

UPDATE

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Highlights of the 55th GST Council Meeting

The 55th GST Council meeting was held in Jaisalmer, Rajasthan on December 21st, 2024 under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has *inter-alia* made the following recommendations relating to changes in GST rates on Goods and Services and other measures for facilitation of trade. The key highlights of the meeting are as under:

A. Key Changes for Trade Facilitation

1. Amendment to Schedule III of the Central GST Act (CGST Act), 2017

Background –

- Currently, transactions involving a supply of goods warehoused in special economic zones (SEZs) or free trade warehousing zones (FTWZs) are subject to differing interpretations regarding their taxability because it was unclear whether goods warehoused in SEZs or FTWZs are covered under entry 8(a) or 8(b) of Schedule III of the CGST Act.
- While customs bonded warehouses have clear exemptions for such transactions, SEZ or FTWZ transactions faced ambiguity, leading to compliance challenges and disputes.

GST Council recommendation –

Clause (aa) in entry 8 of Schedule III of the CGST Act recommended to be inserted retrospectively from 1 July 2017 and hence supply of goods warehoused in SEZ or FTWZ to any person before clearance (for export or a Domestic Tariff Area use) will be treated as a supply of neither goods nor services.

AQUILAW COMMENTS

This will be a welcome amendment to the CGST Act which will simplify compliance for businesses operating in the SEZ and FTWZ zones and reduce the tax liability for the companies having their business set ups in these zones.

2. Taxability of Vouchers

Background –

The GST treatment of vouchers has been a contentious issue since the introduction of the tax. Sections 12(4) and 13(4)5 of the CGST Act, and rule 32(6)6 of the Central Goods and Services Tax Rules, 2017 (CGST Rules), created ambiguity regarding the classification of vouchers as goods or services. Businesses have also faced issues regarding the taxability of income from unredeemed vouchers.

GST Council recommendation –

Legislative changes – Omit sections 12(4) and 13(4) of the CGST Act, and rule 32(6) of the CGST Rules, to eliminate ambiguities.

Clarifications proposed –

Non-taxability of vouchers: Transactions involving vouchers are a supply of neither goods nor services.

Principal-to-agent transactions: GST is payable only on commissions or fees charged by agents for distributing vouchers. No GST on distribution of vouchers on a principal-to-principal basis.

Ancillary services: Activities like co-branding, advertisement and technical support related to vouchers attract GST.

Unredeemed vouchers: No GST is payable on income from unredeemed vouchers.

AQUILAW COMMENTS

The taxability of vouchers has been a pain point in the GST regime. There have been divergent views on the issue considering the specific time of supply provisions thereof under the CGST Act. The Indian courts have concluded vouchers to be mere payment instruments and not an independent subject matter of levy [Sodexo Svc India Private Limited v. State of Maharashtra & Ors (2015-TIOL-293-SC-MISC); Tvl. Kalyan Jewellers Limited v. UOI (TS-704-HC(MAD)-2023-GST); Premier Sales Promotion Private Limited v. Union of India (2023 -VIL-67-Kar)]. The proposed changes would align with the aforesaid jurisprudence and will help mitigate unwarranted litigation on the issue.

3. Clarification regarding requirement to reverse ITC by E-commerce operators (ECOs) regarding supplies made under section 9(5) of the CGST Act

Background –

Previously, disputes arose as tax authorities sought ITC reversals on supplies made by ECOs, even when ECOs were required to pay GST directly.

GST Council recommendation –

ECOs paying tax under section 9(5) of the CGST Act, are not required to reverse ITC proportionally under sections 17(1) or 17(2) of the CGST Act.

4. Clarification regarding ITC availability as per section 16(2)(b) of the CGST Act, 2017, for ex-works contracts

Background –

There was ambiguity regarding the eligibility of ITC where the goods were delivered at a place other than the recipient's place of business, especially in case of ex-works contracts.

