

GOODS & SERVICES TAX / IDT UPDATE – 65

Recommendations made during 31st Meeting of the GST Council

Rate changes and clarification in Goods/services

- GST rates on certain goods, which were attracting rate of 28/18/12% has been reduced to 18/12/5% respectively.
- GST rate on cinema tickets above Rs. 100 shall be reduced from 28% to 18% and on cinema tickets upto Rs. 100 from 18% to 12%.
- GST rate on third party insurance premium of goods carrying vehicles shall be reduced from 18% to 12%
- Air travel of pilgrims by non-scheduled/charter operations, for religious pilgrimage facilitated by the Government of India under bilateral arrangements shall attract the same rate of GST as applicable to similar flights in Economy class (i.e. 5% with ITC of input services).

Comment: In case where goods or services are provided before the change in rate of tax the old rate will be applicable on such supply except where both payment and invoice raised after rate change. Refer section 14 of CGST Act while applying the new rate of GST.

Similarly, In case where goods or services are provided after the change in rate of tax the new rate will be applicable on such supply except where both payment and invoice raised before the rate change. Please note these rate changes will be effective only after a rate-notification is published in the Gazette or website by the Government.

Exemptions on services

(change will be effect after exemption notification issued)

- Services supplied by banks to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) shall be exempted.
- Services supplied by rehabilitation professionals recognised under Rehabilitation Council of India Act, 1992 at medical establishments, educational institutions, rehabilitation centers established by Central Government / State Government or Union Territories or entity registered under section 12AA of the Income-tax Act shall be exempted.
- Services provided by GTA to Government departments/local authorities which have taken registration only for the purpose of deducting tax under Section 51 shall be excluded from payment of tax under RCM and the same shall be exempted.
- Exemption on services provided by Central or State Government or Union Territory Government to their undertakings or PSUs by way of guaranteeing loans taken by them from financial institutions is being extended to guaranteeing of such loans taken from banks.

Comment: Section 11(4) of SGST Law of each State provides that any notification issued by the Central Government, under sub-section (1) of section 11 of the CGST Act, 2017 shall be deemed to be

a notification issued under the SGST Act. Therefore above supplies are exempt from SGST from the date of notification issued under CGST Act.

Scope of RCM of Services Extended

- Parliament and State legislatures shall be extended the same tax treatment with regard to payment of tax under RCM (reverse charge mechanism) as available to Central and State Governments.
- Security services (supply of security personnel) provided to a registered person shall be put under RCM **except** where service provided to:
 - Government Departments which have taken registration for TDS and
 - Entities registered under composition scheme.
- Services provided by unregistered Business Facilitator (BF) to a bank and agent of Business correspondent (BC) to a BC shall be put under RCM.

Clarifications

- To clarify that “printing of pictures” falls under service code “998386: *Photographic and video graphic processing services*” of the scheme of classification of services and attract GST @18% and not under “998912: *Printing and reproduction services of recorded media, on a fee or contract basis*” which attracts GST @12%.
- To clarify that leasing of pumps and reservoirs by the OMCs to petrol pump dealers is a mixed supply and the Licence Fee Recovery (LFR) charged for the same shall be leviable to GST @ 28%, the rate applicable to pumps. Leasing of land and buildings along with equipment shall fall under heading 9972 (real estate services) and attract GST rate of 18%.
- To clarify that the incentives paid by RBI to Banks under “Currency Distribution and Exchange Scheme” (CDES) are taxable.
- To clarify under section 11(3) of the CGST Act, 2017 that scope of entry for multi-modal transport with GST rate of 12% inserted w.e.f. date 26.07.2018, covers only transport of goods from a place in India to another place in India, that is, only domestic multi-modal transport.
- To clarify that the nature of business establishment making supply of food, drinks and other articles for human consumption will not determine whether the supply by such establishments is a supply of goods or services. It will rather depend on the constituents of each individual supply and whether same satisfies the conditions / ingredients of a ‘composite supply’ or ‘mixed supply’.
- To clarify that GST is exempt on supply of food and drinks by an educational institution when provided by the institution itself to its students, faculty and staff and is leviable to GST of 5% when provided by any other person based on a contractual arrangement with such institutions.
- To clarify that the banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.
- To issue a clarification to Food Corporation of India (FCI) that the service provided by godown owner in case of lease with services, where the godown owner, besides leasing the warehouse, undertakes to carry out activities of storage and preservation of stored food grains, is the service of storage and warehousing of agricultural produce and the same is exempt.
- With effect from 31st January, 2018 degrees/ diploma awarded by IIMs under IIM Act,

2017 will be exempt from GST.

