

# EY Tax Alert

**GST Council proposes measures for rate rationalization, trade facilitation and streamlining compliance in its 55<sup>th</sup> meeting**

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## Executive summary

This Tax Alert summarizes the recent press release<sup>1</sup> issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 55<sup>th</sup> meeting held on 21 December 2024.

The key recommendations are:

- ▶ Following shall neither be supply of goods nor supply of services:
  - ▶ Transactions in vouchers (both specific and general-purpose voucher)
  - ▶ Supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance of such goods for exports or to Domestic Tariff Area (DTA)
- ▶ Section 17(5)(d) to be amended retrospectively w.e.f. 1 July 2017 to replace the phrase "plant or machinery" with "plant and machinery".
- ▶ Sponsorship service provided by a body corporate to be covered under forward charge.
- ▶ Input Service Distributor (ISD) provisions to be amended to include reference of supplies covered under section 5(3) and 5(4) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) i.e., inter-state RCM transactions.
- ▶ Various provisions to be amended in CGST Act and CGST Rules in respect of functionality of Invoice Management System (IMS).
- ▶ Pre-deposit to be reduced for filing an appeal before the Appellate Authority in cases involving only penalty without involving the demand of tax.

<sup>1</sup> Press release dated 21 December 2024



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# Background

- ▶ The Goods and Services Tax (GST) Council held its 55<sup>th</sup> meeting in Jaisalmer on 21 December 2024.
- ▶ The Council inter alia recommended rate rationalization and measures for trade facilitation and streamlining compliance.

## Key recommendations

### *Changes relating to goods*

- ▶ Rate on supply of old and used vehicles, including electronic vehicles (EVs) to be increased from 12% to 18%<sup>2</sup>.
- ▶ Earlier, as per entry 52B of compensation cess rate notification<sup>3</sup>, 22% cess was applicable on Sports Utility Vehicles (SUV) if it fulfilled specified criteria.

Later, another notification<sup>4</sup> amended the aforesaid entry to include all utility vehicles provided they meet the prescribed conditions.

It is clarified that the aforesaid amendment is effective from 26 July 2023.

- ▶ The definition of “pre-packaged and labelled” is amended to cover all commodities that are intended for retail sale and containing not more than 25 kg or 25 litre, which are ‘pre-packed’ as defined under the Legal Metrology Act, or a label affixed thereto is required to bear the declarations under the provisions of the Act and rules.
- ▶ Supply of food inputs under HSN 19 or 21 that are supplied for food preparations intended for free distribution to economically weaker sections under a government program to attract concessional rate of 5%.
- ▶ To bring at par with GST rate, the compensation cess rate is reduced to 0.1% on supplies to merchant exporters.

### *Changes relating to services*

- ▶ Currently, sponsorship service provided by any person to any body corporate or partnership firm is under reverse charge mechanism (RCM).

Such supplies when provided by body corporate is to be brought under forward charge.

- ▶ At present, for GST rate on restaurant services at specified premises, reference is given to declared tariff of unit of accommodation.

W.e.f. 1 April 2025, GST rate on restaurant services in a hotel is to be linked with actual “value of supply” of unit of accommodation. If value of supply for any unit of accommodation exceeded INR 7,500 in preceding FY, then GST rate shall be 18% with input tax credit (ITC). Else it will be 5% without ITC.

Accordingly, the definition of ‘declared tariff’ is to be omitted and the definition of ‘specified premises’ will be suitably amended.

Further, an option to be given to pay tax on restaurant service in hotels @ 18% with ITC, if the hotel so chooses, by giving a declaration to that effect on or before the beginning of the financial year or on obtaining registration.

- ▶ Renting of commercial property by unregistered person to registered person is covered under RCM. The Council decided to exclude the composition taxpayers from the above.

Past cases to be regularized on “as is where is” basis.

- ▶ Services by an acquiring bank, to any person in relation to settlement of an amount up to INR 2000 in a single transaction, transacted through credit card, debit card, charge card or other payment card service, is exempted<sup>5</sup>.

The term “acquiring bank” is defined as any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

It is clarified that the exemption does not cover payment gateway (PG) and other fintech services which do not involve settlement of funds.

RBI regulated Payment Aggregators are eligible for exemption since they fall within the ambit of ‘acquiring bank’.

- ▶ GST is not payable on the ‘penal charges’ levied and collected by banks and NBFCs from borrowers for non-compliance with loan terms

<sup>2</sup> Tax is discharged on the margin of the supplier

<sup>3</sup> Notification No. 1/2017 Compensation Cess (Rate) 28 June 2017

<sup>4</sup> Notification No. 3/2023-Compensation Cess (Rate) dated 26th July 2023

<sup>5</sup> Entry 34 of Notification No. 12/2017-CTR dated 28 June 2017

## Clarification

- ▶ Circulars will be issued to clarify followings:
  - ▶ No proportional reversal of ITC under section 17(1) or section 17(2) of CGST Act is required to be made by the Electronic commerce operator (ECO) in respect of supplies for which they are required to pay tax under section 9(5) of CGST Act.
  - ▶ In ex-factory supplies, where goods are delivered by the supplier to recipient at the supplier's place of business and the property in goods transfers to the recipient at that point, the goods are considered to be "received" by the recipient under section 16(2)(b) of CGST Act.
  - ▶ Late fee under Section 47(2) of the CGST Act is leviable for the delay in filing the complete annual return which includes both GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement), where applicable.

