



Week of 13th November 2017

A. CHANGES IN THE GST REGIME

GST rate structure for goods

The CBEC has issued notifications to amend the existing rate structure of GST with majority of changes being made in the 28% rate slab applicable to goods. As a result of these notifications, the list of goods taxable at 28% has been reduced substantially from 224 item heads to merely 50 item heads. The notifications are an outcome of the recommendations made during the 23rd meeting of the GST Council wherein it was proposed that the GST rate on non-luxury goods, merit goods, items of daily use, or goods on which the tax incidence had gone much higher in the GST regime vis-a-vis the earlier regime should be brought down from 28% to 18% (Please refer to our GST Update Volume 19 for details). Some of these items are detergents, shampoos, shaving preparations, perfumes, room deodorisers, beauty or make-up preparations, chocolates, handmade furniture, marble and granite slabs / tiles, ceramic tiles, wrist watches and clocks etc. However, as opposed to the recommendations, consumer durables like air-conditioners, refrigerators, freezers and washing machines are still taxable at 28%. Changes have also been notified in the rate slab of 5%, 12% and 18% and in the list of exempted goods. The detailed notifications are available at the government's website www.cbec.gov.in. Though the new rates are in effect from the 00:01 hrs on 15th November, 2017 and the anti-profiteering mechanism under GST has been kick started to ensure that the prices are reduced post the rate reduction, the process of price revision may take some time.

Cabinet clearance to the National Anti-Profiteering Authority

The Union Cabinet has approved the constitution of the post of the chairman and technical members for the National Anti-Profiteering Authority (NAA). This has paved the way for creation of NAA under GST. The need for NAA has increased manifold in the light of the recent reduction in the GST rates. The NAA is mandated to ensure that the benefits of reduction in GST rates of goods and services are passed on to the ultimate consumer by way of reduction in the prices of goods and services. In other words, it has to check that no profiteering is being done by the suppliers on account of GST. It may be noted that the institutional framework of the anti-profiteering mechanism^[1] under GST includes the NAA, a standing committee, the Directorate General of Safeguards in the CBEC and state-wise screening committees. The in-principle approval for setting-up of a screening committee was already given earlier by the GST Council (Please refer to our GST Update Volume 7 for details). Consumers may apply for relief to the respective state screening committees in cases where the benefit of commensurate reduction in prices is not being passed to them. In case the incident of profiteering relates to an item of mass impact, the standing committee may be approached directly.

GST on restaurant services

A notification has been issued by CBEC to reduce the rate of GST on restaurant services. The new rates are in effect from 00:01 hrs on 15th November, 2017. The revised rates are as follows:

- All stand-alone restaurants, air conditioned or otherwise, will attract GST at the rate of 5% without input tax credit (ITC). It has been expressly mentioned that food parcels or takeaways from such restaurants will also attract 5% GST without ITC.

- Restaurants attached to hotels which have room tariff less than Rs 7,500 per unit per day will attract GST at the rate of 5% without ITC.
- Restaurants attached to hotels which have room tariff of Rs 7,500 and above per unit per day (even if for a particular category of rooms only) will attract GST at the rate of 18% with full ITC.
- Outdoor catering will continue to be at 18% with full ITC.

Though the applicable GST rate on restaurant services has been reduced, it remains to be seen whether the prices will actually go down considering that the reduced rate comes without availability of ITC. The imposition of restriction of ITC for restaurant services seems necessitated from the fact that the restaurants had not passed the GST benefits arising out of full availability of input tax credit by reducing their prices for the end consumers. The move, which is being perceived as a strict anti-profiteering measure of the government, indicates that the government is intently monitoring the price movements of various goods and services post GST to ensure that GST benefits by way of commensurate reduction in prices are being passed on to the end consumers.

Exemption from registration

Earlier, all suppliers supplying goods or services through an e-commerce operator were compulsorily liable to obtain registration irrespective of their turnover^[2]. This brought goods or services supplied by these suppliers in the GST ambit putting them in a disadvantageous position vis-a-vis the independent suppliers supplying offline (Please refer to our GST Update Volume 19 for details). Pursuant to industry representations and the recommendations of the 23rd GST Council meeting made in this regard, a notification has now been issued exempting suppliers providing services through an e-commerce platform from obtaining compulsory registration under GST provided their aggregate turnover^[3] does not exceed Rs. 2,000,000 (Rs. 1,000,000 in special category states). It may be noted that inter-state suppliers of services with aggregate turnover less than Rs. 2,000,000 were already made exempt from obtaining registration under GST by an earlier notification (Please refer to our GST Update Volume 16 for details). Thus, now all service providers, whether supplying intra-state, inter-state or through e-commerce operator, are exempt from obtaining GST registration, provided their aggregate turnover does not exceed Rs. 2,000,000 (Rs. 1,000,000 in special category states).

No GST on advance payments for supply of goods

Earlier, GST was payable at the time of advance payment received in respect of supply of goods or services. The major concern with paying GST on advances received in respect of goods was that the advance amount was generally received by the supplier against mixed orders and not against a specific product and therefore the applicable GST rate was unclear. Further, since the input tax credit of the GST on advance payment was available only after the actual receipt of goods, substantial working capital was being blocked. There was no provision for payment of tax on advances in the erstwhile VAT regime. To ensure uniformity with the earlier regime, a notification has now been issued by CBEC to notify that no GST will be payable at the time of payment received in advance by a supplier of goods from the recipient of supply of goods. Thus, the liability to pay GST in respect of the goods so supplied will arise only at the time when the invoice is raised. The exemption from paying GST at the time of receipt of advances for goods is in line with the decision of the GST Council and is a major relief in terms of compliances as well as working capital loss. In respect of supply of services, the advanced payment received will continue to be taxable at the time when such advanced is received, irrespective of the time of issue of invoice or the actual provision of service. This position is the same as was prevalent under the erstwhile service tax provisions.

