NITYA'S INSIGHT:

Key Takeaways from 28th GST Council Meeting held on July 21, 2018

July 25, 2018

PREFACE

The 28th meeting of GST Council, the first one after completion of 1st year of GST, has been special for multiple reasons. The meeting took place with high hopes of setting right the GST legal framework ignited by proposed amendments in the GST law issued few weeks back for public comments. The results of the meeting have indeed been laudable, the rate rationalisation being the most prominent one. The Council also approved significant amendments to the GST law with significant simplification in the return filing process. Our take on these three sets of proposals is as under:

(a) **GST rate rationalisation:** The Council has curtailed the 28 percent slab to only 35 items (which was 226 on July 1, 2017), reduced the rate of tax on multiple goods and services as well as increase the threshold of composition scheme to ₹ 1.5 Crores. The annual impact of these rate changes is expected to be ₹ 12,500 Crore and yet marginal considering the overall GST revenues. The tax burden has been reduced for wide range of sectors like consumer durables, footwear, building materials, textiles, sugar, specific motor vehicles, handicrafts, hospitality, agriculture, food processing, education, logistics etc. These reductions will go a long way in making GST good and simple by reducing the tax burden for end consumer and increasing tax compliance due to less incentive for tax evasion.

(b) **Amendments in GST law:** Significant amendments have been made in GST law to make the law simpler and minimize the cascading effect on taxpayers. This clearly reflects that the government is responding well to the concerns raised by industry. These changes include taking out high-seas sale, bonded warehouse sale and merchanting sale out of the purview of GST, broadening criteria for export of specified services, permitting multiple registrations of taxpayer within same State, allowing issuance of single debit / credit note for multiple invoices etc. The tax cost has been reduced for businesses by allowing credit on specific motor vehicles, employee related services etc. and clarifying rate of tax on canteen to 5%.

(c) **Simplified compliances:** The proposal of having a quarterly return for taxpayers having turnover less than ₹ 5 Crores (constituting more than 90 percent in numbers) will go a long way in reducing the compliance burden in general. The details of concept of 'upload-lock-pay' for matching of invoices is yet to be spelt out and let us hope that the same will be simple to implement.

Overall, the Council's meeting has been positive and reiterates the Government's undeterred commitment to streamline the GST regime.

This Insight captures the key amendments proposed by the GST Council in its 28th meeting.

Trust you would find the Insight useful. Please do write to us in case of any suggestions.

Warm regards,

Team NITYA

A. REVISION IN GST RATES ON GOODS AND SERVICES

The meeting saw rationalization of GST rates on a number of goods and services. These changes are mostly directed towards end consumers as well as addresses some of the concerns raised by the industry.

Changes proposed in GST rate on goods

- The GST Council has proposed to shift number of goods from 28 percent to 18 / 12 percent category. Consequently, a limited number of goods (35) will remain in the peak slab of 28 percent. A few moderations have also been proposed in the lower tax slabs.

- The key rate changes on goods are as under:

  - 28 percent to 18 percent

    - Consumer durables like refrigerators, washing machines, vacuum cleaners, televisions, domestic electrical appliances etc.
    - Lithium ion batteries
    - Special purpose vehicles like fire-fighting vehicles, crane lorries etc.
    - Paint, varnish, glazier's and grafting putty, resin cements
    - Trailers and semi-trailers

  - Other key rate changes

    - Sanitary napkins, water supplied for public purposes etc. to be exempted
    - Fuel cell vehicles to be taxed at 12 percent
    - Footwears with retail sale price up to ₹ 1,000 to be taxed at 5 percent
    - Hand-made products to be taxed at 5 percent
    - Specified handicraft items to be taxed at 12 / 5 percent

Clarification on GST rate on specific goods

S. No.	Description of goods	Proposed Tariff	Proposed rate
1.	Milk containing vitamins or mineral salts (fortified milk)	0401	Exempt

2.	Beet and cane sugar including refined beet and cane sugar	1701	5 percent
3.	Marine engine	8404 10 93	5 percent

Changes proposed in GST rate on services

- The key rate changes on services are as under:

S. No.	Nature of services	Proposed GST rate
1.	Supply of e-books for which print exists	5 percent
2.	Composite supply of multimodal transportation	12 percent on forward charge *(with full ITC)*
3.	Composite supply of food and drinks in restaurant, mess, canteen, eating joint and such supplies to institutions (educational, office, factory, hospital) on contractual basis	5 percent

- The services supplied by an establishment of a person in India to any establishment of that person outside India to be exempted subject to the following conditions:
    - Both establishments are treated as distinct persons
    - Place of supply of such services is outside India
- GST on accommodation services to be calculated based on transaction value instead of declared tariff
- GST exemption on transportation of export goods by air and sea extended to September 30, 2019

(The above changes in rates of GST proposed to be effective from July 27, 2018)

B. AMENDMENTS IN GST LAW

The key amendments proposed in GST Law are enlisted below:

1. Substantive Law

Supply

- Transactions of merchanting, in-bond sales and high seas sales excluded from the purview of supply (under GST).

