

Week of 30<sup>th</sup> April, 2018

## A. CHANGES IN THE GST REGIME

### Recommendations of the 27<sup>th</sup> meeting of the GST Council

The 27<sup>th</sup> meeting of the GST Council was held on 4<sup>th</sup> May, 2018 via video-conferencing. Some of the decisions/recommendations made by the GST Council at this meeting are as follows:

- **Change in the Shareholding Pattern of GSTN**  
Presently, the Central Government and State Government collectively hold 49% equity shares of the GSTN<sup>1</sup> and the remaining 51% are held by non-governmental institutions. Considering the nature of 'state' functions performed by GSTN, the GST Council has recommended the acquisition of entire 51% of equity held by the non-governmental institutions in GSTN equally by the centre and the states governments.
- **Return simplification process**  
At this meeting, the GST Council also approved the principles of the new return design. Some of the key elements of the new return design, as approved by the GST Council, are as follows –
  - i. **One monthly return:** It has been proposed that all taxpayers excluding a few exceptions (such as registered persons availing the composition scheme or registered persons having nil transactions) be required to file only one monthly return instead of the present requirement of three monthly returns. The dates for the return filing dates will be different for different classes of registered persons (categorised by their turnover) to manage load on the IT system. Composition dealers and dealers having nil transaction shall have facility to file quarterly return.
  - ii. **Unidirectional flow of invoices:** The seller will now be able to upload the invoices at anytime during the month which will be the valid document to avail input tax credit by the buyer. The buyer will not be required to upload the purchase invoices.

<sup>1</sup> The Goods and Services Tax Network is a private limited, not-for-profit company formed under Section 25 of the Companies Act, 1956 (Section 8 of the Companies Act, 2013) by the Government of India on 28th March, 2013 with an objective to provide shared IT infrastructure and services to Centre and States Governments, tax payers and other stakeholders for implementation of Goods and Services Tax (GST) in the country.

- iii. No automatic reversal of credit: Unlike the present framework, it has been recommended that there will not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc. Recovery of tax or reversal of input tax credit shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.
- iv. Content of the return and implementation: Return shall be simplified also by reducing the content/information required to be filled in the return. The details of the design of the return form, business process and legal changes would be worked out by the law committee based on these principles. Government is keen to introduce the simplified return design at the earliest to reduce the compliance burden on the trade in keeping with the philosophy of ease of doing business.
- Incentive to promote digital transactions:  
The GST Council has recommended the setting up of a Group of Ministers to look into the proposal of giving a concession in the GST rates of upto 2% (where the GST rate is 3% or more) on supplies meant for personal use, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction, so as to incentivise promotion of digital payment.
  - Imposition of Sugar Cess over and above 5% GST and reduction in GST rate on ethanol  
Keeping in view the record production of sugar in the current sugar season, and consequent depressed sugar prices and build-up of sugarcane arrears, the GST Council has recommended for setting up of a Group of Ministers to look into the proposal of imposition of sugar cess and reduction in GST rate on ethanol. The Group of Ministers has been directed to submit its report within two weeks.

### **GST on pagadi system**

A circular has been issued by CBEC to clarify the applicability of GST on transfer of tenancy under the pagadi system. In the pagadi system, the tenant acquires tenancy rights in the property against payment of one-time tenancy premium (pagadi) and thereafter pays periodic rent to the landlord. The tenant also usually has the option to sell the tenancy right of the said property to another tenant. In such a case; the outgoing tenant has to share a percentage of the tenancy premium received from the incoming tenant with the landlord. The circular clarifies that the activity of transfer of 'tenancy rights' by landlord against consideration in the form of tenancy premium constitutes a supply and is taxable under GST. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is also liable to GST. However, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.

### **GST on legal services**

A writ petition has been filed before the hon'ble Gujarat High Court challenging the constitutional validity of the provisions under GST which block the availment of input tax credit in respect of exempt services such as legal services<sup>2</sup>. It is the case of the petitioner that as legal services are either exempt or under reverse charge, the credit of the input tax credit of the goods/services or both used by advocates is not available. The absence of provisions for availing the input tax credit by advocates is resulting in a cascading effect as the GST on taxable

---

<sup>2</sup> As per the provisions under the CGST Act, 2017, no input tax credit is available of such services which are used for providing exempt services/services which are under reverse charge.

legal services is being passed on to the litigants by way of the professional fees, on which again GST is being charged. The petition seeks directions from the government to put in place a mechanism for availing input tax credit on the expenses incurred with respect to goods and services availed by the advocates. The high court has issued notices to the central and the state government and the GST Council while listing the petition for hearing on 21<sup>st</sup> June, 2018.

### **Intra-state e way bill**

Earlier, the government of Himachal Pradesh had notified 8 goods for applicability of e-way bill with effect from 20<sup>th</sup> April, 2018 for intra-State movement of goods within Himachal Pradesh (Please refer to our GST Update Volume 42 for details). Now, it has postponed the applicability of e-way bill to 5<sup>th</sup> May, 2018 but e-way bill would be required for 17 goods instead of 8 goods only.

### **Glossary**

**CGST- Central goods and services tax**  
**GSTN- Goods and services tax network**

**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.**

### **DISCLAIMER**

This update has been written for the general interest of our clients and professional colleagues by the **GSTUpdateTeam@ALMT** and is subject to change. This update is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this update. For further clarification and details on the above, you may write to the [GSTUpdateTeam@almlegal.com](mailto:GSTUpdateTeam@almlegal.com). If you would like to unsubscribe from this weekly update please send an e-mail to us at the above address with the subject unsubscribe.