



NITYA'S INSIGHT:

Amendments proposed in 31st GST Council meeting

December 24, 2018

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Introduction

The GST Council ('Council') convened its 31st Meeting on December 22, 2018 after a gap of almost 3 months. There was a huge expectation in the industry that the Council will rationalize the tax rate on many goods and services.

The Council did not disappoint the industry and reduced tax rate on several items. After these changes, only luxury goods, cement, air-conditioners and some automobile parts will be subject to 28% tax rate. While the news reports before this meeting indicated reduction in tax rate on cement and air-conditioners as well, the Council refrained from doing so. The Council has also proposed to clarify rate on various goods and services where there were doubts.

The Council has not clarified the date from when the aforesaid rate changes will come into force (unlike the past instances where the Council also announced the effective date of rate changes). The Union Finance Minister in his speech has said that January 1, 2019 will be the effective date for rate changes.

The Council has also proposed several legislative amendments and other changes relating to extension in dates and rationalizing the procedures.

The industry now awaits changes in relevant Acts as well as issuance of Notifications and clarifications for making effective these changes.

We hope you find this an interesting read!

Regards,

Team NITYA

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A. Reduction in tax rate on several goods and services

- The GST Council has rationalized tax rate on several goods and services. The key changes are discussed below:

1. Change in tax rate on solar power and other renewable energy generating plants

The tax rate on solar power generating systems and other renewable energy generating plants is 5%. However, EPC contracts (involving both supply of goods and services) qualify as works contract and attract 18% tax rate. Several Advance Rulings have also advocated this view, even though the Ministry of New and Renewable Energy was of the view that such projects should attract 5% tax rate only.

Considering the same, the GST Council has proposed a hybrid model for levy of tax rate on goods and services used under EPC contracts for all renewable energy power plants.

Under this hybrid model, the tax will be determined as under:

- Value of goods will be considered as 70% which will be subject to 5% tax rate; and
- Value of service will be considered as 30% on which standard rate viz. 18% tax rate shall apply

Effective tax rate would be 8.9% (70% of 5% + 30% of 18%) on supply and installation of such plants.

2. Key changes in tax rate of various goods

S. No.	Nature of goods	Present tax rate	Proposed tax rate
1.	Pulleys, transmission shafts and cranks, gear boxes etc. falling under Heading 8483	28%	18%
2.	Monitors and TVs of up to screen size of 32 inches	28%	18%
3.	Re-treaded or used pneumatic tyres of rubber	28%	18%
4.	Digital cameras and video camera recorders	28%	18%
5.	Video game consoles and other games and sports requisites falling under Heading 9504	28%	18%
6.	Power banks of lithium ion batteries	28%	18%
7.	Parts and accessories of wheelchairs	28%	5%
8.	Agglomerated cork	18%	12%
9.	Fly ash blocks	12%	5%
10.	Music Books	12%	NIL

- GST on footwear (12% and 5%) shall be levied basis the transaction value of goods and not on MRP.
- 5% tax rate shall apply on specified equipment for waste to energy plant.

3. Key changes in tax rate of various services

S. No.	Nature of services	Present tax rate	Proposed tax rate
1.	Cinema tickets whose value is more than Rs. 100	28%	18%
2.	Cinema tickets whose value is up to Rs. 100	18%	12%
3.	Third party insurance premium of goods carrying vehicles	18%	12%

- The Council has also proposed to make following important clarificatory changes in relation to supply of services:
 - Services of multi modal transport shall attract 12% tax rate only when the transportation of goods is within India. Where the goods are being imported in India or exported outside India, then 18% tax rate shall apply.

***NITYA Comments:** The Council did not address the issue of tax rate in case taxpayer provides a bundle of services including transportation, warehousing, customs clearance etc. Multi-modal transport is usually involved in case of international transportation of goods. In case the provision is amended, the said entry would have limited applicability only to cover cases wherein goods are transported with two modes of transport within India.*

- The printing of pictures shall qualify as photographic processing service and attract 18% tax rate (and not 12% as Printing and reproduction services of recorded media under 998912).
- The nature of establishment making supply of food, drinks and other articles will not determine rate of tax on goods or services. The tax rate will depend upon each supply made by the establishment.