GST Council recommendation –

Goods delivered to the recipient or transporter at the supplier's business location (under ex-works contracts) to be deemed to be 'received' by the recipient under section 16(2)(b) of the CGST Act.

Moreover, ITC to be eligible subject to fulfilment of other conditions under sections 16 and 17 of the CGST Act.

AQUILAW COMMENTS

This recommendation resolves long-standing ambiguities about the physical delivery of goods versus the transfer of property. By establishing that the transfer of ownership at the location of the supplier, the recommendation by the Council satisfies the “receipt” condition while simplifying compliance and aligns tax practices with industry norms.

5. Clarification regarding applicability of late fees for delay in furnishing Form GSTR 9C and providing a waiver of late fees on delayed filing of Form GSTR 9C for the period 2017–18 to 2022–23

Background –

Taxpayers faced delays in filing reconciliation statements (Form GSTR 9C) due to the complexities in GST implementation during initial years.

GST Council recommendations –

- The GST Council has clarified that late fees under section 47(2) of the CGST Act, are leviable for a delayed filing of the complete annual return which includes both Forms GSTR 9 and GSTR 9C (wherever applicable).
- The GST Council also recommended issuing a notification under section 128 of the CGST Act to waive late fees exceeding those applicable until the filing of Form GSTR 9C for financial years 2017–18 to 2022–23, which are in excess of the amount of late fees payable till date for the non-filing of Form GSTR 9, provided Form GSTR 9C is filed by 31 March 2025.

AQUILAW COMMENTS

This relief aims to ease the compliance burden for earlier periods.

B. Key Changes relating to Policy and Procedures

6. Amendment to section 17(5)(d) of the CGST Act –

A retrospective amendment w.e.f. 1st July, 2017 is recommended to section 17(5)(d) of the CGST Act to replace the phrase ‘plant or machinery’ with ‘plant and machinery’ which otherwise has been made due to the important and landmark decision of the Apex court in the Safari Retreat case (Civil Appeal No. 2948 of 2023 dated 3 October 2024). The key highlights on this matter released by the PIB have stated that this particular amendment will allow the phrase to be interpreted in accordance with the explanation at the end of Section 17 of the CGST Act, 2017 and CBIC chairman has made it clear that it was a drafting error and that ‘and’ was supposed to be used instead of ‘or’.

AQUILAW COMMENTS

The retrospective amendment, if passed, would have a major impact on the Safari Retreats ruling and close the door on similar ITC claims for construction costs of rental properties. Real estate companies and other taxpayers who had hoped to benefit from the judgment would be affected, as they would no longer be able to claim ITC on construction-related expenses for immovable properties, even if they were used for taxable business purposes. As the legal battle continues,

businesses, especially those involved in the construction and leasing of commercial properties, will need to keep a close eye on the developments. The ultimate resolution of the Safari Retreats case will depend on the Orissa High Court's review and the final decision on the retrospective amendment. Until then, companies may find themselves in a state of uncertainty, with the possibility of ongoing legal challenges over the eligibility of ITC on construction-related expenses.

7. Reduction in financial burden and easing the process of filing appeals involving only penalties

Pre-deposit requirement for appeals before an appellate authority reduced from 25% to 10% for cases involving only penalties. New proviso recommended to be added to section 112(8) of the CGST Act, setting a 10% pre-deposit requirement for appeals before an appellate tribunal in penalty-only cases.

8. Definition of local fund and municipal fund -

Explanation to be inserted in section 2(69) of the CGST Act, to define 'local fund' and 'municipal fund'.

9. Amendment in Input service distributor (ISD) mechanism under CGST Act –

- Effective from 1 April 2025, sections 2(61) and 20(1) of the CGST Act will explicitly include inter-state reverse charge mechanism transactions under the ISD mechanism, referencing supplies taxed under sections 5(3) and 5(4) of the IGST Act, 2017.
- Section 20(2) of the CGST Act and rule 39(1A) of the CGST Rules will be amended to align with these changes.

