

Key Highlights of the 50th GST Council Meeting

The 50th Goods and Services Tax (“GST”) Council meeting, chaired by the Union Finance Minister and Corporate Affairs Minister, Nirmala Sitharaman was held on July 11, 2023. The GST Council recommended changes in the GST rates, along with measures for trade facilitation and streamlining compliances.

The key recommendations of the meeting are summarized below.

Taxability of online gaming, casinos and horse racing

The GST Council has recommended a levy of GST at 28% on online gaming, horse racing and casinos. As per the recommendations, GST will be applicable on the full value of bets placed/ chips purchased. Relevant changes to the CGST Act¹ will be carried out for the same.

JSA Comment: With this recommendation, the GST Council has made its intention clear to levy GST not only on game of chance but also on game of skill. It is relevant to note that the Karnataka High Court in the recent case of *Gameskraft Technologies Private Limited v. DGGI*², observed the distinction between the game of skill and game of chance and held that GST is not levied on online gaming which are skill-based. Also, imposing tax on the entire bet value may result in gaming industry to change the existing business models.

Constitution of GSTAT³

With a view to set up GSTAT at the earliest, GST Council has recommended that the provisions of Finance Act, 2023 pertaining to constitution and setting up of GSTAT will be notified with effect from August 1, 2023.

Clarifications/amendments regarding ISD⁴ mechanism

GST Council has proposed to clarify (through a Circular) that as per the present provisions of GST laws, ISD mechanism was optional for distribution of ITC⁵ of common input services procured from third parties. The GST Council has recommended that suitable legislative amendments will be made in the GST laws to make ISD

¹ The Central Goods and Services Tax Act, 2017

² 2023 (5) TMI 926 - Karnataka High Court

³ Goods and Services Tax Appellate Tribunal

⁴ Input Service Distributor

⁵ Input Tax Credit

mechanism mandatory prospectively, for distribution of ITC of common input services. Further, clarifications are also expected on issues regarding taxability of cross charge made between registered locations within the same business entities.

Other key legislative amendments

The GST Council has recommended some of the key legislative amendments as below:

- 1) To track payment of GST on RCM⁶ basis by registered recipients in India, Rule 64 of CGST Rules⁷ and FORM GSTR-5A are proposed to be amended, requiring OIDAR⁸ service providers to provide details of supplies made to registered persons in India in FORM GSTR-5A.
- 2) Value of supply of goods by duty free shops at the arrival terminal of international airports to the incoming passengers, to be included in the value of exempt supplies for the purpose of reversal of ITC (explanation to Rule 43 of the CGST Rules to be inserted).
- 3) Place of supply in respect of goods supplied to unregistered persons to be prescribed under Section 10 of the IGST Act⁹.
- 4) Amendments to CGST Rules proposed to strengthen the registration process and to effectively deal with the menace of fake and fraudulent GST registrations.
- 5) Rules regarding filing an appeal before Appellate Authority under Rule 108(1) read with Rule 109(1) of the CGST Rules to be amended suitably to enable manual filing thereof in certain specified circumstances.
- 6) Pursuant to Finance Act 2023, CGST Rules will provide the manner and conditions of consent-based sharing of information of registered persons available on the common portal with other systems. The Council has also recommended notifying “Account Aggregators” as the systems with which information is to be shared by the common portal.

Recommendations relating to supply of goods and services

1) Recommendations relating to goods (including rates of GST)

- a) All utility vehicles (by whatever name called) having a length exceeding 4000 (four thousand) millimeters, engine capacity exceeding 1500 (one thousand five hundred) cc and ground clearance of 170 (one hundred seventy) mm and above, will attract compensation cess of 22%. Further, an explanation will be inserted that ground clearance of vehicle will be computed in an un-laden condition.

JSA Comment: Earlier, in pursuance of recommendations of the 48th GST Council meeting and Circular No. 189/01/2023-GST dated January 13, 2023, levy of compensation cess (at the rate of 22 %) was restricted to sports utility vehicles (SUVs) only, as per the criteria given above. Now, the definition of utility vehicles has been expanded to include in its ambit all MUVs¹⁰ and XUVs¹¹, Accordingly, all MUVs and XUVs fulfilling the prescribed conditions will be subjected to increased compensation cess of 22% from 20%, leading to increase in prices of such vehicles.

⁶ Reverse Charge Mechanism

⁷ Central Goods and Services Tax Rules, 2017

⁸ Online Information Database Access and Retrieval services

⁹ Integrated Goods and Services Tax Act, 2017

¹⁰ Multi-utility vehicle

¹¹ crossover utility vehicles

- b) IGT12 exempted on Dinutuximab (Quarziba) medicine, and medicines and FSMP13 listed under the National Policy for Rare Diseases, 2021, when imported for personal use.
- c) Supply of raw cotton (including kala cotton), by agriculturist to cooperatives clarified to be taxable under RCM.
- d) To encourage better utilization and protection of environment, GST on LD slag¹⁴ reduced from 18% to 5%.

