



Varaiya and Shah LLP
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GST Alert

Following (major) recommendations have been made by GST Council at their 50th meeting held on 11th July, 2023.

Please note that the same shall come into force only after the requisite notifications are issued. We will inform you as and when the said notifications are issued.

GST Council recommends Casino, Horse Racing and Online gaming to be taxed at the uniform rate of 28% on full face value

GST Council recommends notification of GST Appellate Tribunal by the Centre with effect from 01.08.2023

GST Council recommends exemption of cancer related drugs, medicines for rare diseases and food products for special medical purposes from GST tax

Recommends bringing down rates from 18 percent to 5 percent on 4 items - Uncooked, unfried & extruded snack palettes, fish soluble paste, LD slag to be at par with blast furnace slag, and imitation zari thread

Changes in GST Tax Rates:

1. It has been decided to reduce GST on imitation zari thread or yarn known by any name in trade parlance from 12% to 5% and to regularize payment of GST related to this matter during the past period on "as is basis".
2. It has been decided to amend the entry 52B in compensation cess notification to include all utility vehicles by whatever name called provided they meet the parameters of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance of 170 mm & above and to clarify by way of explanation that 'Ground clearance' means Ground Clearance in un-laden condition.
3. It has decided to clarify that services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company or body corporate are not taxable under RCM.

Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Measures for facilitation of trade:

1. **Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023:** The Council has recommended the Rules governing appointment and conditions of President and Members of the proposed GST Appellate Tribunal **for enabling smooth constitution and functioning of GST Appellate Tribunal**. The Council also recommended that provisions of Finance Act, 2023 pertaining to GST Appellate Tribunal may be notified by the Centre **with effect from 01.08.2023**, so that the same can be brought into operation at the earliest. Further the council has recommended the Chief Secretary of Maharashtra to be nominated as one of the members of the Search cum selection committee as per Section 110(4)(b)(iii) of CGST Act 2017. Regarding the number of State Benches, it was decided to start them in a phase wise manner.
2. **Annual Returns for FY 2022-23:** The Council has recommended that the relaxations provided in FY 2021-22 in respect of various tables of **FORM GSTR-9** and **FORM GSTR-9C** be continued for **FY 2022-23**. Further, for easing compliance burden on smaller taxpayers, exemption from filing of annual return (in **FORM GSTR-9/9A**) for taxpayers having aggregate annual turnover **up to two crore rupees**, to be continued for **FY 2022-23** also.
3. The Council has recommended to **clarify through a circular that Input Services Distributor (ISD) mechanism is not mandatory** for distribution of input tax credit of **common input services procured from third parties** to the distinct persons as per the present provisions of GST law, and also to clarify issues regarding taxability of **internally generated services** provided by one distinct person to another distinct person. The Council has also recommended that **amendment may be made in GST law to make ISD mechanism mandatory prospectively** for distribution of input tax credit of such common input services procured from third parties.

4. **Circular to be issued to provide clarity on various issues** pertaining to the GST liability as well as the liability to reverse input tax credit in **cases involving warranty replacement of parts and repair services during warranty period** without any consideration from the customers, clarifying *inter alia* that no GST is chargeable by the manufacturer on such replacement of parts and/ or repair service and also, no reversal of input tax credit is required to be made by the manufacturer.
5. **Circular to be issued to clarify various refund related issues:** Consequent to amendment in rule 36(4) of CGST Rules 2017 with effect from 01.01.2022, refund of accumulated input tax credit (ITC) under Section 54(3) of CGST Act, 2017 for a tax period to be restricted to ITC on inward supplies reflected in **FORM GSTR-2B of the said tax period or any previous tax period**. Consequent to Explanation having been inserted in rule 89(4) of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the **value of export goods**, to be included while calculating "**adjusted total turnover**" in the formula under rule 89(4), will be determined as per the said explanation. Clarification regarding **admissibility of refund** in cases where export of goods, or the realization of payment for export of services, as the case may be, is made after the time limit provided under rule 96A of CGST Rules, 2017.
6. Clarifying that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, are required to issue **e-invoices** under rule 48(4) of CGST Rules. for the **supplies made to Government Departments** or establishments / Government agencies / local authorities / PSUs, etc., registered solely for the purpose of TDS.
7. Clarification regarding the **manner of calculation of interest amount** liable to be paid under section 50(3) of CGST Act, 2017 in respect of wrongly availed and utilized IGST credit, clarifying *inter alia* that in cases of wrong availment of IGST credit, **the balance of input tax credit (ITC) in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be taken in consideration while calculating such interest liability as per rule 88B of CGST Rules, 2017.**
8. As per the recommendations of the Council in its 48th meeting, Circular No. 183/15/2022-GST dated 27th December, 2022 was issued to provide for the procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in **FORM GSTR-3B** vis a vis that available as per **FORM GSTR-2A** during **FY 2017-18 and 2018-19**. To provide further relief to the taxpayers, the Council recommended for further issuance of a circular to provide for similar procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in **FORM GSTR-3B** vis a vis that available as per **FORM GSTR-2A** during the period **01.04.2019 to 31.12.2021**.

