

EY Tax Alert

GST Council recommends notifying amnesty scheme effective 1 November 2024 and proposes various trade facilitation measures

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Executive summary

This Tax Alert summarizes the recent press release¹ issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 54th meeting held on 9 September 2024.

The key recommendations are:

- ▶ Group of Ministers (GoM) to be constituted to look into the issues pertaining to GST on life and health insurance and to study the future of compensation cess.
- ▶ Amnesty scheme providing waiver of interest and penalty in non-fraud cases for FY 2017-18 to 2019-20 to be notified w.e.f. 1 November 2024. Further, the tax demand as per the notice or order is required to be paid on or before 31 March 2025 to avail the benefit.
- ▶ Mechanism to be provided for implementation of newly inserted Section 16(5) and 16(6) of the Central Goods and Services Tax Act, 2017 (CGST Act).
- ▶ Rule 96(10), 89(4A) and 89(4B) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) restricting refund in certain scenarios to be omitted prospectively.
- ▶ Import of services by an establishment of foreign airlines from a related entity or its establishments outside India without consideration to be exempted, with past demands being regularized on "as is where is" basis.
- ▶ B2C e-invoicing will be rolled out on pilot basis in selected sectors and States.
- ▶ Circulars to be issued to clarify place of supply for advertising and data hosting services provided to entities outside India as well as to clarify availability of input tax credit on demo vehicles in the hands of dealers.

¹ Press release dated 9 September 2024

Background

- ▶ The Goods and Services Tax (GST) Council held its 54th meeting in New Delhi on 9 September 2024.
- ▶ The Council *inter alia* recommended to constitute Group of Ministers (GoM) to look into various matters under GST, rate rationalization and measures for trade facilitation.

Key Recommendations

Rate changes and clarifications relating to goods

- ▶ The tax rate on cancer drugs, namely, Trastuzumab Deruxtecan, Osimertinib and Durvalumab to be reduced from 12% to 5%.
- ▶ Reverse charge mechanism (RCM) to be made applicable on supply of metal scrap by unregistered person to registered person.

Further, TDS @ 2% will be applicable in case of B2B supplies of metal scrap.
- ▶ Roof mounted package unit (RMPU) air conditioning machines for railways is classifiable under HSN 8415 attracting tax @28% tax.
- ▶ Car seats are classifiable under HSN 9401 presently attracting GST @18%.

The tax rate on the same to be prospectively increased to 28% to bring parity with seats of motorcycles which already attracts tax @28%.

Rate changes and clarifications relating to services

- ▶ Transport of passengers by helicopters on seat share basis to attract GST @5%. The issue for the past cases will be regularized on "as is where is" basis. Further, charter of helicopter will continue to attract GST at 18%.
- ▶ Flying training courses conducted by Directorate General of Civil Aviation (DGCA) approved Flying Training Organizations (FTOs) are exempt from the levy of GST.
- ▶ Exemption to be granted on supply of research and development services by a government entity, research association, university, college, or other institution notified under Section 35(1)(ii) or (iii) of the Income Tax Act, 1961 using Government or private grants.

Further, the past demands to be regularized on "as is where is" basis.
- ▶ Preferential location charges paid along with the consideration for construction service before

issuance of completion certificate forms part of composite supply of construction services and is subject to same tax treatment.

- ▶ Affiliation services provided by educational boards are taxable.

Such services provided by State or Central educational boards, council and other similarly placed bodies to Government Schools will be made exempt prospectively.

The past demands to be regularized on "as is where is" basis for period upto 17 June 2021.

Moreover, affiliation services provided by universities to their affiliated colleges fall outside the scope of exemption provided to educational institution as per Notification No. 12/2017-Central Tax Rate. These services are taxable @18%.

- ▶ Exemption to be provided on import of services by an establishment of foreign airlines from a related person or any of its establishment outside India, when made without consideration. The past demands to be regularized on "as is where is" basis.
- ▶ RCM to be made applicable on renting of commercial property by unregistered person to a registered person.
- ▶ Ancillary services such as loading, unloading, packing, unpacking, transshipment, warehousing etc., provided by a Goods Transport Agency (GTA) in the course of transportation of goods by road, will be treated as part of composite supply.

However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as part of composite supply.

- ▶ Services by transmission and distribution utilities where consideration is received by way of application fees for electricity connections, meter rentals, testing fees for equipment, labor charges for moving meters or lines, and fees for duplicate bills, etc. which are ancillary or integral to the supply of transmission and distribution of electricity will be made exempt when provided as a composite supply.

Disputes in such cases for past periods to be regularized on "as is where is" basis.
- ▶ GST liability to be regularized for the period upto 1 October 2021 on "as is where is" where film distributor or sub-distributor acts on a principal basis to acquire and distribute films.

Trade facilitation measures

Procedure for Interest and penalty waiver

- ▶ Vide Finance (No. 2) Act, 2024, Section 128A was inserted under the Central Goods and Services Tax Act, 2017 (CGST Act) to waive interest and penalty in cases other than fraud or suppression of facts, for FY 2017-18 to 2019-20, if entire tax demand as per SCN or order is paid up to the date to be notified.

