

UPDATE

This Update has been prepared by Rajarshi Dasgupta, Dimple Jogani, Vedika Agarwal and Debarun Chakraborty.

The 54th GST Council Meeting was held on September 9, 2024, in New Delhi wherein the following key decisions were taken:

A. Measures for facilitation of trade

- **Procedure and conditions for waiver of interest or penalty or both, in respect of tax demands under section 73 of CGST Act, 2017 for FYs 2017-18, 2018-19 and 2019-20 as per section 128A of Central Goods and Services Tax Act, 2017 (CGST Act, 2017)**
 - Insertion of Rule 164 in the Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017) along with certain Forms to provide for terms & conditions to avail the benefit of Section 128A of the CGST Act, 2017.
 - To notify 31.03.2025 as the date on or before which payment of tax shall be made to avail the benefit of Section 128A of the CGST Act, 2017.
 - Clarifications are to be issued in connection with the availment of benefits under Section 128A of the CGST Act, 2017 by way of a Circular.
 - Section 146 of Finance (No.2) Act, 2024 which provides for the insertion of Section 128A in the CGST Act, 2017 to be notified with effect from 01.11.2024.

AQUILAW Comments: Registered Taxable Person (RTPs) should clearly bifurcate notices issued under Section 73 & Section 74 and thereafter ascertain the cost-benefit analysis in availing the amnesty scheme vis-à-vis going ahead with the litigation.

Part-amnesty scheme for demand would not be available and a refund of interest and penalty already paid for any demand falling during the amnesty period would not be granted.

- **Providing a mechanism for implementation of newly inserted sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017**
 - Vide Finance (No. 2) Act, 2024, dated 16.08.2024 Section 16(5) of the CGST Act, 2017 was inserted to facilitate availment of ITC by a registered person for invoices or debit notes issued from FYs 2017-18 to 2020-21 and declared in any return filed by 30th November 2021.
 - Further, Section 16(6) of the CGST Act, 2017 was also inserted to facilitate availment of ITC for registered persons whose cancelled registration was later revoked for the period from the cancellation of registration to the date of revocation, if GSTR 3B is filed within 30 days of the revocation order. **The Council has recommended notifying such sections as soon as possible.**
 - The Council also suggested notifying a special procedure under Section 148 of the CGST Act, 2017 for rectifying orders issued under Sections 73, 74, 107, or 108 of the CGST Act, 2017.

- This would apply to taxpayers who were issued orders confirming demands for wrong ITC due to non-compliance with sub-section (4) of Section 16 of the CGST Act, 2017 but are now eligible for ITC under sub-section (5) or (6) of Section 16 of the CGST Act, 2017. This procedure is for those who have not yet filed an appeal against such orders.
 - Additionally, the Council recommended issuing a circular to clarify the procedure and address various issues related to the implementation of these new provisions.
- **Amendments in Rule 89 and Rule 96 of CGST Rules, 2017 and to provide clarification in respect of IGST refunds on exports where the benefit of concessional/ exemption notifications specified under Rule 96(10) of CGST Rules, 2017 has been availed on the inputs**
 - The GST Council clarified that if inputs were imported without paying IGST and compensation cess under Notifications No. 78/2017-Customs dated 13.10.2017 or Notification No. 79/2017-Customs dated 13.10.2017 but IGST and compensation cess are later paid with interest, and the Bill of Entry is reassessed, then IGST refunds on exports will not violate Rule 96(10) of the CGST Rules, 2017.
 - The Council also recommended removing Rule 96(10), Rule 89(4A), and Rule 89(4B) from the CGST Rules, 2017, to ease and speed up the refund process for exports where concessional or exemption notifications were used for inputs.
 - **Issuance of clarifications through the circulars to remove ambiguity and legal disputes in certain issues**

The GST Council recommended the issuance of circulars to provide clarity and to remove doubts and ambiguities arising in the following issues due to varied interpretations by the field formations:

- Clarification on the Place of Supply of advertising services provided by Indian advertising companies to foreign entities.
- Clarification regarding the availability of Input Tax Credit on demo vehicles by the dealers of the vehicle manufacturers.
- Clarification on Place of Supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.
- Clarification that GST does not apply to approved flying training courses conducted by DGCA-approved Flying Training Organizations (FTOs).

B. Other Measures:

- **B2C E-Invoicing**

The GST Council recommended launching a pilot for B2C e-invoicing, following the successful implementation in the B2B sector. The GST Council highlighted potential benefits for the retail sector, such as increased business efficiency, environmental sustainability, and cost savings. Additionally, it would enable retail customers to verify the reporting of their invoices in GST returns. The pilot will be voluntary and rolled out in selected sectors and states.

