

GOODS & SERVICES TAX / IDT UPDATE-165

Recommendations of the 48th GST Council Meeting

The 48th GST Council meeting held on 17th December 2022 has recommended the following:

1. No GST shall be payable where the residential dwelling is rented to a registered person if it is rented in his/her personal capacity for use as his/her own residence and on his account and not on account of his business.
2. Incentive 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.
3. Measures for Trade Facilitation:

(i) Decriminalization under GST: The Council has recommended to-

- raise the minimum threshold of tax amount for launching prosecution under GST from Rs. 1 Crore to Rs. 2 Crores, except for the offence of issuance of invoices without supply of goods or services or both;
- reduce the compounding amount from the present range of 50% to 150% of tax amount to the range of 25% to 100%;
- decriminalize certain offences specified under clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act, 2017 viz., obstruction or preventing any officer in discharge of his duties, deliberate tempering of material evidence, failure to supply the information.

(ii) Refund to unregistered persons:

There is no procedure for claim of refund of tax borne by the unregistered buyers in cases where the contract/ agreement for supply of services, like construction of flat/house and long-term insurance policy, is cancelled and the time period of issuance of credit note by the concerned supplier is over. The Council recommended amendment in CGST Rules, 2017, along with issuance of a circular, to prescribe the procedure for filing application of refund by the unregistered buyers in such cases.

(iii) Facilitating e-commerce for micro enterprises:

GST Council in its 47th meeting 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 conditions. Further, considering the time required for development of the requisite functionality on the portal as well as for providing sufficient time for preparedness by the ECOs, Council has recommended that the

scheme may be implemented w.e.f. 01.10.2023.

- (iv) Paras 7, 8(a) and 8(b) were inserted in Schedule III of CGST Act, 2017 with effect from 01.02.2019 to keep certain transactions/ activities, such as supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales and supply of warehoused goods before their home clearance, outside the purview of GST. In order to remove the doubts and ambiguities regarding taxability of such transactions/ activities during the period 01.07.2017 to 31.01.2019, the Council has recommended to make the said paras effective from 01.07.2017. However, no refund of tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period 01.07.2017 to 31.01.2019.
- (v) The Council has recommended to amend sub-rule (1) of rule 37 of CGST Rules, 2017 retrospectively with effect from 01.10.2022 to provide for reversal of input tax credit, in terms of second proviso to section 16 of CGST Act, only proportionate to the amount not paid to the supplier vis a vis the value of the supply, including tax payable.
- (vi) The Council recommended to insert rule 37A in CGST Rules, 2017 to prescribe the mechanism for reversal of input tax credit by a registered person in the event of non-payment of tax by the supplier by a specified date and mechanism for re-availment of such credit, if the supplier pays tax subsequently. This would ease the process for complying with the condition for availment of input tax credit under section 16(2)(c) of CGST Act, 2017.
- (vii) Sub-rule (3) of rule 108 and rule 109 of the CGST Rules, 2017 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.
- (viii) Rule 109C and FORM GST APL-01/03 W to be inserted in the CGST Rules, 2017 to provide the facility for withdrawal of an application of appeal up to certain specified stage.
- (ix) Circular to be issued to clarify that No Claim Bonus offered by the insurance companies to the insured is an admissible deduction for valuation of insurance services.
- (x) 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 finalised under Insolvency and Bankruptcy Code, 2016. Rule 161 of CGST Rules, 2017 and FORM GST DRC-25 also to be amended for facilitating the same.
- (xi) Sub-rule (3) of rule 12 of CGST Rules, 2017 to be amended to provide for facility to the registered persons, who are required to collect tax at source

under section 52 or deduct tax at source under section 51 of CGST Act, 2017, for cancellation of their registration on their request.

- (xii) Circular to be issued for clarifying the issues pertaining to the place of supply of services of transportation of goods in terms of the proviso to sub-section (8) of section 12 of the IGST Act, 2017 and availability of input tax credit to the recipient of such supply. It has also been recommended that proviso to sub-section (8) of section 12 of the IGST Act, 2017 may be omitted.
- (xiii) Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:
 - a) 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.
 - b) Clarifying the manner of re-determination of demand in terms of sub-section (2) of section 75 of CGST Act, 2017.
 - c) Clarification in respect of applicability of e-invoicing with respect to an entity.

4. Measures for streamlining compliances in GST:

- (i) Proposal to conduct a pilot in State of Gujarat for Biometric-based Aadhaar authentication and risk-based physical verification of registration applicants. Amendment in rule 8 and rule 9 of CGST Rules, 2017 to be made to facilitate the same. This will help in tackling the menace of fake and fraudulent registrations.
- (ii) PAN-linked mobile number and e-mail address (fetched from CBDT database) to be captured and recorded in FORM GST REG-01 and OTP-based verification to be conducted at the time of registration on such PAN-linked mobile number and email address to restrict misuse of PAN of a person by unscrupulous elements without knowledge of the said PAN holder.
- (iii) Section 37, 39, 44 and 52 of CGST Act, 2017 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.
- (iv) FORM GSTR-1 to be amended to provide for reporting of details of supplies made through ECOs, covered under section 52 and section 9(5) of CGST Act, 2017, by the supplier and reporting by the ECO in respect of supplies made under section 9(5) of CGST Act, 2017.
- (v) Rule 88C and FORM GST DRC-01B to be inserted in CGST Rules, 2017 for intimation to the taxpayer, by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM

GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage, for enabling the taxpayer to either pay the differential liability or explain the difference. Further, clause (d) to be inserted in sub-rule (6) of rule 59 of CGST Rules, 2017 to restrict furnishing of FORM GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid.

- (vi) Amendment in definition of “non-taxable online recipient” under section 2(16) of IGST Act, 2017 and definition of “Online Information and Database Access or Retrieval Services (OIDAR)” under section 2(17) of IGST Act, 2017 so as to reduce interpretation issues and litigation on taxation of OIDAR Services.

5. Recommendations for changes in GST rates:

- (i) It has been recommended to reduce the rate of Husk of pulses including chilka and concentrates including chuni/churi, khanda from 5% to Nil and Ethyl alcohol supplied to refineries for blending with motor spirit (petrol) from 18% to 5%.
- (ii) It has also been decided to include supply of Mentha arvensis under reverse charge mechanism.
- (iii) The higher rate of compensation cess of 22% is applicable to motor vehicle fulfilling all four conditions, namely, it is popularly known as SUV, has engine capacity exceeding 1500 cc, length exceeding 4000 mm and a ground clearance of 170mm or above.

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