

# DESAI SAKSENA & ASSOCIATES

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## Friday Tax Alert

**From:**

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## **Recommendations of the 55th Meeting of the GST Council**

The 55th GST Council meeting was held in Jaisalmer, Rajasthan on December 21st, 2024 under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has *inter-alia* made the following recommendations relating to changes in GST rates on Goods and Services and other measures for facilitation of trade. The key highlights of the meeting are as under:

### **1. Rate of Tax on Goods and Services**

#### **The rate for Goods:**

- **Fortified rice kernels:** The GST rate reduced to 5 percent from the previous 18 percent, regardless of end use.
- **Autoclaved Aerated Concrete (ACC) blocks:** ACC blocks containing more than 50 percent fly ash will now attract 12 percent GST, reduced from 18 percent.
- **Used cars and EVs:** Sale of old and used cars, including smaller petrol/diesel vehicles and electric vehicles, to 18 percent from the earlier 12 percent.

### **2. Exemption from GST on Goods/Services:**

#### **A. Exemption for Goods:**

- The IGST Exemption under Notification No. 19/2019-Customs involves specified systems, subsystems, equipment, parts, subparts, tools, test equipment, and other related components meant to assemble/manufacture the Long-Range Surface-to-Air Missile (LRSAM) system.
- Exempting IGST on imports of all equipment and consumable samples by the Inspection Team of the International Atomic Energy Agency (IAEA) involves facilitating compliance with international obligations while ensuring that such imports are efficiently utilized for their intended purpose.
- Gene therapy, Life-Saving Drugs.

#### **B. Exemption on Services:**

- **Contributions made by general insurance companies:** Contributions made by general insurance companies to the Motor Vehicle Accident Fund from the third-party motor vehicle insurance premiums collected by them. The contribution must be statutory, mandated under Section 164B of the Motor Vehicles Act, 1988.

### **3. Proposal for Amending GST Structure on Hotel Accommodation and Restaurant Services:**

- Align the rate of GST on hotel accommodation and restaurant services with the actual value of supply rather than relying on declared tariffs.
- To determine GST rates based on the preceding financial year's value of supply.
- Allow hotels the option to opt for 18% GST with ITC on restaurant services, thereby facilitating input tax credit (ITC) utilization.
- Changes to be made effective from 01.04.2025 to avoid any transitional challenges.

### **4. Reverse Charge Mechanism on Services:**

- **Supply of sponsorship services by body corporates:** To bring under Forward Charge Mechanism (FCM) instead of the existing Reverse Charge Mechanism (RCM). Services provided by other categories (e.g., individuals, unincorporated entities) may continue under the RCM to simplify tax collection from smaller, unregistered entities.

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- **Supply of Renting services to registered under the Composition Levy Scheme:** To Exclude taxpayers registered under the Composition Levy Scheme from Entry 5AB under Notification No. 09/2024-CTR i.e. exempting them from the RCM liability for renting such properties.

## **5. Applicability of GST on various Goods /Services:**

- Pepper whether green or dried and raisins, when supplied by an agriculturalist, are not liable for GST.
- Payment aggregators handling transactions below Rs 2,000 are eligible for exemptions; this does not apply to payment gateways and fintech services.
- Penal charges levied and collected by banks and NBFCs from borrowers for non-compliance with loan terms will not attract GST.
- Tax rates on Popcorn:
  - Unpackaged salted or spiced popcorn: 5% GST
  - Pre-packaged popcorn: 12% GST
  - Caramel-coated popcorn: 18% GST.

## **6. Removal of ambiguity and legal disputes on various GST issues:**

- **Reversal of Input Tax Credit by Electronic Commerce Operators (ECO) for Supplies Under Section 9(5) of CGST Act, 2017 –** To clarify explicitly stating that ECOs are not required to reverse ITC proportionally for supplies covered under Section 9(5).
- **Input Tax Credit (ITC) on Ex-Works Contracts:** To clarify that delivery under Ex-Works contracts qualifies as receipt of goods for ITC purposes, subject to compliance with other provisions.
- **Late Fee for Delay in Filing FORM GSTR-9C and Waiver for Previous Years (2017-18 to 2022-23):**

**A. Applicability of Late Fee for Delay in Filing FORM GSTR-9C-** To Clarify that the late fee is applicable for delayed filing of complete annual return under Section 44 including both FORM GSTR-9 (Annual Return) and FORM GSTR-9C (Reconciliation Statement).

**B. Waiver of Late Fees for Past Years (2017-18 to 2022-23) –** To Issue a notification under Section 128 to formalize the waiver of excess late fees for the financial years 2017-18 to 2022-23. The waiver will apply if FORM GSTR-9C is filed on or before 31 March 2025, provided FORM GSTR-9 for the corresponding period has already been filed.

## **7. Facilitation of Trade Measures and Amendments in the CGST Act**

**A. Amendment in Schedule III of CGST Act, 2017:** Transactions involving goods warehoused in an SEZ or FTWZ (Free Trade Warehousing Zone) before their clearance for exports or to the Domestic Tariff Area (DTA) will not be treated as a supply of goods or services under GST.

