

Week of 15th January, 2018

A. CHANGES IN THE GST REGIME

Decisions of the 25th GST Council meeting

The 25th meeting of the GST Council was held on 18th January, 2018 wherein the recommendations of the Law Committee and GST Advisory Panel and other industry representations were considered. (Please refer to our GST Update Volume 28 for details). The agendas before the GST Council were, inter alia, simplification of returns, reduction in rates of certain goods and services, review of the composition scheme and inclusion of petroleum and real estate under the GST regime. The key recommendations of the GST Council are being summarised below:

Policy changes

- The late fee for failure to furnish return in form GSTR-1 (outward supply return), return in form GSTR-5 (return to be furnished by a non-resident taxable person) and return in form GSTR-5A (return to be furnished by an OIDAR service provider) has been reduced from INR 200 to INR 50 per day (INR 20 per day in case of nil returns). The late fee for failure to furnish return in form GSTR-6 by an input service distributor has also been reduced to INR 50 per day.
- It has been decided that registered taxpayers, who are not liable to obtain registration under GST but have obtained voluntary registration, may apply for cancellation of registration even before the expiry of one year from the date of registration, as is required presently.
- It has been decided to extend the last date for applying for cancellation of registration by migrated taxpayers till 31st March, 2018.
- It has been decided that the testing of the electronic way bill (e-way bill)¹ system, which started from 16th January, 2018, will continue till 25th January 2018 and thereafter the e-way bill system will become mandatory with effect from 1st February, 2018. The facility for generation, modification and cancellation of electronic way bills on trial basis is being provided on the portal ewaybill.nic.in. With effect from 1st February, 2018, the electronic way bill system will be functional on ewaybillgst.gov.in.

¹ The e-way bill is an electronic document which is required in specified cases of inter-state and intra-state supply of goods.

- It has been decided to continue the furnishing of the provisional monthly return in form GSTR-3B till a period to be notified.

The GST Council did not take any decision on real estate and petroleum yet and postponed the matter to be taken up in next meeting. No decision was also taken on the simplification of returns. The GST Council will discuss the matter on returns simplification after 10 days via video conferencing. The government has however given an indication of possible merger of the three returns into a single return in future.

Changes in the taxation of goods

The GST Council has recommended 29 changes in the GST/IGST rate of goods and certain clarifications in respect of GST rate on goods. The recommendations will be in force once notified. It is proposed to issue notification giving effect to these recommendations of the GST Council on 25th January, 2018 which will be effective from 00 hours on 25th January, 2018. Some of the key recommendations are:

- It has been recommended that the GST rate for buses meant for use in public transport, which exclusively run on bio-fuels be reduced from 28% to 18%.
- It has been recommended that GST rate for diamond and precious stones be reduced from 3% to 0.25%.
- It has been recommended that GST rate for bio-pesticides be reduced from 18% to 12%
- It has been recommended that rate of compensation cess for, inter alia, ambulances, duly fitted with all fitments, furniture and necessary accessories be reduced from 15% to nil.
- The recommendations of a specially constituted committee of handicrafts have been accepted and it has been recommended to reduce the rate of certain handicraft items to 0%. A fitment committee has been directed to decide the rate of 40 handicraft items.

Changes in the taxation of services

The GST Council has revised the rates of 53 services. The revised rates will come into effect from 00 hours on 25th January, 2018 after issuance of notification in this regard. The GST Council has also recommended issuance of certain clarifications on issues relating to GST rates and taxability of certain services. Major recommendations of the Council are summarised below:

- It has been recommended that supply of services by way of providing information under the Right to Information Act, 2005 be exempted from GST.
- It has been recommended that legal services provided to government, local authority, governmental authority and government entity be exempted from GST.
- It has been recommended that subscription of online educational journals/periodicals by educational institutions which provide degree recognized by any law be exempted from GST.
- It has been recommended to enhance the exemption limit of INR 5,000/- per member per month in respect of services provided by a resident welfare association (unincorporated or non-profit entity) to its members against their individual contribution to INR 7,500/- per member per month.
- It has been recommended that the GST rate on transportation of petroleum crude and petroleum products be reduced from 18% to 5% without input tax credit and 12% with input tax credit.
- It has been recommended that the GST rate in respect of mining or exploration services of petroleum crude and natural gas and for drilling services in respect of the said goods be reduced to 12%.
- It has been recommended that services by way of renting of immovable property by government or local authority to a registered person be subject to reverse charge mechanism while renting of immovable property by government or local authority to un-registered person will continue under forward charge.

- It has been recommended that valuation provisions under the CGST Rules, 2017 be amended to prescribe that the value of supply of betting and gambling will be 100 % of the face value of the bet or the amount paid into the totalizator.
- It is clarified that services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which is exempt. Further, it is clarified that the entire amount charged by the hospitals from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and therefore is exempt.
- It is clarified that food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services (not separately taxable) and therefore exempt from the payment of GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.
- It is clarified that services by way of admission to entertainment events or access to amusement facilities including casinos and race courses, ancillary services provided by casinos and race-courses in relation to such admission and the services given by race-course by way of totalisator are services for the purpose of betting and taxable at 28%. Services given by race-course by way of license to bookmaker are not a service by way of betting and gambling, and are taxable at 18%.

Writ petition on sanitary napkins

Several petitions have been filed in various courts all over India seeking removal of GST on sanitary napkins. In some petitions, complete removal of GST on sanitary napkins has been prayed for while other petitions seek to reduce the GST rate of sanitary napkins from 12%. In this regard, the Supreme Court has now fixed a hearing on 22nd January, 2018 for a batch of petitions pending in the Supreme Court as well in Bombay High Court seeking removal of GST on sanitary napkins.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Representation by GST practitioners to Finance Ministry

The Goods and Service Tax Practitioners' Association of Maharashtra ("**Association**") has submitted a representation to Ministry of Finance stressing on the necessity to change the system of filing returns under GST, which is currently very cumbersome and complicated. In its representation, the Association has made several recommendations on the return filing system, concept of invoice matching and input tax credit. Some of the key recommendations are:

- (i) The present system of invoice matching should be done away with. The government's objective of matching seller's sales with purchaser's purchases can be achieved even by asking to file party wise sale & purchase annexes instead of matching each invoice, as was done under the erstwhile VAT regime. The online matching of sales and purchases should be automatic and mismatch report should be generated, post which necessary recovery action should be taken against defaulting seller.
- (ii) The lengthy and cumbersome procedure of filing three GST returns should be done away with and instead the return in form GSTR-3B should be made the final return.
- (iii) In case of non-deposit of GST by the seller, GST should be recovered from purchaser by disallowing his input tax credit only after exhausting all machineries of recovery against defaulting seller and only when collusion between seller and buyer is proved.

Glossary

CBEC- Central Board of Excise and Customs

OIDAR- Online Information and database access and retrieval services

CGST- Central Goods and Services Tax

IGST- Integrated Goods and Services Tax

GST Council- Goods and Services Tax Council, a constitutional body comprising of members of the Central and the State Governments to recommend changes under the existing GST regime.

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