

EY Tax Alert

GST Council recommends changes in tax rates and clarification on issues including taxability of personal and corporate guarantee

Executive summary

This Tax Alert summarises the recent press release¹ issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 52nd meeting held on 7 October 2023. The key recommendations are as follows:

- ▶ GST is not payable for providing personal guarantee where no consideration is paid by the company to the director.
- ▶ Value of supply of providing corporate guarantee shall be 1% of the amount of such guarantee offered or the actual consideration, whichever is higher. This valuation will apply irrespective of whether full ITC is available to the recipient or not.
- ▶ GST exemption to be granted to foreign flag foreign going vessel when it converts to coastal run subject to its reconversion to foreign going vessel in six months.
- ▶ Bus operators organised as companies and supplying services through e-commerce operators (ECO) would be liable to pay GST. At present, the liability to pay GST is on ECO.
- ▶ Suppliers to Special Economic Zone (SEZ) units/ developer can make such supplies with payment of tax and claim the refund of tax so paid.
- ▶ Amnesty scheme for filing of appeal before Appellate Authority where appeal could not be filed against the demand order passed on or before 31 March 2023, or the appeal was rejected solely on the ground of being time-barred.

¹ Press release dated 7 October 2023

Background

- The Goods and Services Tax (GST) Council held its 52nd meeting in New Delhi on 7 October 2023.
- The Council made recommendations relating to changes in GST rates, measures for trade facilitation and streamlining compliances in GST.

Key Recommendations

Changes relating to goods

- Currently, a foreign flag foreign going vessel is liable to pay 5% GST on the value of vessel if it converts to coastal run. A conditional exemption is recommended on such conversion subject to its reconversion to foreign going vessel in six months.
- Extra Neutral Alcohol (ENA) used for manufacturing of alcoholic liquor for human consumption to be kept outside the ambit of GST. A separate tariff HS code has been created at 8 digit level in the Customs Tariff Act to cover rectified spirit for industrial use. The GST rate notification will be amended to create an entry for ENA for industrial use attracting 18% GST.
- Food preparation of millet flour in powder form containing at least 70% millets by weight, when sold in loose form would be exempt. If the same is sold in pre-packaged and labelled form, the rate is reduced to 5%.
- GST rate on molasses to be reduced from 28% to 5%.

Changes relating to services

- Services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation when supplied to Governmental Authorities would be exempt.
- W.e.f. 1 January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce operators (ECOs) has been placed on ECO. It is recommended that bus operators organized as companies may be excluded from the above. This would enable them to pay GST on supplies using their ITC.
- Supply of all goods and services by Indian Railways shall be taxed under forward charge mechanism to enable them to avail ITC.

Clarifications

- Circular will be issued to clarify the place of supply (PoS) provisions in respect of following services:
 - Service of transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India - PoS shall be determined as per section 13(2) of IGST Act.
 - Advertising services.
 - Co-location services.
- Circular will also be issued to clarify admissibility of

export remittances received in Special INR Vostro account as permitted by RBI, for the purpose of qualifying export of services.

- District Mineral Foundations Trusts (DMFT) set up by the State Governments across the country in mineral mining areas are Governmental Authorities and thus, eligible for the same exemptions as available to any other Governmental Authority.
- Job work services for processing of barley into malt attracts GST @ 5% as applicable to "job work in relation to food and food products" and not 18%.

Taxability of Personal/ Corporate guarantee

- Circular to be issued to clarify that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their behalf, the open market value of the said supply may be treated as zero and hence, no tax to be payable in respect of such supply of services.
- W.r.t. corporate guarantee provided to related persons, sub-rule (2) in Rule 28 to be inserted to provide for taxable value as 1% of the amount of such guarantee offered or the actual consideration, whichever is higher.

This valuation will apply irrespective of whether full ITC is available to the recipient or not.

Trade facilitation measures

- Amnesty scheme to be introduced for taxable persons who could not file an appeal before the Appellate Authority against the demand order passed on or before 31 March 2023, or whose appeal was rejected solely on the ground of being time-barred. Filing of appeal in such cases will be allowed up to 31 January 2024, subject to the condition of payment of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e., 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger.
- Rule 159 (2) and Form GST DRC-22 to be amended to provide that the order for provisional attachment shall not be valid after expiry of one year from the date of the said order.
- Notification No. 1/2023 - Integrated tax dated 31 July 2023 to be amended to allow suppliers to SEZ unit/ developer to pay integrated tax on such supplies and claim the refund of tax so paid.

Other measures

- Provisions of the Central Goods and Services Tax Act, 2017 (CGST Act) to be aligned with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Members for the proposed GST Appellate Tribunals.
- Amendments in section 2(61) and section 20 of CGST Act, 2017 as well as in Rule 39 of CGST Rules, 2017 are proposed to make ISD procedure mandatory.

Comments

- a. RBI prohibits any payment by way of guarantee commission to the directors. Non taxability in such scenarios will align GST provisions with RBI guidelines and provide much needed relief to the industry.
- b. Provision for valuation of corporate guarantee is likely to resolve a long-standing issue faced by the companies. Preferably, if the benefit of Nil value as per second proviso to Rule 28 is allowed for such guarantee, it may help in reducing working capital blockage.
- c. Amnesty scheme extending the timelines for filing appeal is a welcome move and would aid the ease of doing business agenda of the Government.
- d. IGST exemption to foreign flag vessel converting for coastal run is likely to boost the tourism industry in India.

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