

# EY Tax Alert

## CBIC issues Notifications and Circulars pursuant to recommendations made in 53rd GST Council meeting

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

### Executive summary

This Tax Alert summarizes recent Notifications<sup>1</sup> and Circulars<sup>2</sup> issued by Central Board of Indirect Taxes and Customs (CBIC) pursuant to recommendations made in the 53<sup>rd</sup> Goods and Services Tax (GST) Council meeting. The key highlights are:

- ▶ Rule 28(2) of Central Goods and Services Tax Rules, 2017 (CGST Rules) has been amended retrospectively from 26 October 2023 to provide value of supply of providing corporate guarantee at 1% of the amount guaranteed per annum or actual consideration, whichever is higher. This valuation does not apply to export of such services or where the recipient is entitled to full input tax credit.  
Value of such supply will be calculated basis the amount guaranteed and not on the basis of loan actually disbursed.
- ▶ Rule 59 of CGST Rules has been amended to provide for an optional facility by way of GSTR-1A to amend or add details in GSTR-1 before filing GSTR-3B for the same tax period.
- ▶ Proviso has been inserted in Rule 88B(1) to provide that interest is not leviable on amount available in cash ledger (on the due date of filing GSTR-3B) which is utilised while filing return belatedly.
- ▶ Refund of additional IGST paid on account of upward price revision subsequent to exports needs to be claimed by filing application in GST RFD-01 before expiry of two years from the relevant date.
- ▶ The rate of TCS (tax collected at source) is reduced from 1% to 0.5%.

<sup>1</sup> Notification No. 12/2024 to 15/2024 - Central Tax all dated 10 July 2024 and Notification No. 01/2024- Integrated Tax dated 10 July 2024

<sup>2</sup> Circular No. 224/18/2024 to 227/21/2024 - Central Tax dated 11 July 2024

# Background

- ▶ The Goods and Services Tax (GST) Council held its 53<sup>rd</sup> meeting in New Delhi on 22 June 2024.

The Council made recommendations relating to changes in GST rates, measures pertaining to law and procedures and certain measures for trade facilitation in GST.<sup>3</sup>

- ▶ Circulars were issued by the Central Board of Indirect Taxes and Customs (CBIC) as per the recommendations of the GST Council.<sup>4</sup>
- ▶ CBIC has now issued Notifications<sup>5</sup> and additional Circulars<sup>6</sup> to give effect to some of the above recommendations.

## Highlights

### Corporate Guarantee

- ▶ As per the Notification, Rule 28(2) of Central Goods and Services Tax Rules, 2017 (CGST Rules) which provides for valuation in case of corporate guarantee is amended retrospectively with effect from 26 October 2023.

The value of supply shall be one per cent of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher.

- ▶ Further, rule 28(2) shall not apply in case of export of such services and where the recipient is eligible for full input tax credit.
- ▶ Circular is issued to clarify the following:
  - ▶ Supply of service of providing corporate guarantee was taxable even before the insertion of rule 28(2).
  - ▶ In respect of guarantee issued or renewed before 26 October 2023, the valuation is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26 October 2023, then the valuation will be required to be done as per Rule 28(2) of CGST Rules.
  - ▶ Value of supply will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee.
  - ▶ Recipient shall be eligible to avail ITC, irrespective of (i) when the loan is actually disbursed to the recipient, and (ii) the amount of loan actually disbursed.
  - ▶ If the loan is taken over by another banking company/ financial institution, the said activity does not fall under the service of providing

corporate guarantee. Therefore, it is clarified that in such cases, there will be no GST impact.

However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.

- ▶ In cases where corporate guarantee is being provided by multiple related entities, the value of such services shall be the sum of the actual consideration paid/ payable to co-guarantors, if the same is higher than 1% of amount guaranteed.

In cases where the sum of the actual consideration is less than 1% of amount guaranteed, then GST shall be payable by each co-guarantor proportionately on 1% of the amount guaranteed by them.

- ▶ Where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier.
- ▶ Value of supply of providing guarantee for a particular number of years shall be 1% of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration whichever is higher.

