



Key Recommendations of the 50th GST Council Meeting

In the 50th meeting of the GST Council held on July 11, 2023 several recommendations were announced regarding GST rates, ISD, status of the Appellate Tribunal, GST related litigation and refunds. Various clarifications have also been provided. Key announcements are summarized in this alert.

Input Service Distributor (ISD)

- A circular is to be issued clarifying that the ISD mechanism is **not mandatory** for distribution of input tax credit of common input services procured from third parties to the distinct persons. It is proposed to amend the law to make the ISD mechanism mandatory prospectively.
- Also, a clarification is to be provided regarding taxability of services rendered between distinct persons.

On GST Appellate Tribunal

- Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 have been recommended by the Council. Further, the relevant legislative provisions of the Finance Act 2023 are proposed to be notified with effect from August 1, 2023. It is also proposed to start the State Benches in a phase-wise manner.
- The Council has recommended the Chief Secretary of Maharashtra to be nominated as one of the members of the Search-cum-Selection Committee for appointment of tribunal members.

On Casino, Horse Racing and Online Gaming

- Casinos, horse racing and online gaming are to be taxed at the uniform rate of 28%. These activities will be included in Schedule III of the Central Goods and Services Tax Act, 2017, as taxable actionable claims. Taxes will be applicable as per the table given below:

| Description | Value on which tax is applicable | GST Rate |
|---------------|---|----------|
| Casino | Face value of the chips purchased | 28% |
| Horse racing | Full value of the bets placed with bookmaker/ totalizator | |
| Online gaming | Full value of the bets placed | |

On Appeal against Orders Passed in respect of revised FORM GST TRAN-1/ FORM GST TRAN-2

- A special procedure is to be prescribed for manual filing of appeal against the orders passed by proper officers in respect of revised FORM GST TRAN-1/ FORM GST TRAN-2 claims of the registered persons. This has been done in pursuance of directions of the Hon'ble Supreme Court in case of the **Union of India v/s Filco Trade Centre Pvt. Ltd.**

On Verification of Difference in Input Tax Credit (ITC) as per FORM GSTR-3B vis-à-vis FORM GSTR-2A for FY 2019-2020 & FY 2020-2021

- A similar procedure, as was made applicable for ITC availed in respect of the period July 1, 2017 to March 31, 2019 (*vide Circular No. 183/15/2022 dated December 27, 2022*) shall be prescribed for verification of ITC for the period from April 1, 2019 to December 31, 2021.

On Mechanism to deal with differences in ITC between FORM GSTR-2B & FORM GSTR-3B –

- A System-based intimation to the taxpayers in respect of the excess availment of ITC above a certain threshold will be initiated. This will include an auto – compliance procedure for taxpayers, where they will need to explain the reasons for the difference or take remedial action.

On Annual Returns for FY 2022-2023

- Following relaxations/ exemptions provided in FY 2021-2022 to be continued for FY 2022-2023:
 - Relaxations provided with respect to various tables of FORM GSTR-9 and FORM GSTR-9C;
 - Exemption from filing annual return (in FORM GSTR-9/9A) for taxpayers with an aggregate annual turnover of up to INR 2 crores.

On Refund Related Issues

- A circular is to be issued to clarify various refund related issues. These include:
 - Refund of accumulated input tax credit on account of zero-rated supply and inverted duty structure to be restricted to the extent of credit reflected in FORM GSTR-2B of a particular tax period;
 - Value of export of goods to be included while calculating “adjusted total turnover” as per the explanation inserted in Rule 89(4) of CGST Rules vide **Notification No. 14/2022- CT dated July 5, 2022**;
 - Admissibility of refund in cases where export of goods or realization of payment for export of services is made after the prescribed time limit provided under Rule 96A of CGST Rules.

On Warranty Replacement of Parts and Repair Services

- A circular is to be issued to provide clarity that no GST is chargeable on replacement of parts and/ or repair services, and no reversal of credit is required by the manufacturer if the said activities are undertaken during the warranty period (without charging any consideration from the customers).

On Relaxations to Goods Transport Agencies (GTAs)

- It has been proposed to relax GTAs from filing declaration for paying GST under forward charge every year. If the GTAs have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless a declaration is filed that they want to revert to RCM.
- It has been proposed that the last date for exercising the option by GTAs to pay GST under forward charge shall be March 31 of preceding Financial Year instead of March 15th and start date of exercise of option shall be January-1 of preceding Financial Year.

On Services by Director of Company or Body Corporate

- Services supplied in the capacity of a director shall be taxable (under RCM in the hands of the company or body corporate and not when supplied in private or personal capacity (such as renting of an immovable property)).

On Supply of Foods and Beverages in Cinema Halls

- It has been clarified that supply of food and beverages in cinema halls shall be taxable as a restaurant service as long as:
 - they are supplied by way of or as part of a service; and
 - supplied independent of the cinema exhibition service.
- It is further clarified that if sale of cinema ticket and supply of food and beverages are clubbed together and such clubbing satisfies the test of composite supply, the entire supply shall attract GST on the principal supply i.e., at the rate applicable to service of exhibition of cinema.

On Compensation Cess @ 22% on Specific Utility Vehicles

- An amendment in Entry 52B in Compensation Cess Notification will include all utility vehicles with the parameters of length exceeding 4000 mm, engine capacity exceeding 1500 cc and having ground clearance of 170 mm & above.

It has also been proposed to clarify (by way of explanation) that 'Ground clearance' shall mean Ground Clearance in un-laden condition.