9. **Special procedure** to be provided under section 148 of CGST Act, 2017 to enable manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims of the registered persons, filed in pursuance of the directions of Hon'ble Supreme Court in case of the Union of India v/s Filco Trade Centre Pvt. Ltd.
10. **Rule 108(1)** and **rule 109(1)** of CGST Rules, 2017 to be amended to provide for manual filing of appeal under certain specified circumstances.

Measures for streamlining compliances in GST:

1. In accordance with the recommendations of **Group of Ministers (GoM) on implementation of E-way bill requirement for movement of Gold/ Precious stones** under chapter 71, the Council has recommended to insert **rule 138F** in CGST Rules, 2017, as well as in SGST Rules, 2017 of the States, who want to mandate the requirement of generation of e-way bills for intra-State movement of gold and precious stones under Chapter 71 within their States.
2. **Amendment in CGST Rules, 2017 regarding registration:** The Council has recommended the following amendments in CGST Rules, 2017 **to strengthen the registration process and to effectively deal with the menace of fake and fraudulent registrations in GST:** **Amendment in rule 10A** to provide that the details of bank account, in name and PAN of the registered person, to be required to be furnished within 30 days of grant of registration or before filing of statement of outwards supply under section 37 of CGST Act in **FORM GSTR-1/ IFF**, whichever is earlier. **Amendment in rule 21A(2A)** to provide for system-based suspension of the registration in respect of such registered persons who do not furnish the details of valid bank account under rule 10A with the time period prescribed under the said rule. **Insertion of 3rd proviso in rule 21A(4)** to provide for automatic revocation of such system-based suspension upon compliance with provisions of rule 10A. **Amendment in rule 59(6)** to provide that where a registered person has not furnished details of a valid bank account under rule 10A, the said registered person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using IFF. **Amendment in rule 9 and rule 25** to do away with the requirement that the physical verification of business premises is to be conducted in the presence of the applicant and also to provide for physical verification in high risk cases even where Aadhaar has been authenticated.

3. **Procedure for Recovery of Tax and Interest in terms of Rule 88C(3):** On the recommendations of the GST Council in its 48th meeting held on 17.12.2022, rule 88C was inserted in the CGST Rules, 2017 with effect from 26.12.2022 for system based intimation to the registered person in cases where the output tax liability in terms of **FORM GSTR-1** of a registered person for any particular month exceeds the output tax liability disclosed by the said person in the return in **FORM GSTR-3B** for the said month by a specified threshold. The Council has now recommended insertion of **Rule 142B** in the CGST Rules, 2017 and insertion of a **FORM GST DRC-01D** to provide for manner of recovery of the tax and interest in respect of the amount intimated under rule 88C which has not been paid and for which no satisfactory explanation has been furnished by the registered person.
4. **Mechanism to deal with differences in ITC between FORM GSTR-2B and FORM GSTR-3B:** The Council has recommended a mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in **FORM GSTR-3B** vis a vis that made available in **FORM GSTR-2B** above a certain threshold, along with the procedure of auto-compliance on the part of the taxpayers, to explain the reasons for the said difference or take remedial action in respect of such difference. For this purpose, **rule 88D** and **FORM DRC-01C** to be inserted in CGST Rules, 2017, along with an amendment in **rule 59(6)** of CGST Rules, 2017. **This will help in reducing ITC mismatches and misuse of ITC facility in GST.**
5. Explanation 3 to be inserted after **rule 43** of CGST Rules, 2017 to prescribe that the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers to be included in the value of exempt supplies for the purpose of reversal of input tax credit.

We, at Varaiya & Shah LLP

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