This brings the taxation of goods in SEZs and FTWZs at par with the treatment of goods in customs bonded warehouses, thus reducing ambiguity and ensuring consistency in trade policies.

## **B. Taxability of Vouchers:**

- Vouchers Not Treated as Supply: To clarify Transactions involving vouchers will not be treated as a supply of goods or services under GST.
- Distribution of Vouchers: Principal-to-Principal Distribution basis not be subject to GST.
- However, in case of Principal-to-Agent Distribution, any commission/fee or other amounts charged by the agent for distributing the vouchers will be taxable under GST.

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- Additional Services Related to Vouchers: Services such as advertising, co-branding, marketing, promotion, customization, technology support, and customer support related to vouchers will be subject to GST.
- Unredeemed Vouchers (Breakage): No GST will be payable on income booked in respect of breakage or unclaimed voucher value.

**C. Implementation a Track and Trace Mechanism for specified evasion-prone commodities:** This mechanism will allow authorities to monitor and track the movement of goods throughout the supply chain. The system will rely on the use of a Unique Identification Marking (UIM) that will be affixed on the goods or the packages containing the goods.

**D. Retrospective Amendment in Section 17(5)(d) of CGST Act, 2017 relating to phrase ‘plant or machinery’:**

The GST Council has proposed a retrospective amendment to the Goods and Services Tax (GST) Act to address the implications of the Supreme Court’s landmark judgment in the Safari Retreats case.

Specifically, the amendment proposes to replace the phrase “plant or machinery” with “plant and machinery”, effective retrospectively from 01.07.2017. The change aims to clarify the legislative intent behind Section 17(5)(d), which deals with the restriction on Input Tax Credit (ITC) on certain items, including plant and machinery.

**E. Reduction in pre-deposit requirement for filing appeals in cases involving only a penalty demand:**

To reduce pre-deposit amount from 25% to 10% for filing an appeal before the Appellate Authority and an appeal before the Appellate Tribunal.

**F. Provisions Pertaining to Input Services Distributor (ISD):**

To include interstate RCM transactions under the ISD framework. This will simplify the distribution of input tax credits (ITC) for such supplies and provide greater clarity and consistency in GST compliance. The changes will be effective from 01.04.2025, allowing time for necessary adjustments.

**G. Generation of a Temporary Identification Number (TIN):**

To provide for the generation of a Temporary Identification Number (TIN) for persons who are not otherwise required to be registered under the CGST Act, 2017, but are still required to make a payment under Rule 87(4) of the CGST Rules, 2017. These amendments will take effect from the date of issuance of the relevant notification or the prescribed timeline by the authorities.

**H. Amendment to enhance the functionality of the Invoice Management System (IMS)**

These proposed changes are as under:

**Section 38 of the CGST Act, 2017** – To establish the process for generating FORM GSTR-2B based on the action taken by taxpayers within the IMS.

**Rule 60 of CGST Rules, 2017** – To align the rules with the revised processes for generating the GSTR-2B form.

**Section 34(2)** – To clarify that the recipient must reverse the ITC associated with the credit note issued by the supplier. This ensures that the supplier's output tax liability can be adjusted appropriately.

**New Rule 67B** – A new Rule 67B will be inserted in the CGST Rules, 2017 to specify the process and method through which the supplier's output tax liability will be adjusted when a credit note is issued.

**Section 39** – To ensure that FORM GSTR-3B can be filed only after FORM GSTR-2B has been made available for the corresponding tax period.

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## **8. Miscellaneous:**

A. Amendment in the Definition of “Pre-Packaged and Labelled” Under GST:

**Current Definition:** Under the existing GST provisions, the term ‘pre-packaged and labelled’ refers to commodities that are packaged and labelled for retail sale, with the focus primarily on certain categories of goods.

**Proposed Change:** The definition will be expanded to include all commodities intended for retail sale, which contain no more than 25 kg or 25 litres, and which are Pre-packed as defined under the Legal Metrology Act, 2009 and Labelled to comply with the declarations required by the Legal Metrology Act and its associated rules.

This change will ensure uniformity in the treatment of goods that are pre-packed and labelled for retail sale, regardless of their category, as long as they meet the specified weight and volume thresholds.

**B. Supply of Online Services to Unregistered Recipients:** To provide clarity on the tax invoice requirements for suppliers of online services such as online money gaming, OIDAR services, and other digital services, when provided to unregistered recipients.

**Mandatory Requirement for Suppliers:** Suppliers of online services (e.g., online money gaming, OIDAR services) to unregistered recipients will be required to mandatorily record the name of the State of the recipient on the tax invoice.

This clarification is significant in determining the place of supply for online services under Section 12(2)(b) of the IGST Act, 2017. By mandating the recording of the State of the recipient, the location of the unregistered recipient becomes clear for tax purposes, enabling the supplier to correctly determine the place of supply for GST applicability.

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