

EY Tax Alert

GST Council recommends decriminalization of offences and measures for trade facilitation

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Executive summary

This Tax Alert summarizes a press release¹ issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 48th meeting held on 17 December 2022.

The key recommendations are as follows:

- ▶ Decriminalization of certain offences, increasing the threshold of tax amount from INR 1 crore to INR 2 crores for launching prosecution, and reducing the compounding amount for offences.
- ▶ Paras 7, 8(a) and 8(b) earlier inserted in Schedule III to Central Goods and Services Tax Act, 2017 (CGST Act) w.e.f. 1 February 2019, to be made retrospectively effective from 1 July 2017.
- ▶ Amendment in GST law to prescribe a procedure for filing refund application by unregistered buyers on cancellation of supply agreements, where the time limit to issue credit note by the supplier has expired.
- ▶ Restricting filing of returns/ statements to a maximum period of three years from the relevant due dates.
- ▶ Clarifying issues pertaining to the place of supply of services of transportation of goods outside India and availability of input tax credit (ITC) to the recipient of such supply.

¹ Press release dated 17 December 2022

Background

- ▶ The Goods and Services Tax (GST) Council held its 48th meeting on 17 December 2022.
- ▶ The Council has made recommendations relating to changes in tax rates for goods, decriminalization of certain offences, measures for trade facilitation and streamlining compliances under GST.

Key Decisions

Rate changes and clarifications in respect of goods

- ▶ Council made the following recommendations for changes in GST rates for goods:

Sl. No.	Description	Existing rate	Proposed Rate
1.	Husk of pulses including chilka and concentrates including chuni/churi, khanda	5%	NIL
2.	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%

- ▶ Supply of Mentha Arvensis to be included under reverse charge mechanism (RCM) as has been done for Mentha Oil.
- ▶ Council recommended following clarifications:
 - ▶ The higher rate of compensation cess of 22% is applicable to motor vehicle fulfilling all the four conditions, viz., it is popularly known as sport utility vehicle (SUV), has engine capacity exceeding 1500 cc, length exceeding 4000 mm and ground clearance of 170 mm or above.
 - ▶ Goods falling in lower rate category of 5% under Schedule I of Notification No. 1/2017-CT(R), imported for petroleum operations, will attract lower rate of 5% and the rate of 12% shall be applicable only if the general rate is more than 12%.
 - ▶ Other classification related clarifications for certain goods.

Clarifications in respect of services

- ▶ No GST under RCM is payable where the residential dwelling is taken on rent by a registered person in his personal capacity for use as his own residence and on his own account and not on account of his business.
- ▶ Incentives paid to banks by Central Government under the scheme for promotion of RuPay debit cards and low value BHIM-UPI transactions are in the nature of subsidy and thus, not taxable.

Decriminalization of offences

- ▶ The minimum threshold for launching prosecution under GST to be increased from INR 1 crore to INR 2

crores. However, offence of issuance of invoices without supply of goods or services shall not be covered for such increase.

- ▶ Compounding amount to be reduced from the present range of 50% to 150% of tax amount to the range of 25% to 100%.
- ▶ Offences specified under clauses (g), (j) and (k) of Section 132(1) of the Central Goods and Services Tax Act, 2017 (CGST Act) to be decriminalized, viz.:
 - ▶ Obstruction or preventing any officer in discharge of his duties.
 - ▶ Deliberate tempering of material evidence.
 - ▶ Failure to supply information.

Trade facilitation measures

- ▶ Entries 7, 8(a) and 8(b) were inserted in Schedule III to CGST Act w.e.f. 1 February 2019 to keep the following transactions outside the purview of GST:
 - ▶ Supply of goods from a place in non-taxable territory to another place in non-taxable territory without such goods entering into India,
 - ▶ Supply of warehoused goods before their clearance for home consumption, and
 - ▶ High sea sales.

In order to remove the ambiguities regarding taxability of such transactions during the period 1 July 2017 to 31 January 2019, it is recommended to make the said entries retrospectively effective from 1 July 2017.

However, no refund shall be available in cases where tax has already been paid in respect of such transactions during the period 1 July 2017 to 31 January 2019.

- ▶ Currently, there is no procedure for claiming refund of tax borne by the unregistered buyers in cases where the agreement for supply of services (like construction of house, long-term insurance policy) is cancelled and the time period of issuance of credit note by the concerned supplier is over.

The Council has recommended amendment in Central Goods and Services Tax Rules, 2017 (CGST Rules), and issuance of a circular to prescribe the procedure for filing application of refund by unregistered buyers in such cases.

- ▶ Rule 37(1) to be amended retrospectively w.e.f. 1 October 2022 to provide for only the proportionate reversal of input tax credit (ITC) in terms of second proviso to section 16(2) of CGST Act.
- ▶ Rule 37A to be inserted for prescribing the mechanism for ITC reversal by a registered person due to non-payment of tax by the supplier within a specified date. It will also prescribe mechanism for re-availment of such credit if the supplier pays tax subsequently.

This would ease the process for complying with the condition for ITC availment under section 16(2)(c) of CGST Act.

