

GOODS & SERVICES TAX / IDT UPDATE- 133

Key Recommendations of 45th GST Council Meeting held on 17th September, 2021

1. Interest u/s 50(3) of the CGST Act, 2017 to be levied on ITC availed and utilized

Interest under section 50(3) of the CGST Act, 2017 to be payable on “ineligible ITC availed and utilized” and not on “ineligible ITC availed”. The change will be effective retrospectively from 01.07.2017. Interest in such cases to be charged on ineligible ITC availed and utilized at 18%.

2. Transfer of unutilized balance in CGST/ IGST cash ledger between two GSTINs having same PAN allowed

Unutilized balance in CGST and IGST cash ledger shall be allowed to be transferred between distinct persons (entities having same PAN but registered in different states or having different GSTINs in the same State), without going through the refund procedure, subject to certain safeguards.

3. Relaxation in the requirement of filing Form GST ITC-04

Requirement of filing Form GST ITC-04 under rule 45(3) of the CGST Rules, 2017 to be relaxed as under:

S. No.	Particular	Remark
(a)	Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores	Need to furnish ITC-04 once in six months.
(b)	Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores	Need to furnish ITC-04 annually

4. 100% ITC matching after section 16(2)(aa) gets notified

Once section 16(2)(aa) (introduced through Finance Act, 2021) gets notified, rule 36(4) to be amended to restrict ITC to the extent of the invoices/ debit notes communicated to the registered person in Form GSTR-2B. Section 16(2)(aa) provides for 100% matching between GSTR-2B and GSTR-3B.

5. Removal of ambiguity in refund of taxes paid under wrong head

CGST Rules, 2017 to be amended to remove the ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid as CGST/ SGST instead of IGST and

vice-versa.

6. Mandatory Aadhar authentication for refund claim and application for revocation of cancellation of registration

Aadhar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.

7. Late fee for delayed filing of GSTR-1 to be collected through next month's Form GSTR-3B

Late fee for delayed filing of Form GSTR-1 to be auto-populated and collected in next open return in Form GSTR-3B.

8. Refund to be disbursed in the bank account linked with correct PAN

Refund to be disbursed in the bank account, which is linked with the same PAN on which registration had been obtained under GST.

9. Amendment in rule 59(6) of CGST Rules, 2017 with effect from 01.01.2022

Currently, rule 59(6) of the CGST Rules does not permit filing GSTR-1, if a registered person does not file Form GSTR-3B for preceding two months or preceding quarter, as the case may be.

However, it has been recommended to amend rule 59(6) from 01.01.2022 to provide that a registered person shall not be allowed to furnish Form GSTR-1, if he has not furnished the return in Form GSTR-3B for the preceding month.

10. Levy of GST on petroleum products deferred further

After due deliberation, the Council has decided to continue keeping petroleum products outside the ambit of GST.

11. Measures related to restaurant services

(i) After keeping a few exceptions aside, the Council has decided to levy GST on e-commerce food delivery operators like Swiggy, Zomato, etc., and not the restaurant delivering food through them, with effect from 1st January, 2022.

(ii) It has been clarified that services by cloud kitchen/ central kitchen are covered under restaurant service and attract GST at the rate of 5% [without ITC].

(iii) It has been clarified that alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing GST rate of 5% on job work services in relation to food and food products.

12. Bringing all types of motor vehicles within the scope of section 9(5) of the CGST Act, 2017

Services of transport of passengers by any type of motor vehicle through e-commerce platform to be covered under section 9(5) of the CGST Act, 2017 and the person liable to pay tax would be such e-commerce operator. Currently, only radio taxi, motor cab,

maxi cab and motorcycle are covered under section 9(5).

13. Date of debit note and not underlying invoice to be considered for limitation period prescribed under section 16(4) of the CGST Act, 2017

Section 16(4) of the CGST Act, 2017 restricts availment of ITC upto the due date of filing return of September month of subsequent financial year or actual date of filing annual return based on the initial document issued by the supplier.

It has been clarified that with effect from 1st January, 2021, the date of debit note and (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act, 2017.

14. No requirement of carrying physical copies of tax invoices

It has been clarified that at the time of transportation, there would be no requirement of carrying physical copies of e-invoices generated under rule 48(4) of the CGST Rules, 2017.

15. Refund not to be denied if export duty is not actually payable

Under section 54(3) of the CGST Act, 2017, refund of accumulated ITC is denied if any goods are subject to export duty. In a number of cases, export duty has been notified as NIL/ exempt. It has been clarified that refund would be restricted only when export duty is required to be actually paid on the relevant goods and not in case of NIL/exempted goods.