For the annual returns pertaining to the period 2017-18 to 2022-23, notification to be issued for waiver of late fee for delayed filing of GSTR-9C in excess of the amount of late fee payable till the date of filing of GSTR-9 for the said financial years, provided GSTR-9C is filed on or before 31 March 2025.

## Measures pertaining to law and procedure

### Taxability

- ▶ Transactions in vouchers shall be treated neither a supply of goods nor a supply of services.

Section 12(4) and Section 13(4) of the CGST Act which provides for time of supply of voucher and Rule 32(6) of the CGST Rules which provides for valuation of voucher to be omitted.

Distribution of vouchers on principal-to-principal basis shall not be subject to GST. However, the commission/fee or any other income charged by the agent in distribution of voucher on principal-to-agent basis is taxable under GST.

Additional services related to vouchers would be leviable to GST.

Unredeemed vouchers (breakage) would not be considered as supply under GST and accordingly, no GST is payable.
- ▶ Supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance of such goods for exports or to Domestic Tariff Area

(DTA) shall be treated neither as supply of goods nor as supply of services.

Accordingly, clause (aa) is to be inserted in paragraph 8 of Schedule III of the CGST Act.

### Input tax credit

- ▶ Consequent to the Supreme Court (SC) judgement in case of Safari Retreats Pvt. Ltd.<sup>6</sup>, Section 17(5)(d) to be amended retrospectively w.e.f. 1 July 2017 to replace the phrase "*plant or machinery*" with "*plant and machinery*".
- ▶ Definition of "Input Service Distributor" is to be amended to include references of supplies covered under section 5(3) and 5(4) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) i.e., inter-state RCM transactions.

Consequently, Section 20(1) and 20(2) of CGST Act and Rule 39(1A) of CGST Rules to be amended.

The amendments will be effective from 1 April 2025.

### Definition

- ▶ Section 2(69)(c), which defines local authority, to be amended and an Explanation to be inserted to provide for definitions of the terms 'Local Fund' and 'Municipal Fund' used in the said clause.

### Pre-deposit w.r.t. order involving only penalty

- ▶ Section 107(6) provides for pre-deposit of 25% of penalty for filing appeal before Appellate Authority in case of detention or seizure under section 129.
- ▶ The amount of pre-deposit in cases involving only penalty without involving the demand of tax will be 10% of the penalty amount. Further, 10% pre-deposit will be required for filing appeal before Appellate Tribunal in such cases.

### Invoice Management System (IMS)

- ▶ Section 38 and rule 60 to be amended for providing a legal framework in respect of generation of GSTR-2B based on the action taken by the taxpayers on the IMS.
- ▶ Amendment in Section 34(2) to explicitly provide for reversal of ITC attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier.
- ▶ Rule 67B to be inserted to prescribe the manner in which the output tax liability of the supplier shall be adjusted against the credit note issued by him.

<sup>6</sup> 2024-TIOL-101-SC-GST

- ▶ Section 39(1) and rule 61 to be amended to provide that GSTR-3B of a tax period shall be allowed to be filed only after GSTR-2B of the said tax period is made available on the portal.

#### *Measures for streamlining compliance*

- ▶ Section 148A will be inserted in the CGST Act to empower the Government to enforce a track and trace mechanism for specified evasion prone commodities.

Such system shall be based on a Unique Identification Marking affixed on goods, enabling tracing specified commodities throughout the supply chain.

- ▶ For supply of online services such as money gaming to unregistered recipients, the supplier is required to mandatorily record the name of the State of the unregistered recipient on tax invoice.

The same shall be deemed to be the address on record of the recipient for the purpose of section 12(2)(b) of IGST Act read with proviso to rule 46(f) of CGST Rules.

- ▶ Separate provision to be inserted for generation of temporary identification number for person who are not liable to be registered under CGST Act, but are required to make payment as per Rule 87(4).
- ▶ Rule 19(1) to be amended to allow the taxpayers to modify their "category of registered person" in GST CMP-02 through GST REG-14.

#### *Miscellaneous*

- ▶ The time frame for Group of Ministers (GoM) to restructure GST Compensation is extended till 30 June 2025.
- ▶ The issue relating GST on charges collected by municipalities for granting FSI including additional FSI under RCM was deferred for further examination.

## Comments

Classification of vouchers as neither supply of goods nor supply of services simplifies GST compliance, reducing administrative complexity and costs for businesses. Through such amendment, plethora of ambiguity on the time and place of supply of voucher stands resolved.

It is relevant to note that Haryana Appellate Authority for Advance Ruling in case of Loyalty Solutions and Research Pvt. Ltd. held that GST is leviable on breakage income.

Treating supplies of warehoused goods within SEZ/ FTWZ as not a supply under GST is likely to eliminate double taxation since at the time of removal of goods into DTA, customs duties are payable.

SC in the case of Safari Retreat Pvt. Ltd. [2024-TIOL-101-SC-GST] has assigned distinct meaning to the expression "*plant and machinery*" and "*plant or machinery*" used in clause (c) and clause (d) of section 17(5) of the CGST Act and concluded that the term "plant" needs to be analyzed basis functionality test.

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