***NITYA Comments:** This change is to overcome the Advance Ruling in the case of **Kundan Misthan Bhandar, 2018-VIL-285-AAR**. In this case, it was held that supply of goods like namkeens etc. by a restaurant will be a service and attract concessional rate of 5%. It was further held that such goods will not attract individual tax rate applicable on such goods.*

B. Extension and notification of dates

Last date for availing input tax credit pertaining to FY 2017-18

- The last date of availing credit for invoices relating to Financial Year (FY) 2017-18 shall be the due date of furnishing of GSTR-3B of March 2019 i.e. **April 20, 2019**.

***NITYA Comments:** This has come as a big relief to the industry who was struggling to decode the new law and were unable to avail all eligible credits by October 25, 2018. With this amendment, the taxpayers should review their credit positions as well as undertake GSTR-2A reconciliation for FY 2017-18 (if not already done). The government also needs to make necessary changes in GST law as well as on GST Network to effectuate this change.*

Extension in due dates of several returns

- The due dates of furnishing following returns have been extended:

Relevant return	Revised due date
GSTR-9 and GSTR-9C (<i>annual return and reconciliation statement</i>)	June 30, 2019
GSTR-8 (<i>TCS return by e-commerce operators</i>) for October to December 2018	January 31, 2019
ITC-04 (<i>job-work return</i>) for July 2017 to December 2018	March 31, 2019
GSTR-1 and GSTR-3B for month / quarter from July 2017 to September 2018	No extension (<i>Late fee will be waived for the returns filed between December 22, 2018 and March 31, 2019</i>) <i>NITYA Comments: There are taxpayers who filed returns for the period July 2017 to September 2018 prior to December 22, 2018 and paid late fee. Such late fee has not been waived off. The taxpayers can claim refund of such late fee paid by them based on the amendment as well as principles of equity.</i>

Effective date of amendments made in CGST, SGST and IGST Acts

- The Council has notified **February 1, 2019** as the date when amendments made in the Central Goods and Services Tax Act, 2017 ('CGST Act'), the Integrated Goods and Services Tax Act, 2017 ('IGST Act') and relevant State Goods and Services Tax Act, 2017 ('SGST Act') in 2018 will become applicable. The important amendments that will become effective, are as under:
 - Merchanting sales, in-bond sales and high sea sales getting placed under Schedule III (transactions not qualifying as supply)
 - No reversal of credit on activities mentioned under Schedule III
 - Availability of credit on all motor vehicles except passenger transport vehicles with seating capacity of more than 13 passengers
 - Non-availability of credit on repair and insurance of motor vehicle
 - Non-availability of credit on leasing, renting and hiring of motor vehicle
 - Facility of issuance of consolidated credit and debit note against multiple invoices
 - Facility to obtain separate registration for separate place of business in a State even though falling under same 'business vertical'
 - The place of supply of services supplied in respect of goods temporarily imported into India for any treatment or process will be the location of service recipient
 - The place of supply of transportation services for export of goods to be the destination of such goods in case both supplier and recipient are in India

***NITYA Comments:** Please also refer to our update dated August 20, 2018 discussing the implications of these changes in detail.*

C. Legislative changes

- The following changes have been proposed under the CGST Act:
 - A Centralised Appellate Authority for Advance Ruling ('CAAAR') to be created where conflicting decisions have been given by two or more State Appellate Authority for Advance Ruling (AAARs); and
 - Interest to be applicable on amount payable net of admissible input tax credit. Consequently, interest will not be payable where there is sufficient credit balance in Electronic Credit Ledger.