- ▶ Circular to be issued for clarifying the issues pertaining to the place of supply of services of transportation of goods in terms of proviso to section 12(8) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) and availability of ITC to the recipient of such supply.

It has also been recommended that proviso to section 12(8) may be omitted.

- ▶ Earlier, GST Council had granted in-principle approval for allowing unregistered suppliers and composition taxpayers to make intra-state supply of goods through E-Commerce Operators (ECOs), subject to certain conditions².

Now, the Council has approved amendments in the GST Act and Rules, along with issuance of relevant notifications, to enable the same. The scheme may be implemented w.e.f. 1 October 2023.

- ▶ Rule 108(3) and 109 to be amended to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority.

This would facilitate timely processing of appeals and ease the compliance burden for the appellants.

- ▶ Rule 109C and Form GST APL-01/03 W to be inserted for providing the facility for withdrawal of an application of appeal up to certain specified stage. This would help in reducing litigations at the level of appellate authorities.

- ▶ Rule 12(3) to be amended to provide facility for cancellation of TDS and TCS registrations.

- ▶ Circular to be issued to clarify that “No Claim Bonus” offered by insurance companies is an admissible deduction for valuation of insurance services.

- ▶ Circular to be issued for clarifying the issue of treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under Insolvency and Bankruptcy Code, 2016 (IBC).

Rule 161 and Form GST DRC-25 also to be amended for facilitating the same.

- ▶ In order to remove ambiguity and legal disputes on various issues, circulars on the following will be issued:

- ▶ Procedure for verification of ITC in cases involving difference in ITC availed in GSTR-3B vis-à-vis that available as per GSTR-2A during FY 2017-18 and 2018-19.
- ▶ Clarifying the manner of re-determination of demand in terms of section 75(2) of CGST Act.
- ▶ Clarification on applicability of e-invoicing with respect to an entity.

Measures for streamlining compliances

- ▶ It is proposed to conduct a pilot in the State of Gujarat for biometric-based Aadhaar authentication and risk-based physical verification of registration applicants.

Corresponding amendments to be made in Rule 8 and 9. This will help in tackling the menace of fake and fraudulent registrations.

- ▶ PAN-linked mobile number and e-mail address to be captured and recorded in GST REG-01, and OTP-based verification to be conducted at the time of registration on such mobile number and email address to restrict misuse of PAN of a person by unscrupulous elements without knowledge of the said PAN-holder.

- ▶ Section 37, 39, 44 and 52 of CGST Act to be amended to restrict filing of returns/ statements to a maximum period of three years from the due date of filing of the relevant return/ statement.

- ▶ GSTR-1 to be amended to provide for reporting of details of supplies made through ECOs, covered under section 52 and section 9(5), by the supplier and reporting by the ECOs in respect of supplies made under section 9(5).

- ▶ Rule 88C and Form GST DRC-01B to be inserted for intimation to the taxpayer about the difference between liability reported in GSTR-1 and GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage.

This is for enabling the taxpayer to either pay the differential liability or explain the difference.

Further, clause (d) to be inserted in Rule 59(6) to restrict furnishing of GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount nor has furnished a reply explaining the reasons for the amount remaining unpaid.

- ▶ Definition of “non-taxable online recipient” under section 2(16) and “Online Information and Database Access or Retrieval Services (OIDAR)” under section 2(17) of IGST Act to be amended so as to reduce interpretation issues and litigation on taxation of OIDAR services.

² Refer our alert “GST Council recommends rate rationalization and changes in GST law and procedure” dated 30 June 2022

Comments

- a. Relaxation in the provisions relating to offences, prosecution and compounding is a welcome move and likely to aid the ease of doing business agenda of the Government.
- b. Although the threshold for launching prosecution will be increased to INR 2 crores, as per CBIC guidelines, prosecution would normally be initiated where amount of tax evasion is more than INR 5 crores except in case of habitual evaders and arrest cases.
- c. Allowing refund to unregistered buyers in case of cancellation of supply agreements is a much-needed relief to the general public. Earlier, in a few cases, recipients of supply had approached the High Courts to claim refund where the levy was struck down.
- d. Retrospective effect to the amendments under Schedule III to the CGST Act may benefit taxpayers in pending litigations. However, the Government should allow refund in cases where a person has already paid tax on such transactions.
- e. While the recipient of supply is able to check GSTR-3B filing status of the supplier, he is unable to verify whether the supplier has paid tax to the Government. Thus, prescribing the mechanism under Rule 37A will be critical for complying with the provisions of section 16(2)(c).
- f. Courts in the past have held that the provisions of IBC have an overriding effect over the tax laws. Necessary changes were carried out under the Income tax law in the Budget for FY 2022-23. Amendment in Rule 161 and proposed issuance of Circular appears to be on the similar line.
- g. Proposed Rule 88C and amendment in Rule 59(6) may lead to additional compliance by taxpayers. There may be genuine reasons for difference in tax reported in GSTR-3B and GSTR-1 (for e.g., adjustment of credit note pertaining to earlier period in GSTR-3B of the current period). The difference may now have to be substantiated on a monthly basis.

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