The Council has recommended 31 March 2025 as the date on or before which the payment of tax would be required to be made to avail the above benefit.

Further, section 128A is proposed to be made effective from 1 November 2024.

- ▶ Rule 164 will be inserted in the Central Goods and Services Tax Rules, 2017 (CGST Rules) along with certain Forms, for providing procedure and conditions for availment of benefit under Section 128A.
- ▶ A Circular is also proposed to be issued in this regard.

Input Tax Credit (ITC)

- ▶ Section 16(5) and 16(6) were inserted *vide* Finance (No. 2) Act, 2024 to retrospectively extend time limit to avail ITC for FY 2017-18 to 2020-21 till 30 November 2021. Further, time limit to avail ITC where registration of the recipient is cancelled and subsequently restored was also extended to:
 - ▶ 30 November of the subsequent financial year, or
 - ▶ 30 days from the date of order of revocation, whichever is later.
- ▶ It is recommended to notify the above amendments at the earliest.
- ▶ A special procedure for rectification of orders is proposed to be notified under Section 148 for taxpayers who have received orders under Sections 73, 74, 107 or 108 for wrongful availment of ITC beyond the time limit prescribed under Section 16(4) but is now permissible as per Section 16(5) and 16(6).
- ▶ A circular will also be issued to clarify the procedure and various issues related to implementation of the said provisions.

Refund

- ▶ Rule 96(10) of the CGST rules restricts refund of integrated tax paid on exports of goods and services where the taxpayer avails benefit of Notification No. 78/2017-Customs or Notification No. 79/2017-Customs both dated 13 October 2017.

It is proposed to clarify that inputs which were initially imported without payment of tax by availing benefits under the above notifications but integrated tax and compensation cess on

such inputs is subsequently paid along with interest, then refund of IGST paid on exports shall not be considered to be in contravention of Rule 96(10).

- ▶ Further, Rule 96(10), 89(4A) and 89(4B), which restricts refund in cases where benefit of specified concessional/ exemption notifications is availed on inputs, are recommended to be omitted prospectively.

Other clarifications

- ▶ Circular will be issued to clarify the following:
 - ▶ Place of supply of advertising services provided by Indian advertising companies to foreign entities.
 - ▶ Availability of ITC on demo vehicles by dealers of the vehicle manufacturers.
 - ▶ Place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

Other measures

- ▶ Pilot program for B2C e-invoicing will be rolled out on voluntary basis in selected sectors and States.
- ▶ Enhancements have been made in GST return architecture including introduction of RCM ledger, ITC reclaim ledger and Invoice Management System (IMS). Taxpayers would be given the opportunity to declare their opening balance for these ledgers by 31 October 2024.
- ▶ GoMs to be constituted to holistically look into the issues pertaining to GST on life and health insurance and to study the future of compensation cess.

Comments

Omission of Rule 96(10), 89(4A) and 89(4B) is likely to help in reducing working capital blockage and alleviate difficulties faced by exporters.

Exemption provided to foreign airlines on import of service from related parties may provide much needed relief to airline sector from the ongoing dispute. It may be represented to the Government to provide similar exemption to foreign shipping lines having same business model.

DGGI has recently issued notices to various educational institutions, including IITs and universities demanding GST on the research grants received by them. Allowing exemption on such grants and regularizing past cases may provide relief to such institutions.

West Bengal AAAR in case of Bengal Peerless Housing Development Company [2019 (30) G.S.T.L. 652] had ruled that preferential location charges cannot be treated as a part of composite supply as it is not naturally bundled with the main supply of construction service. Issuance of Circular treating the same as composite supply is likely to benefit businesses in real estate sector.

Gujarat HC in case of Torrent Power Ltd [2020 (34) G.S.T.L. 385 (Guj.)] had earlier struck down Circular No. 34/8/2018-GST which clarified that various ancillary charges collected by DISCOMs from consumers are liable to GST. HC had held that these charges have direct nexus and are naturally bundled with services of transmission and distribution of electricity and are not subject to GST. This matter is currently pending before the Supreme Court [2020 (34) G.S.T.L. J137 (S.C.)].

Prior to 1 October 2021, licensing services for the right to use the intellectual property of films was taxed @ 12% and motion picture, videotape and television programme distribution services was taxed @ 18%. To remove disparity and classification ambiguities, GST rate on all the above licensing services was rationalized @ 18% w.e.f. 1 October 2021. Regularization of GST liability on film distribution appears to aim at resolving past classification disputes.

Taxpayers who have *suo moto* reversed ITC or not availed the same considering it as time barred basis Section 16(4) for the period up to FY 2020-21, may not be covered by the procedure proposed to be notified under Section 148.

Madras HC in case of Sree Ramu College of Arts and Science [TS-607-HC(MAD)-2023-GST] and Telangana HC in case of Care College of Nursing [TS-559-HC(TEL)-2023-GST] have held that grant or renewal of affiliation by universities to colleges are not exempt from GST.

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