10. Streamlining the payment process for non-registered persons –

- A new rule 16A has been proposed to be inserted to allow tax officers to generate a temporary identification number for persons not required to register under GST but who need to make payment as per rule 87(4) of the CGST Rules.
- Rule 87(4) of the CGST Rules to be amended to reference the new rule, along with modifications to Form GST REG 12.

11. Composition taxpayers –

- Rule 19 of the CGST Rules to be amended to allow composition taxpayers to modify their 'category of registered person' through Table 5 of Form GST CMP-02.
- This is now being done using Form GST REG-14.

12. Amendments to enhance the functionality of the Invoice Management System (IMS) –

- Section 38 of the CGST Act and rule 60 of the CGST Rules to be amended to provide for a legal framework for generating Form GSTR-2B based on taxpayer actions on IMS.
- Section 34(2) of the CGST Act to be amended to provide for a reversal of ITC (attributable to a credit note) by the recipient, facilitating a reduction in the supplier's output tax liability.

- Rule 67B to be inserted to prescribe a method for adjusting the supplier's output tax liability against issued credit notes.
- Section 39(1) of the CGST Act and rule 61 of the CGST Rules to be amended to ensure the filing of Form GSTR-3B for a tax period only after Form GSTR-2B is available on the portal.

C. Key Changes relating to Taxability and Definitions

13. Definition of 'pre-packaged and labelled' to be amended and linked to the definitions under the Legal Metrology Act, 2009.

AQUILAW COMMENTS

This is definitely very important, as this decision includes all the commodities intended for retail sale, which will definitely boost the sales of the country. With the help of this initiative, the amendment will affect bulk packages weighing more than 25 kg or 25 litres to make necessary declarations. It is to be noted that "pre-packaged commodity," as that term is defined under section 2(l) in the Legal Metrology Act of 2009. The amendment's goal is to redefine "pre-packaged and labelled" to encompass all goods intended for retail sale, regardless of size or number. In order to provide transparency and help consumers make educated decisions, manufacturers, packers, and importers would be obliged to give thorough labelling on all pre-packaged goods meant for retail sale.

14. Definition of 'declared tariff' omitted and that of 'specified premises' amended for hotel accommodation and restaurant services to link to the actual value of supply of any unit of accommodation provided by a hotel on and from 1st April, 2025)

AQUILAW COMMENTS

The definition of declared tariff has been omitted, and the definition of specified premises has been recalibrated to link it with the actual value of supply. From April 1, 2025, if the value of supply for hotel accommodation in the preceding financial year exceeds INR 7,500, it will attract Goods and Services Tax (GST) at 18% (with Input Tax Credit). Otherwise, a 5% GST (without ITC) will apply. Additionally, hotels may opt to pay 18% GST with ITC by submitting a declaration at the beginning of the financial year.

15. Levy of a reverse charge on sponsorship services provided by body corporates recommended to be **withdrawn**. Such services to be liable to a forward charge post issuance of the requisite amendment notification to this effect.

16. GST under reverse charge was introduced vide Notification No. 09/2024-CTR dated 8 October 2024 on renting of any commercial or immovable property (other than a residential dwelling) by an unregistered person to a registered person. It has now been recommended to exclude composition dealers from paying a reverse charge on such services. It has also been recommended to regularise the past on an 'as-is-where-is' basis.

17. It has been clarified that the explanation in Sl. No. 52B in the notification regarding ground clearance is applicable with effect from 26 July 2023.

D. Key Changes relating to Compliance

18. Introduction of section 148A in the CGST Act –

A new provision, section 148A, will empower the government to enforce a Track and Trace mechanism for specified commodities identified as evasion prone. This system will be based on a unique identification marking (UIM) to be affixed on goods or their packages.