Manner of Calculation of Interest qua Wrongly Availed and Utilized IGST Credit

- In cases of wrong availment and utilization of IGST credit, the balance under the heads of IGST, CGST and SGST credit shall be considered together while calculating interest liability as per Rule 88B of the CGST Rules.

On OIDAR services

- An amendment is proposed in Rule 46(f) of CGST Rule to only mention 'name of the State of the recipient' on the tax invoice in cases of supply of taxable services by or through an Electronic Commerce Operator or by a supplier of Online Information Database Access and Retrieval services (OIDAR) to an unregistered recipient.
- To track due payment of tax on reverse charge basis by registered persons in India in respect of supplies received from OIDAR service providers, Rule 64 and FORM GSTR-5A in CGST Rules to be amended.

On TCS liability in case of multiple E-commerce Operators

- A circular is to be issued to provide clarification regarding TCS liability in cases where multiple E-commerce Operators ("ECOs") are involved in a single transaction of supply of goods or services or both.

On Issuance of Circulars / Notifications for Removal of Ambiguity and Legal Disputes

- E-invoices are to be generated for supplies made to Government Departments or establishments / Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS. It is applicable for the registered person whose turnover exceeds the prescribed threshold for generating an e-invoice.
- Mere holding of securities of a subsidiary company by a holding company cannot be treated as supply of service and cannot be taxed under GST law.
- The 'Amnesty Scheme' has been extended in the following cases till August 31, 2023:
 - non-filers of FORM GSTR-4, FORM GSTR-9 & FORM GSTR-10 returns;
 - revocation of cancellation of registration;
 - deemed withdrawal of assessment orders issued under Section 62 of the CGST Act.

On Measures for Streamlining GST compliances

- Amendments are proposed to be inserted in CGST Rules and SGST Rules for the States who want to mandate the requirement of generation of E-Way Bills for intra-State movement of gold and precious stones.
- Provisions of Section 123 of the Finance Act, 2021, amending Section 16 of the IGST Act (i.e., zero-rated supply) to be notified with effect from October 1, 2023.
- **Amendments in CGST Rules with regards to the registration process –**
 - Registered persons will have to furnish details of a valid bank account in their name and their PAN details within 30 days of grant of registration or before filing of statement of outwards supply;
 - Requirement for the physical verification of business premises in the presence of the applicant is to be done away with.
- Rule 142B and FORM GST DRC-01D is to be inserted in the CGST Rules for providing a manner of recovery of tax and interest in respect of an amount intimated under Rule 88C of the CGST Rules (outward tax liability exceeds in FORM GSTR-1 vis-à-vis FORM GSTR-3B) which has neither been paid nor any satisfactory explanation is provided.
- Rule 163 in CGST Rules is to be amended to provide manner and conditions of consent-based sharing of information of registered persons available on the common portal with other systems. The Council has also recommended issuance of a notification under section 158A of CGST Act for notifying "Account Aggregators" as the systems with which information is to be shared by the common portal.

- It has been recommended to insert clause (ca) to Sub-Section (1) to Section 10 of IGST Act to clarify the place of supply in respect of supply of goods to unregistered persons.

On GST Rates and Related Issues

- The GST rates largely remain unchanged. In only four cases, the GST rates have been proposed as following:

| Sl. No. | Description of goods / services | Old Rate | New Rate |
|---------|---------------------------------|----------|----------|
| 1 | Imitation zari thread or yarn | 12% | 5% |
| 2 | LD Slag | 18% | 5% |
| 3 | Fish soluble paste | 18% | 5% |
| 4 | Uncooked/ unfried snack pellets | 18% | 5% |

- Recommendations on IGST exemptions –**
 - Dinutuximab (Quarziba) medicine when imported for personal use;
 - Medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases enlisted under the National Policy for Rare Diseases, 2021 when imported for personal use subject to existing conditions;
 - FSMP when imported by Centres of Excellence for Rare Diseases or any person or institution on recommendation of any of the listed Centres of Excellence;
- RBL Bank and ICBC bank have been proposed to be included in the list of specified banks for which IGST exemption will be available on imports of gold, silver or platinum. It has also been proposed to update the list of banks /entities eligible for such IGST exemption as per Annexure 4B (HBP) of Foreign Trade Policy 2023.
- For encouraging startups, GST exemption (currently provided to ISRO, Antrix Corporation Limited and New Space India Limited (NSIL)) on satellite launch services supplied has been proposed to be extended to the private sector also.

Note: It is pertinent to note that to effectuate the said recommendations, Circulars/ Notifications will be issued by Central Board of Indirect Taxes & Customs ('CBIC')The aforesaid recommendations will be implemented vide suitable Notifications/ Circulars to be issued by CBIC in the due course.

ELP Comments

Several of the recommendations by the Council, including ISD being non-mandatory for the past years, procedure for verification of ITC for FY 2019-20 and FY 2020-21 are in line with the Government's focus on '**Ease of Being GST Compliant**'. Another feather in the cap for the tribunal is the introduction of GST Appellate Tribunals – a much needed redressal mechanism for the tax payers.

Clarifications **with respect to** services by director of a company, warranty replacement of parts and repair services, refund related issues, etc. shall resolve the dichotomy between the taxpayers and GST authorities to a great extent especially during audits / investigations.

Prescribing a special procedure for filing a manual appeal against an Order issued **qua** revised FORM GST TRAN-1/ FORM GST TRAN-2 will assist in resolving doubts and is definitely a respite for industry. Although litigations around carry forward of CENVAT Credit into GST regime cannot be ruled out.

With regard to the online gaming industry, the taxability of full value of the bets placed @ 28% could be a major impediment to the industry's projected growth.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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