Eg.: If a guarantee is issued for a period of 5 years, then the value would be 5% of the amount guaranteed or the actual consideration, whichever is higher. GST would be payable on such amount at the time of issuance of such corporate guarantee.

However, if a corporate guarantee is issued for a period of 1 year and is renewed 5 times, for a period of 1 year each, then tax would be payable on 1% of amount guaranteed, or the actual consideration, whichever is higher, on the issue of such guarantee in the first year as well as on every renewal in subsequent years.

In cases where the guarantee is provided for a period of less than a year (say 6 months), then the valuation may be done on proportionate basis i.e., 0.5% of the amount guaranteed or the actual consideration, whichever is higher.

- ▶ Where full ITC is available to the recipient, the value declared in the invoice shall be deemed to be the value of supply.

### Distribution of credit by Input Service Distributor (ISD)

- ▶ Section 20 of the Central Goods and Services Tax Act, 2017 (CGST Act) which provides for manner of distribution of credit by ISD was amended vide

<sup>3</sup> Refer our alert "Council recommends amending GST law and issuing clarifications for achieving rate rationalization, trade facilitation and reduction in ongoing litigation" dated 25 June 2023

<sup>4</sup> Refer our alert "CBIC issues Circulars pursuant to recommendations made in 53rd GST Council meeting" dated 28 June 2024

<sup>5</sup> Notification No. 12/2024 to 15/2024 Central Tax all dated 10 July 2024 and Notification No. 01/2024- Integrated Tax dated 10 July 2024

<sup>6</sup> Circular No. 224/18/2024 to 227/21/2024 - Central Tax dated 11 July 2024

Finance Act, 2024. However, the same has not yet come into force.

- ▶ As per amended Section 20, the credit shall be distributed in such manner as may be prescribed.
- ▶ Accordingly, Rule 39(1) is amended. The manner which is currently provided in Section 20 is incorporated in the Rules.
- ▶ Further, Rule 39(1A) has been inserted to provide mechanism for credit distribution in case of reverse charge.  
  
The normal registration, having same PAN and state code as an ISD, may issue an invoice or debit or credit note as per rule 54(1A) to ISD and such common credit shall be distributed by ISD as per Rule 39(1).
- ▶ The amendment in Rule 39 will come into effect from the date to be notified.

### ***Amendment in GSTR 1***

- ▶ Rule 59 has been amended to provide for a new optional facility by way of GSTR-1A to amend the details in GSTR-1 for a tax period and/ or to declare additional details, if any, before filing of GSTR-3B for the said tax period.
- ▶ Consequently, various other Rules have been amended to give effect of the introduction of GSTR-1A.
- ▶ Format of Form GSTR-1A has been prescribed along with instructions.
- ▶ The threshold for reporting of B2C inter-State supplies invoice-wise in Table 5 of GSTR-1 have been reduced from INR 2.5 lakh to INR 1 lakh.

### ***Interest calculation on delayed payment of tax***

- ▶ Rule 88B(1) provided for manner of calculating interest on delayed payment of tax in cases where return for a said period is filed after the due date of furnishing of return under section 39 of CGST Act.

Interest on delayed payment of tax in such cases is calculated on the portion of tax which is paid by debiting the electronic cash ledger.

Proviso has now been inserted to provide that interest will not be levied on amount available in cash ledger (on the due date of filing GSTR-3B) and which is utilised while filing return belatedly.

### ***Refund***

- ▶ Rule 89(1B) has been inserted and Rule 96 has been amended to provide that additional IGST paid on account of upward revision in price subsequent to exports can be claimed by filing refund application in GST RFD-01 before the expiry of two years from the relevant date.  
  
If the relevant date falls before the date of amendment, application can be filed within two years from the date of amendment.
- ▶ For such refund claims, applicants shall submit a statement containing necessary documents, proof of

additional integrated tax payment, and related foreign inward remittance certificates.

Additionally, a chartered accountant or cost accountant certificate is required to the effect that the additional foreign exchange is due to the price increase, supported by contracts or other documents.

Circular has also been issued to clarify the refund procedure.