2) Recommendations relating to services (including rates of GST)

- a) It is clarified 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) are not taxable under RCM. Only those services supplied by a director of company, which are supplied by him in the capacity of being a director of that company will be taxable under RCM.
- b) It is clarified that supply of food and beverages in cinema halls is taxable as restaurant services and attracts GST at the rate of 5%, provided they fulfil the following 2 (two) conditions:
 - i) they are supplied by way of or as part of a service; and,
 - ii) supplied independently of the cinema exhibition service.

However, where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate of 18% as applicable to exhibition of cinemas, being the principal supply.

- c) GST exempted on satellite launch services supplied by organizations in private sectors.

Key clarifications expected

Clarificatory circulars are expected to be issued in respect of below:

- 1) No GST is chargeable by the manufacturer on replacement of parts and provision of warranty services to customers without consideration during warranty period and, no reversal of ITC is required in respect thereof.
- 2) Mere holding of securities of a subsidiary company by a holding company cannot be treated as a supply of services and therefore, cannot be taxed under GST.
- 3) Circular to be issued to clarify various refund related issues in respect of export of goods and services as per below:
 - a) Refund of accumulated ITC under Section 54(3) of CGST Act for a tax period will be restricted to ITC on inward supplies reflected in Form GSTR-2B of the said tax period or any previous tax period;
 - b) For calculating refund under Rule 89(4) of CGST Rules read with explanation thereto, the value of goods exported out of India is taken as FOB¹⁵ value declared in the shipping bill or value declared on the tax invoice/bill of supply, whichever is less. The revenue authorities were disputing that the above is applicable only for computing 'turnover of zero-rated supply of goods', and not 'adjusted total turnover'. The GST Council has now proposed to clarify that for calculating both 'turnover of zero-rated supply of goods' and 'adjusted total turnover', the value of goods exported outside India will be determined in the same manner as prescribed under the explanation above; and,

¹² Integrated Goods and Services Tax

¹³ Food for Special Medical Purposes

¹⁴ LD slag is a byproduct of steel industry, which is suitable for use in road construction and other civil related works

¹⁵ Free on Board

- c) Clarification regarding admissibility of refund in cases where export of goods or realization of payment for export of services, as the case may be, is made after time limit provided under Rule 96A of the CGST Rules.
- 4) Circular to be issued to provide clarification regarding TCS¹⁶ liability under Section 52 of the CGST Act in cases where multiple e-commerce operators (ECOs) are involved in a single transaction of supply of goods or services or both.
- 5) A registered person having an aggregate turnover above the prescribed threshold limit is required to issue e-invoices for supplies made to Government departments and other bodies, which are registered under the GST laws solely for the purpose of tax deduction at source.
- 6) Section 50(3) of the CGST Act provides recovery of interest on ITC which is wrongly availed and utilised. The Council has proposed to clarify that for computing interest, cumulative balance of all heads (IGST, CGST and SGST) needs to be considered.

Measures to facilitate trade and simplify procedural compliances

- 1) Procedure to be provided to enable manual filing of appeals 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 the Hon'ble Supreme Court in the case of *Union of India v. Filco Trade Centre Private Limited*¹⁷.
- 2) The Council has recommended to extend amnesty schemes till August 31, 2023, for following:
 - a) Non-filers of FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 returns;
 - b) Revocation of cancellation of registration; and,
 - c) Deemed withdrawal of assessment orders.
- 3) GTAs¹⁸ will be not required to file declaration for paying GST under forward charge every year. If this option is exercised for a particular FY¹⁹, it will be deemed to have been exercised for all periods unless, a declaration to revert to RCM is filed by the GTA.
- 4) Procedure for verification of ITC in cases involving difference in ITC availed in FORM GSTR-3B and FORM GSTR-2A during period April 1, 2019 to December 31, 2021, is proposed to be provided (this will be similar to the procedure prescribed for FY 2017-18 and FY 2018-19²⁰).

Relaxations provided in respect of various tables of Form GSTR-9 and Form GSTR-9C for FY 2021-22 to be continued for FY 2022-23. Further, small taxpayers having aggregate annual turnover up to INR 2,00,00,000 (Indian Rupees two crore) exempted from filing Form GSTR-9/ Form GSTR-9A exempted.

¹⁶ Tax Collected at Source

¹⁷ 2022 (7) TMI 1232 - SC Order

¹⁸ Goods Transport Agency

¹⁹ Financial Year

²⁰ Circular No. 183/15/2022-GST dated December 27, 2022

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India. Under the Indirect Tax, JSA provides services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates.

This Prism has been prepared by:



Manish Mishra

Partner & Head of
Practice - Indirect Tax



Shareen Gupta

Partner



Shikha Parmar

Principal Associate



Meghna Mittal

Associate

For more details, please contact km@jsalaw.com

www.jsalaw.com



17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
**IFLR1000 APAC
Rankings 2022**

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
9 Ranked Practices

11 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the
Year 2021



Ranked #1
The Vahura Best Law Firms to
Work Report, 2022

Top 10 Best Law Firms for
Women in 2022



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.