in their capacity as a director of the company or body corporate to the company or body corporate will only be taxable under the RCM.

5. Food and beverages served in the cinema hall and billed separately and not forming part of the movie ticket will attract GST under restaurant service at the rate of 5%. However, in case of bundled supply i.e. where a single amount is charged for food and beverages and price of the ticket, the entire supply will be subject to GST at the rate applicable to the cinema exhibition service, which is considered the main supply.
6. The GST Council with regard to the levy of GST on online gaming, casinos, racecourses etc. recommended that suitable amendments will be made to include online gaming and horse racing in Schedule III as taxable actionable claims. All three activities, namely casinos, horse racing, and online gaming, will be subject to a uniform rate of 28% and GST will be applicable on face value of chips purchased in the case of casinos, on the full value of bets placed with a bookmaker in the case of horse racing, and on the full value of bets placed in the case of online gaming. This seems to be in contrary to the judgement of the Hon'ble Karnataka High Court in case of Gameskraft Technologies Private Limited Vs Directorate General of Goods Services Tax Intelligence (Writ Petition No. 19570 of 2022). Further, whether such change will be prospective, or retrospective can only be ascertained when the clarifications in this regard are released.

C. Trade Facilitation Measures

1. Relaxations granted regarding specific sections of FORM GSTR-9 and FORM GSTR-9C in the financial year 2021-22 extended for the financial year 2022-23.
2. Taxpayers with an aggregate annual turnover of up to two crore rupees are exempt from filing FORM GSTR-9/9A in FY 2022-23 as well.
3. Council proposed issuing circulars providing clarity on certain matters: -
 - That input Services Distributor (ISD) mechanism will not be mandatory for the distribution of common input services procured from third parties to distinct persons, as per the current provisions of the GST law and amendments to the GST law will be done to enforce the mandatory use of the ISD mechanism on a prospective basis for distribution of ITC on such common input services procured from third parties.
 - Concerns will be addressed regarding the taxability of internally generated services provided from one distinct person to another distinct person.
 - GST liability as well as liability to reverse ITC in situations involving warranty replacements of parts and repair services during the warranty period, without any consideration from customers, clarifying *inter alia* that no GST is chargeable by the manufacturer on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer.
 - More clarity will be provided in matters pertaining to refund: -
 - In a particular tax period, refunds shall be allowed on the ITC appearing in the GSTR-2B for that tax period or for any previous GSTR-2B related to that tax period which is in line with the Circular issued earlier regarding GSTR 2A.

- The value of export turnover shall be lower of the value mentioned in the shipping bill or on the invoice value which otherwise will form a part of the computation of “adjusted total turnover” in terms of Rule 89(4) of the Central Goods and Services Tax Rules, 2017(CGST Rules, 2017).
 - Regarding the admissibility of refund in cases where the export of goods or the realization of payment for export of services is after the period prescribed under relevant corresponding laws.
- Clarification regarding TCS liability under section 52 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) in cases where multiple e-commerce operators are involved in a single transaction of supply of goods or services or both.
 - Clarification will be issued regarding prescribed threshold beyond which the registered tax payer should generate e-invoice for supplies made to Government Departments or establishments, Government agencies, local authorities, PSUs etc. that are registered solely for the purpose of TDS.
 - While calculating interest liability under Rule 88B of the CGST Rules, 2017, the balance of ITC in the electronic credit ledger, under the heads of IGST, CGST, and SGST in cases of wrong availment of IGST ITC shall be taken into consideration.
 - Mere holding of securities of subsidiary company by a holding company is not supply of services, and therefore not liable to GST.
 - Procedure for verifying input tax credit in cases where there is a difference between the Input Tax Credit claimed in FORM GSTR-3B and the available credit as per FORM GSTR-2A during the period from 1st April 2019 to 31st December 2021 will be prescribed in line with Circular No. 183/15/2022-GST dated 27th December 2022.
4. Amnesty schemes for non-filers of FORM GSTR-4, FORM GSTR-9, and FORM GSTR-10 returns, as well as the revocation of registration cancellations and the deemed withdrawal of assessment orders issued under Section 62 of the CGST Act, 2017 extended till 31st August 2023.
 5. 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 claims filed in pursuance of the direction of the Hon’ble Supreme Court in the case of Filco Trade Centre Private Limited. Further, amendment to be provided for manual filing of appeal under specified circumstances under Rule 108(1) and Rule 109(1) of the CGST Rules, 2017.

D. Changes for streamlining compliances in GST

1. Earlier on 12th September, 2022, the National Informatics Centre (NIC) updated the e-way bill platform to facilitate the creation of e-way bills for the transport of gold, gold jewellery, and precious stones. It has been recommended to insert Rule 138F in the CGST Rules, 2017 as well as SGST Rules, 2017 of the states who want to mandate the requirement of generation e-way bills for intra-state movement of gold and precious stones falling under Chapter 71 within their respective states. However, it should be noted that the Central Board of Indirect Taxes and Customs has not yet issued a Central Tax notification to exclude Chapter 71 from the list of exemptions.
2. Various recommendations have been made by inserting various amendments in CGST Rules, 2017 to strengthen the registration process and to effectively deal with the menace of fake/fraudulent registration in GST.
3. Rule 142B to be inserted in CGST Rules, 2017 along with insertion of FORM DRC-01B to provide for manner of recovery of tax and interest in cases where the output tax liability in terms of FORM GSTR-1 for any particular month, exceeds the output tax liability disclosed in FORM GSTR-3B for the said month by a specified threshold and in respect of which the said registered tax payer did not discharge the differential liability and also did not provide a satisfactory explanation for the said difference.
4. System generated intimation will be issued to registered taxpayer for excess availment of ITC in FORM GSTR-3B in compare FORM GSTR-2B above a certain threshold and in the event reply is not provided within stipulated time line, the registered taxpayer will be debarred from filing FORM GSTR 1/FORM GSTR 3B as the case may be.
5. FORM GSTR 3A to be amended to provide for issuance of notice to registered taxpayers who fail to submit their Annual Return in FORM GSTR-9 or FORM GSTR-9A within the prescribed due date.
6. Sub-rule (3A) to be inserted under Rule 162 of the CGST Rules, 2017 to prescribe the compounding amount for various offences under Section 132 of the CGST Act, 2017.
7. The Council will clarify place of supply in respect of supply of goods to unregistered persons by inserting of a clause (ca) in sub-section (1) of section 10 of the IGST Act, 2017

E. Others

1. The GST Council decides to include RBL Bank and ICBC Bank to list of banks /entities eligible for IGST exemption as per Annexure 4B (HBP) of Foreign Trade Policy 2023 to allow IGST exemption on Imports of gold, silver, or platinum made through such banks.
2. The Council has recommended the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal for enabling smooth constitution and functioning of GST Appellate Tribunal. The Council also recommended that provisions of the Finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre with effect from 01.08.2023, so that the same can be brought into operation at the earliest. So far as the number of state benches are concerned it was decided to start in phase-wise manner.
3. Consequential changes under GST will be notified in view of the new Foreign Trade Policy 2023.

4. GST exemption on satellite launch services supplied by ISRO and Antrix Corporation Limited and New Space India Limited will be extended to private sector as well.
5. In case of supply of taxable service by or through an E-commerce Operator or by a supplier of Online Information and Data Accessible and Retrieval Services to an unregistered recipient, only the name of the state of the recipient should be mentioned in the tax invoice and not the full name and full address of the recipient.

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