Extension of filing of GSTR-3B return

A notification has been issued to prescribe that the provisional monthly return in form GSTR-3B will have to be furnished for the months of January to March, 2018 also. Till now, this return was required to be filed till the month of December, 2017 only. The furnishing of the GSTR-3B return for a given month has to be done by the 20th day of the succeeding month. Further, the tax liability pertaining to a given month has to be discharged on or before the due date of filing the GSTR-3B return for that month. The late fee for delayed furnishing of GSTR-3B has been waived off for the months of July-September, 2017. The maximum limit for delayed furnishing of GSTR-3B return for the month of October is Rs 25 per day for each day of delay.

Date for furnishing returns

Notifications have been issued by CBEC to extend the due dates of filing certain returns under GST. The revised dates, inter alia, are as follows:

S.No.	Return	Period	Due date
1.	GSTR-1 (Where the aggregate turnover of the registered taxpayer is more than Rs 15,000,000 in the preceding financial year)	July-October, 2017	31st December, 2017
		November, 2017	10th January, 2018
		December, 2017	10th February, 2018
		January, 2018	10th March, 2018
		February, 2018	10th April, 2018
		March, 2018	10th May, 2018
2.	GSTR-1 (Where the aggregate turnover of the registered taxpayer is upto Rs 15,000,000 in the preceding financial year)	July-September 2017	31st December, 2017
		October-December, 2017	15th February, 2018
		January-March, 2018	30th April, 2018
3.	GSTR-2	July, 2017	30th November, 2017
4.	GSTR-3	July, 2017	11th December, 2017

Other changes

The following changes in the existing GST structure have also been notified by CBEC with effect from 00:01 hrs on 15th November, 2017:

- Services by way of admission to specified protected monuments are exempt from payment of GST.
- The rate of GST on job work services is reduced to 5% with full ITC in relation to manufacture of such handicraft goods in respect of which the casual taxable person has been exempted from obtaining registration by an earlier notification[4].
- Facilities for manual filing of application for refund in case of exports and application for advance has been introduced till the time the online modules for the same become active.
- Purchasers of raw cotton from an agriculturist have been made liable to pay GST on reverse charge basis.
- The IGST (Amendment) Rules, 2017 prescribing rules for determination of the manner of apportionment of IGST to different states or union territories with respect to supply of advertisement services.

GST clarifications

A circular has been issued to clarify, inter alia, that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits and processed cashew nuts fall outside the definition of agricultural produce[5] under GST and therefore the exemption from GST on agricultural produce is not available to them[6].

GST on sanitary napkins

A writ petition has been filed before the Hon'ble Delhi High Court challenging the levy of GST at the rate of 12% on sanitary napkins when items such as bindi, kajal, sindoor are exempt from GST. In its response affidavit to this writ petition, the GST Council has stated that the basis of arriving at tax rates takes into account not only the use of the goods but also their pre-GST tax incidence and mode of production. The pre-GST estimated total tax incidence, inclusive of excise duty and VAT, on sanitary napkins was 13.68% and therefore the rate of 12% under GST is in fact lower than the earlier regime. The Council also said reduction of rates on sanitary napkins would apply even for the raw material involved, which will increase the input tax credit due to addition of financial cost in form of interest burden, hence put local manufacturers at a disadvantage in comparison with importers. The court has directed the council to look towards reducing

GST on sanitary napkins as it has done recently for many products and has posted the next hearing in the matter on 14th December, 2017.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Proposed changes in the composition scheme

The 23rd Council meeting was held on 10th November, 2017 wherein certain changes were proposed in the structure of the composition scheme. However, these changes require an amendment of the CGST Act, 2017 and therefore will be effective only after the necessary amendments are made in due course:

- It has been proposed that a uniform rate of 1% of turnover be adopted for payment of GST under composition scheme by both manufacturers and traders. Earlier, this rate was 2% in case of manufacturers. For added benefit to traders, it has been proposed that the turnover on which GST is payable under composition scheme should include only the turnover of taxable goods. No change in the composition scheme for restaurant service providers has been recommended.
- Earlier, one of the eligibility criteria to opt for composition scheme was that the registered person opting for composition scheme (the 'Composition Taxpayer') should not be engaged in any supply of services other than restaurant services or exempted services. A modification in this criterion has been proposed so as to allow supply of taxable services by a Composition Taxpayer up to a limit of Rs 500,000 per annum.
- The CGST Act, 2017 prescribes the maximum limit of turnover of a registered taxpayer for eligibility of composition scheme. It is within this limit that the government is empowered to notify the actual threshold limit for composition scheme. The maximum limit in the CGST Act, 2017 is proposed to be increased from the current 10,000,000 to 20,000,000. The threshold limit for composition scheme will be enhanced from the present Rs. 10,000,000 to Rs. 15,000,000.

[1] The crux of the anti-profiteering measures is that if there is reduction in rate of GST on the supply of goods or services vis-a-vis the earlier regime or that benefit of input tax credit is now available under GST, then a registered supplier must pass on that benefit to the recipient by reduction in prices.

[2] Section 24 of the Central Goods and Services Tax Act, 2017

[3] Aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of persons having the same permanent account number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

[4] Notification number 32/2017-Central Tax(Rate) dated 15th September, 2017

[5] Agricultural produce has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

[6] Serial number 54 of notification number 12/2017- Central Tax (Rate), dated 28th June 2017 exempts GST on loading, unloading packing, storage or warehousing of agricultural produce

Glossary

CBEC- Central board of excise and customs	CGST-Central goods and service tax
IGST- Integrated goods and services tax	VAT – Value added tax

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