- ▶ Rule 95B has been inserted to provide that Canteen Stores Department (CSD) under the Ministry of Defence can claim 50% refund of the central tax paid on goods purchased for resale to Unit Run Canteens or authorized customers subject to the conditions prescribed in Rule 95B(3).

Such application for refund of tax paid on inward supplies of goods to be filed in GST RFD-10A.

Circular has also been issued to clarify the refund procedure.

- ▶ Rule 96A(1)(b) has been amended to provide that proceeds for export of services under LUT should be realised within 15 days after the expiry of one year, or the period as allowed under FEMA including any extension of such period as permitted by RBI, whichever is later.

### ***Appeal***

- ▶ Rule 110 has been amended to allow manual filing of appeal and memorandum of cross objections in cases where the registrar allows the same by issuing special or general order.

Further, the date of issue of provisional acknowledgement shall be considered as the date of filing of appeal.

If the order being appealed is not uploaded on the common portal, the appellant needs to submit or upload a self-certified copy of the order within seven days of filing Form GST APL-05.

Similar amendments have been made in Rule 111 which provides for filing of appeal by the department before the Appellate Tribunal.

- ▶ Rule 113A has been inserted in CGST rules to allow withdrawal of appeal or application filed before the Appellate Tribunal.

Any fresh appeal or application filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in section 112.

- ▶ Circular is issued to clarify the following:
  - ▶ In cases where the taxpayer decides to file an appeal against the order of the appellate authority and wants to make the payment of amount equivalent to pre-deposit, he can make the payment by navigating to Services > Ledgers> Payment towards demand. The said amount will be adjusted against the pre-deposit required at the time of filing appeal before the Appellate Tribunal.
  - ▶ The taxpayer also needs to file an undertaking/ declaration with the proper officer that he will file

appeal before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit, the recovery of the remaining amount of confirmed demand will stand stayed.

- ▶ In case the taxpayer does not make the payment of amount equal to pre-deposit or does not provide the undertaking/ declaration to the proper officer, then it will be presumed that taxpayer is not willing to file appeal and, in such cases, recovery proceedings can be initiated.

### Other Changes

- ▶ Rule 133 of the CGST rules has been amended to provide mechanism for generation of e-way bill for unregistered persons opting to generate e-way bill and for persons required to generate e-way bill as per fourth proviso to rule 133(1).
- ▶ Rule 142(2B) has been inserted to provide that a person who has paid tax, interest, penalty, or other amounts due under specified provisions via GST DRC-03 can file DRC-03A to credit such payment directly to the electronic liability register.

However, if proceedings have been concluded and DRC-05 is issued, the person cannot file DRC-03A for that payment.

- ▶ Filing of annual return in GSTR-9/9A for FY 2023-24 is exempted for taxpayers having aggregate annual turnover up to INR 2 crore.
- ▶ The rate of TCS has been reduced from 1% to 0.5% (0.25% CGST and SGST each or 0.5% IGST).
- ▶ Changes have been made in various forms including GSTR-2B, GSTR-3B, GSTR-7, GSTR-9 and GST RFD-01.
- ▶ Rule 8 has been amended to provide mechanism for verification where the person seeking registration has not opted for Aadhaar authentication.

Further, the provisions of Aadhaar authentication will now apply in all the States and Union Territories.

## Comments

- a. The Circular seems to clarify that the time of supply in case of corporate guarantee is the issuance of such guarantee. In light of this, taxability of guarantees given during service tax regime which are continuing under GST needs to be evaluated.
- b. Since the valuation is 1% per annum of amount guaranteed or actual consideration, whichever is higher, the same needs to be analyzed in cases where the guarantee is either perpetual or do not stipulate any quantum.
- c. Taxpayers who have claimed refund on account of export of service by way of corporate guarantee, after 23 October 2023 basis rule 28(2), will need to evaluate the implication of retrospective amendment.
- d. Since the proviso under Rule 88B for interest computation is not inserted with retrospective effect, the issue of levy of interest for past period may be still open considering divergent HC rulings.
- e. As per the Instruction on revised Form GSTR-2B, the supplies declared or amended in Form GSTR-1A shall be made available in the next open Form GSTR-2B.

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