AQUILAW COMMENTS

Operational adjustments: *Businesses dealing in specified commodities will need to implement systems for affixing and maintaining UIMs.*

Compliance burden: *Although this system increases initial compliance efforts, it will reduce future litigation and disputes due to clearer traceability.*

Improved credibility: *Enhanced traceability may improve supply chain transparency and build trust among stakeholders.*

19. Clarification on recording correct state details for online services to unregistered recipients –

Suppliers of 'online services' must record the state of the unregistered recipient on the tax invoice and the same will be considered as the recipient's address on record for compliance with section 12(2)(b) of the IGST Act, 2017, read with proviso to rule 46(f) of the CGST Rules.

E. GST Rate Changes

- **GST Rate Reduction on Fortified Rice Kernel (FRK):** The GST rate on Fortified Rice Kernel (FRK), classifiable under HSN 1904, reduced to 5% from existing GST rate of 18%.
- **GST Exemption on Gene Therapy:** To exempt GST on gene therapy.
- **IGST Exemption on Long Range Surface to Air Missile System (LRSAM):** To extend IGST exemption to systems, sub-systems, equipment, parts, sub-parts, tools, test equipment, and software meant for the assembly/manufacture of LRSAM system under Notification 19/2019-Customs.
- **Compensation Cess Reduction for Merchant Exporters:** Rate of compensation cess to be reduced to 0.1% on supplies to merchant exporters. Reduction recommended to bring the compensation cess rate at par with the GST rate.
- **IGST Exemption for International Atomic Energy Agency (IAEA) Imports:** IGST to be exempted on import of all equipment and consumable samples by the inspection team of the IAEA subject to specified conditions.
- **Concessional GST on Food Preparations for Government Programs:** Concessional 5% GST rate to be extended to food inputs of food preparation for free distribution to economically weaker sections under government programmes subject to the existing conditions.
- **Increase in GST Rate on sale of old and used vehicles:** GST rate on the margin on the sale of all old and used vehicles, including electric vehicles, to be increased from 12% to 18%.
- **No GST applicable on 'penal charges'** levied by banks and NBFCs for non-compliance with loan terms.
- **Pepper and raisins** supplied by agriculturists **not to be liable to GST.**

F. Others

20. Resolution of Integrated GST (IGST) settlement issues

Background –

- States raised concerns regarding the formula and methodology used for IGST settlement, which directly affects their revenue distribution.
- The allocation of IGST between the centre and states has often been controversial, with certain states claiming unfair treatment in settlement mechanisms.

GST Council recommendation –

The GST Council approved recommendation on forming a committee of officers to suggest improvements to the IGST settlement process and such changes will be **finalised and implemented by March 2025**.

21. Operationalisation of GST Appellate Tribunal (GSTAT)

Background –

Operationalisation of the GSTAT, established under the GST framework, has been delayed due to procedural and structural challenges, leaving taxpayers without a dedicated forum for resolving GST disputes.

GST Council recommendation –

- The GST Council took note of procedural rules proposed by the Law Committee for the internal functioning of GSTAT.
- These rules will be notified after examination and approval.

22. Extension of time frame for GST compensation restructuring

Background –

The GST compensation cess mechanism was initially designed to compensate states for revenue losses due to GST implementation. However, its restructuring has been under deliberation.

GST Council recommendation –

The GST Council extended the deadline for the Group of Ministers (GoM) on GST compensation restructuring to finalise their recommendations by 30 June 2025.

23. GST on municipal charges (floor space index (FSI) and Additional FSI)

Background –

Municipalities levy charges for FSI, including additional FSI. The applicability of GST on these charges, especially on a reverse charge basis, has been unclear and contentious.

GST Council recommendation –

The GST Council deferred the matter for further examination at the request of the Central Government, emphasising the need for clarity as these charges relate to municipalities or local authorities.

AQUILAW TAKE-AWAYS

The industry had high expectations from the 55th GST Council meeting on certain clarifications which have been long demanded. Though the GST Council has provided certain other measures related to tax rate rationalisation and trade facilitation measures, certain key decisions including those on GST compensation cess, tax rate on health and life insurance and tax rate on delivery for food delivery apps have been deferred. Additionally, it has been announced that these deliberations will require more analysis.

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