- To clarify that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act, 1966.
- To clarify to West Bengal that services provided by Council/ Board of Primary/ Secondary/ Higher Secondary Education for conduct of examination to its students are exempt.
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[Release ID: 1557064 dated 22nd December,2018]

Formation of GOM as recommended by the GST Council

The GST Council in its 31st meeting has approved the proposal to form a 7 Member Group of Ministers to study the revenue trend, including analyzing the reasons for structural patterns affecting the revenue collection in some of the States. The study would include the underlying reasons for deviation from the revenue collection targets vis a vis original assumptions discussed during the design of GST system, its implementation and related structural issues.

The Group of Ministers will be assisted by the committee of experts from Central Government, State Governments and the NIPFP (National Institute of Public Finance and Planning), who would study and share the findings with GOM. The GOM in turn would give its recommendation to the GST Council.

The members of the GOM and the Committee of experts would be announced in due course of time.

Policy Recommendations

(recommendations to take effect only after duly notified)

Change in relation to GSTR- Form-9, 9A & 9C

- The due date for furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the Financial Year 2017 – 2018 shall be further extended till 30.06.2019.
- Amendment of headings in the forms to specify that the return in FORM GSTR-9 & FORM GSTR-9A would be in respect of supplies etc. 'made during the year' and not 'as declared in returns filed during the year'
- All returns in FORM GSTR-1, GSTR-3B & GSTR-4 have to be filed before filing of FORM GSTR-9 and FORM GSTR-9C;
- HSN code may be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of inward supplies.
- Additional payments, if any, required to be paid can be done through FORM GST DRC-03 only in cash;
- ITC cannot be availed through FORM GSTR-9 & FORM GSTR-9C;
- All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of FORM GSTR-9;
- Value of "non-GST supply" shall also include the value of "no supply" and may be reported in Table 5D, 5E and 5F of FORM GSTR-9;
- Verification by taxpayer who is uploading reconciliation statement would be included in FORM GSTR-9C.

Comments:

- *Extension of due date is a positive step providing enough time for taxpayers to understand and furnish the required details as well as preparation and testing time to GSTIN. ICAI has also represented for the same. Extension of due date for Annual Return appears to require an extension to GSTR 1 also. If GSTR 1 stands extended then it would be in harmony with additional time permitted (upto 31 March 2019) to claim credits relating to 2017-18. Please look for these extension notifications as the additional time to avail missed credits is 31 March, 2019 but the due date for Annual Return is upto 30 June, 2019.*
- *Amendment in heading “made during the year” has removed the confusion that GSTR 9 is not just a consolidation of figures filed earlier in the returns. With the data being furnished in table 4 and 5 as well as 10 and 11, it needs to be seen whether table 10 and 11 would be a subset of data included in 4 and 5 or they would operate independently. Given that no link to liability ledger is mentioned, GSTR 9 may be an intelligent summary.*
- *Categorization of HSN and its reporting for inward supply would be more cumbersome over outward supplies. Therefore, the requirement has been confined only to major inward supplies upto 10% which have been highlighted by ICAI in its representation also. Clearly, GSTR 9 may not undergo a major overhaul except to dilute the extent of reporting required in this table 17.*
- *Additional liability can be reported in Form GSTR 9 after payment is made through DRC 03. Therefore there would not be an option for payment of newly discovered liability through Annual Return. Similarly, there would not be an option to claim credit missed out from the monthly returns to be claimed for the first time in the Annual Returns .*
- *Filing of Annual Returns is not permissible unless monthly returns are filed. As such, all tax dues to be duly reported in monthly returns in order to be able to summarize the data in Annual Returns.*
- *Joint responsibility of auditor with Registered Personal to be enabled in GSTR 9C.*

Refund Related policy changes

- A scheme of single authority for disbursement of the refund amount sanctioned by either the Centre or the State tax authorities would be implemented on pilot basis. The modalities for the same shall be finalized shortly.
- All the supporting documents/invoices in relation to a claim for refund in FORM GST RFD-01A shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application. GSTN will enable this functionality on the common portal shortly.
- The following types of refunds shall also be made available through FORM GST RFD01A:
 - i) Refund on account of Assessment/Provisional Assessment/Appeal/Any Other Order;
 - ii) Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice-versa;
 - iii) Excess payment of Tax; and
 - iv) Any other refunds.
- In case of applications for refund in FORM GST RFD-01 A (except those relating to refund of excess balance in the cash ledger) which are generated on the common portal before the roll out of the functionality described in point (10) above, and which have not been submitted in the jurisdictional tax office within 60 days of the generation of ARN, the

claimants shall be sent communications on their registered email ids containing information on where to submit the said refund applications. If the applications are not submitted within 15 days of the date of the email, the said refund applications shall be summarily rejected, and the debited amount, if any, shall be re-credited to the electronic credit ledger of the claimant.