- **Invoice Management System and New Ledgers**

The GST Council discussed planned enhancements to the existing GST return framework, including the introduction of a Reverse Charge Mechanism (RCM) ledger, an Input Tax Credit (ITC) Reclaim ledger, and an Invoice Management System (IMS). Taxpayers will have until October 31, 2024, to declare their opening balances for these ledgers. The IMS will allow taxpayers to accept, reject, or hold invoices for ITC purposes, helping to minimize errors and improve reconciliation. This optional feature is expected to reduce the number of notices issued for ITC mismatches in returns.

AQUILAW Comments: The recommendations that such ITC would be available under Section 16(5)

and Section 16(6) of the CGST Act, 2017 with the condition that “**an appeal against the order has not been filed**”, should be properly addressed in the Circular or otherwise such dispute will continue. In case the RTP has already paid such amount with applicable interest and penalty, whether or not such refund should be granted or it will be tagged with Section 128A of the CGST Act, 2017 like the amnesty scheme. The RTP should immediately reassess their books and prepare the documentation in this regard.

C. Exemptions/Rate Changes pertaining to the Service Sector

- **Transport of passengers by helicopters**

- GST of 5% will be applied to passenger transport by helicopters on a seat-share basis. GST for past transactions will be regularized on an ‘as is where is’ basis.
- Charter services for helicopters will continue to be taxed at 18% GST.

- **Supply of research and development services**

- Research & Development Services by a government entity, research organization, university, college or other institution notified under Section 35(1)(ii) or (iii) of the Income Tax Act using government or private grants, to be exempt from GST
- Past demands will be regularized on an ‘as is where is’ basis.

- **Preferential Location Charges (PLC)**

To clarify, location charges or Preferential Location Charges (PLC) paid along with the payment for construction services of residential, commercial, or industrial complexes before the issuance of a completion certificate will be treated as composite supply and the GST Rate applicable for Construction Services for residential or commercial properties would apply.

AQUILAW Comments: This is an extreme welcome step for the real estate industry and this clarification would address various notices issued on the real estate industry in this regard.

- **Affiliation services**

- By State/Central Educational Boards to Government Schools to be exempt from GST.
- By universities to their constituent colleges to attract GST at 18%.

- **Import of service by Foreign Airline’s Branch Office**

Import of services by an establishment of a foreign airline company from a related person, exempt from GST when made without consideration.

- **Renting of commercial property**

- Renting of commercial property by an unregistered person to a registered person to attract GST under RCM.
- Renting of both residential or commercial property by an unregistered person to an unregistered person would be exempt from GST.

AQUILAW Comments: It would be relevant to see as to whether such recommendations would be retrospective or not.

- **Ancillary/intermediate services are provided by GTA**

- Shall be treated as a part of a composite supply, when provided in the course of transportation of goods with transportation being the main service provided there is a single charge for the entire service.
- Shall not be treated as a composite supply if provided and billed separately.

D. Changes/Classification in the GST Tax Rate of Goods:

Item	HSN Classification	Current GST Rate	Proposed GST Rate	Remarks
Extruded/Expanded Savoury Products	1905 90 30	18%	12%	GST rate on extruded or expanded products, savoury or salted (excluding un-fried or un-cooked snack pellets), to be reduced to 12%, aligning with namkeens, bhujia, mixture, etc., classifiable under HS 2106 90. GST of 5% continues on snack pellets. The reduced GST rate of 12% falling under HSN 1905 90 30 will apply prospectively.
Cancer Drugs	NA	12%	5%	GST rate on cancer drugs like Trastuzumab Deruxtecan, Osimertinib, and Durvalumab reduced to 5%.
Roof Mounted Package Unit (RMPU)	8415	NA	28%	RMPU Air Conditioning Machines for Railways to be classified under HSN 8415, attracting 28% GST.
Car and Motorcycle Seats	9401	18%	28%	GST rate on car seats classifiable under HSN 9401 to be increased to 28%, prospectively, to align with motorcycle seats which already attract a 28% GST rate.
Metal Scrap	NA	NA	NA	Reverse Charge Mechanism (RCM) to be applied on metal scrap supplied by unregistered persons to registered persons. GST TDS of 2% on B2B supply by registered persons.

E. Other Changes

- To settle the past GST liability (i.e. before 01.10.2021) for film distributors or sub-distributors who acquired and distributed films on a principal basis, using the "as is where is" basis.
- To exempt supply of services such as application fees for electricity connections, rental charges for electricity meters, testing fees for meters/transformers/capacitors, labour charges for shifting meters/service lines, and fees for duplicate bills when provided as a composite supply by transmission and distribution utilities to their consumers. The GST demand for the past period will also be regularized on an "as is where is" basis.

This Update has been prepared by Rajarshi Dasgupta, Rajarshi Dasgupta, Dimple Jogani, Vedika Agarwal and Debarun Chakraborty who can be reached at rajarshi.dasgupta@aquilaw.com. This Update is only for informational purposes and is not intended for solicitation of any work. Nothing in this Update constitutes legal advice and should not be acted upon in any circumstance.