16. Issuance of the following circulars in order to remove ambiguity

(i) Clarification on the scope of intermediary services - Earlier, the government had issued [Circular No. 107/26/2019 dated 18th July, 2019](#) clarifying the doubts related to supply of IT enabled services and services of intermediaries. However, such circular was withdrawn later. Now, a fresh circular will be issued for explaining the scope of intermediary services.

(ii) Clarification relating to interpretation of the term “merely establishment of distinct person” in condition (v) of the section 2(6) of the IGST Act, 2017 for export of services. A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act, 2017 for considering a supply of service as export of services.

17. Concessional GST rates on certain COVID-19 treatment drugs (currently valid till 30.09.2021) has been extended upto 31st December, 2021.

18. Supply of Mentha Oil from unregistered person has been brought under reverse charge. Further, Council has also recommended that exports of Mentha oil shall be allowed only against LUT and consequential refund of input tax credit. Hence, export of mentha oil with payment of IGST and getting refund of the same will not be allowed.

19. With effect from 1st April, 2022, brick kilns shall be brought under special composition scheme with threshold limit of Rs. 20 lakhs. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would apply to bricks in other cases.

20. GST rate changes in order to correct inverted duty structure in footwear and textiles sector, will be implemented with effect from 1st January, 2022.

21. Revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22.

22. Major changes in relation to GST rates and scope of exemption on services w.e.f 1st October, 2021

- a) Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30th September, 2022.
- b) Exemption on leasing of rolling stock by IRFC to Indian Railways shall be withdrawn.
- c) Certain relaxations have been made in conditions relating to IGST exemption on import of goods on lease, where GST is paid on the lease amount, so as to allow this exemption even if :
 - (i) such goods are transferred to a new lessee in India upon expiry or termination of lease; and
 - (ii) the lessor located in SEZ pays GST under forward charge.
- d) Nil GST rate shall be applicable on following services:
 - Services by way of grant of National Permit to goods carriages on payment of fee.
 - Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%].
 - Services related to AFC Women's Asia Cup 2022.
- e) GST rate increased from 12% to 18% in respect of following services:
 - Licensing services/ the right to broadcast and show original films, sound recordings, radio and television programmes [to bring parity between distribution and licensing services].
 - Printing and reproduction services of recorded media where content is supplied by the publisher (to bring it on parity with colour printing of images from film or digital media).

23. Clarification in relation to GST rate on services

- (i) Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' shall be exempt from GST.
- (ii) Ice cream parlor selling already manufactured ice-cream would attract GST at the

rate of 18%.

- (iii) Overloading charges at toll plaza shall be exempt from GST being akin to toll.
 - (iv) The renting of vehicle by State Transport Undertakings and Local Authorities is covered by the expression 'giving on hire' for the purposes of GST exemption.
 - (v) Services by way of grant of mineral exploration and mining rights shall attract GST rate of 18% w.e.f. 1st July, 2017.
 - (vi) Admission to amusement parks having rides etc. shall attract GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos, etc.
24. The Council has decided to set up two Group of Ministers (GoMs) to examine the issue of correctness of inverted duty structure for major sectors; rationalize the rates and review exemptions from the point of view of revenue augmentation, from GST. It has also been decided to set up a GoM to discuss ways and means of using technology to further improve compliance including monitoring through e-way bill systems, e-invoices, FASTag data, etc.

GST Knowledge Sharing

Please visit the website of the GST & Indirect Taxes Committee of ICAI www.idtc.icai.org for previous GST/IDT Updates and other knowledge resources on GST like articles, publications, legal updates, newsletter etc. as also for the information on upcoming events on GST organised by the Committee.

<i>Articles</i>	<i>http://idtc.icai.org/knowledgesharing.php</i>
<i>Legal Update on GST & E-Newsletter on GST</i>	<i>http://idtc.icai.org/gst.html</i>
<i>Publications</i>	<i>http://idtc.icai.org/publications.php</i>
<i>Upcoming events</i>	<i>http://idtc.icai.org/upcoming-events.php</i>

Disclaimer

Information published in the Update is taken from publicly available sources and is believed to be accurate. The GST & Indirect Taxes Committee of ICAI takes no responsibility of accuracy and reliability of information published in the Update. No part of this Update may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording, or otherwise without the permission of GST & Indirect Taxes Committee of ICAI.

ICAI Feedback

The GST Update is an endeavour of the GST & Indirect Taxes Committee to apprise the readers of the amendments made in the GST law vide significant notifications, circulars etc. We welcome your feedback on the Update and its contents. Please share your feedback at gst@icai.in.