- Clarifications shall be issued on certain refund related matters like refund of ITC accumulated on account of inverted duty structure, disbursement of refunds within the stipulated time, time allowed for availment of ITC on invoices, refund of accumulated ITC of compensation cess etc.

Other Recommendations

- There would be a single cash ledger for each tax head. The modalities for implementation would be finalised in consultation with GSTN and the Accounting authorities.
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- The new return filing system shall be introduced on a trial basis from 01.04.2019 and on mandatory basis from 01.07.2019.

Comment: ICAI has represented in this regard to improve the effectiveness of this simplified return.

- The due date for furnishing FORM GSTR-8 by e-commerce operators for the months of October, November and December, 2018 shall be extended till 31.01.2019.
- The due date for submitting FORM GST ITC-04 for the period July 2017 to December 2018 shall be extended till 31.03.2019.
- ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March, 2019, subject to specified conditions.

Comment: ICAI has represented for the same.

- One more window for completion of migration process is being allowed. The due date for the taxpayers who did not file the complete FORM GST REG-26 but received only a Provisional ID (PID) till 31.12.2017 for furnishing the requisite details to the jurisdictional nodal officer shall be extended till 31.01.2019. Also, the due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period July, 2017 to February, 2019/quarters July, 2017 to December, 2018 by such taxpayers shall be extended till 31.03.2019.
- Late fee shall be completely waived for all taxpayers in case FORM GSTR-1, FORM GSTR-3B & FORM GSTR-4 for the months / quarters July, 2017 to September, 2018, are furnished after 22.12.2018 but on or before 31.03.2019.
- Taxpayers who have not filed the returns for two consecutive tax periods shall be restricted from generating e-way bills. This provision shall be made effective once GSTN/NIC make available the required functionality.
- Changes made by CGST (Amendment) Act, 2018, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and GST (Compensation to States) Amendment Act, 2018 and the

corresponding changes in SGST Acts would be notified w.e.f. 01.02.2019.

Comment: Appears to indicate that all States would be ready with their legislative amendments by that date.

[Release ID: 1557060 dated 22nd December,2018]

In-Principle approval given for Law Amendments

The GST Council in its 31st meeting gave in principle approval to the following amendments in the GST Acts:

1. Creation of a Centralised Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.
2. Amendment of section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.

Comment: This law amendment will NOT be part of the CGST Amendment Act that is already passed by Parliament and expected to be notified by 1 Feb, 2019. Another set of law amendments are likely. The Council's recommendations are the first step before bill introduction can take place.

It is now clear that interest was always intended to be applicable on 'gross tax due' that remain unpaid and not 'net'. Also, identifying whether there is a conflict in two AARs is itself a vexed issue and open to contest citing that one ruling may have proceeded from rate of tax and another may have proceeded from valuation perspective.

In any case, it is to be awaited how and when these recommendations will take the form of a CGST Second Amendment Bill, 201X.

[Release ID: 1557062 dated 22nd December,2018]

The above recommendations of the Council will be made effective only after the necessary amendments in the GST Acts are carried out.

GST council in its next meeting would take a view on the above issues in its next meeting.

The GST Council decided to refer the following issues to Committees / GOM indicated against them:

- i. Extending the Composition scheme to small service providers. The rate of tax and threshold limit to be proposed - Law Committee and Fitment Committee.
- ii. Tax rate on lotteries – Committee of States.
- iii. Taxation of residential property in real estate sector – Law Committee and Fitment Committee.
- iv. Threshold limit of exemption under GST regime – GOM on MSMEs.

Comment: Representations appear to have come from all quarters not to leave service providers out of composition facility. Lotteries and Residential Property are also likely to see some relief and the hard stand taken appears to have no legal remedy but only remedy by policy re-examination. SMEs to get some fillip if threshold benefit is considered but without including them under 9(4) and 5(4), respectively.

[[Release ID: 1557065 dated 22nd December,2018](#)]

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