NITYA Comments: *The above changes will be brought into effect vide Central Goods and Services Tax (Second Amendment) Act. It will be important to see the time that will be taken by the Government to implement these changes (the First Amendment Act took 6 months to implement).*

D. Issues referred to Ministries / Committees

- The following points have been referred to Ministries / Committees for finalizing some important changes:

Issue	Referred Ministry / Committee
Composition scheme for service providers (approved in-principle, reference for tax rate and threshold)	Law and Fitment committee
Tax rate on residential property	
Increase in threshold limit for exemption	MSME Ministry
Tax rate on lotteries	Committee of States

These issues, along with proposal to levy Disaster Cess, will be taken up in next Council meeting in January 2019.

E. Other important changes

- Security services provided to a registered person shall be brought under reverse charge net.

NITYA Comments: *It will be important to note that under Service Tax law, reverse charge was applicable only in case of individual, HUF and firm security service providers. In case such service providers are brought under reverse charge net, it will increase cost of provision of such services due to non-availability of credit to such service providers.*

- The CBIC has already issued the draft of new simplified return mechanism. The new return filing system shall be introduced on a trial basis from April 1, 2019 and shall be made mandatory from July 1, 2019.

NITYA Comments: *NITYA will be sharing a detailed update on the new return filing system shortly.*

- The movement of rigs, tools & spares and all goods on wheels for the provision of service, shall not be subject to GST where such movement is not intended for further supply of goods.

- The facility to generate e-way bill shall be suspended if a taxpayer does not file returns for two consecutive tax periods.
- There will be a single cash ledger for each head (CGST, SGST, IGST and Cess). The bifurcations between tax, interest, penalty, fee and others will be done away with.

NITYA Comments: *This dispensation will bring limited relief to taxpayers and they will still need to pay tax separately for each head. This relief will not address the situations where a taxpayer has deposited tax in a wrong tax head.*

- A taxpayer shall be able to submit all documents for filing refund claim electronically, obviating the need to physically visit the department.
- The following types of refunds shall be made available through RFD-01A:
 - Refund on account of assessment, re-assessment or any other order
 - Excess tax paid
 - Tax paid under wrong head (IGST instead of CGST and SGST and vice-versa)
 - Any other refund
- In future, a single authority (Centre or State) shall disburse the refund. The proposal will be initially implemented on pilot basis.

NITYA Comments: *Presently, refund is sanctioned by one authority but the refund order is dispatched to the other authority as well for disbursal. This leads to delay in disbursing the refund amount to the taxpayer. Post the amendment, the authority passing the refund order shall only disburse the sanctioned amount.*

- CBIC shall release clarifications on the following matters:
 - Refund of ITC accumulated on account of inverted duty structure
 - Disbursal of refund within stipulated timeframe
 - Time allowed for availment of ITC
 - Refund of accumulated ITC of compensation cess
- Several clarificatory changes have been proposed in GSTR-9 and GSTR-9C. The key changes are as under:
 - All returns (GSTR-1 and GSTR-3B) should be filed before filing GSTR-9 and GSTR-9C.
 - HSN Code shall be declared only for inward supplies where value is more than 10% of total inward supplies.

NITYA Comments: *The said amendment has brought a big relief for taxpayers.*

- Additional payment of tax shall be required to be paid through GST DRC-03 in cash.

NITYA Comments: *This clarification poses an anomaly where a taxpayer pays the tax suo-moto before filing of annual return when such issue is pointed out by auditor. In case any amount is paid*

by DRC-03, the taxpayer will neither be able to utilize the available credit nor can pass the credit of such tax amount to the receiver by issuing a tax invoice or debit note.

- Fresh ITC cannot be availed through GSTR-9 & GSTR-9C.
- All invoices pertaining to FY 2017-18 (irrespective of month in which such invoice is reported in GSTR-1) would be auto-populated in GSTR-9.
- Reconciliation statement (GSTR-9C) will be verified by taxpayer as well (apart from auditor).

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