  *(**NITYA comments:** For these transactions, there were interpretational issues in the past. CBIC had to step-in and issue specific clarification in case of in-bond sales and high seas sales. The amendment settles the legal position on taxability of such transactions)*

Reverse charge

- The applicability of GST on reverse charge on procurements from unregistered suppliers extended till September 30, 2019. *(This was declared by the Finance Minister in his speech but not published in the Press Release)*

- GST on reverse charge on procurements from unregistered suppliers, to be applicable only on specified goods in case of notified class of registered persons.

Input Tax Credit

- The value of exempt supply for the purpose of reversal of credit not to include the activities mentioned in Schedule III of the CGST Act.

- Scope of input tax credit widened to include credit on:

  - Expenses incurred by employer for its employees which are obligatory under any law. Like expenses on canteen facility provided to workers under the Factories Act, 1948

    (***NITYA comments:** The amendment shall bring relief on expenses incurred due to an obligation under any law*)

  - Motor vehicles for transportation of persons having a seating capacity of more than thirteen, vessels and aircraft

  - Motor vehicles for transportation of money for or by a banking company or financial institution

  - Services of general insurance, repair and maintenance of motor vehicles, vessels and aircraft on which credit is available

(***NITYA comments:*** *The amendments aim to expand the scope on input tax credit availability on motor vehicles having capacity of more than 13 passengers, dumpers, work-trucks, fork-lift trucks etc.*)

- No interest (on amount of credit reversal) in case of failure to pay value of procurement and GST thereon to the supplier within 180 days.

- Order of cross-utilization of Input Tax Credit:

  - SGST / UGST can be used for payment of IGST only when CGST balance exhausted
  - CGST / SGST / UGST can be used for IGST only if IGST balance exhausted

Exports

- Receipt of payment received in Indian Rupees (where permitted by RBI) for services supplied to foreign recipient to qualify as export of service.

  (***NITYA comments:*** *This amendment comes as a relief to service providers particularly the ones providing services to clients in Nepal and Bhutan*)

- Place of supply for services supplied in respect of goods temporarily imported to India for any treatment or process (job-work) to be the location of service recipient (outside India). Consequently, such services will be treated as export of services.

Composition Scheme

- Threshold for composition scheme to be increased from ₹ 1 Crore to ₹ 1.5 Crore.

- Composition dealers allowed to provide services up to 10 percent of its turnover in the preceding financial year or ₹ 5 Lakhs, whichever is higher.

2. Procedural Law

Compliances

- Consolidated credit / debit notes can be issued against multiple invoices in a financial year.

- Mandatory registration for e-commerce operators who are required to collect tax at source.

- Option for taxpayers to obtain separate GSTIN for multiple place of business (other than business verticals) within the same State / Union Territory.

- Suspension of procedural compliances when the application for cancellation of registration under process.

- Threshold limit for registration in State of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand increased to ₹ 20 Lakhs.

Recovery

- Tax can be recovered from distinct persons in other States / Union Territories.

Litigation

- Cap of pre-deposit of ₹ 25 crores and ₹ 50 crores to apply before Commissioner (Appeals) and Tribunal respectively.

(The proposed amendments will be placed before the Parliament and the respective legislatures of States / Union Territories for receiving assent)

Other proposed amendments not mentioned in the Press-release

Besides the above, the government also proposed a plethora of amendments (and the same were issued for public comments) which do not find mention in the Press-release.

Some key missing amendments are highlighted as under:

- *Schedule II only for categorization of activities otherwise qualifying as supply into goods and services, and not for deeming activities and transaction listed thereunder as a 'supply'.*
- *Place of supply for export goods where both supplier and recipient are in India to be the place of destination of goods.*
- *Unjust enrichment to apply for supplies to Special Economic Zones.*
- *Relevant date for refund of unutilised ITC to be from due date of furnishing of return.*
- *Bill-to ship-to model for the purposes of credit to be available for services as well.*
- *Transitional provision to bar credit of cess (such as education cess, secondary & higher education cess and krishi kalyan cess)*

C. RECOMMENDATION FOR SIMPLIFIED GST RETURN

New return format

The GST Council approved the single return system as finalized in the 27th Meeting of the GST Council. Key takeaways of this simplified return structure are as under:

- Return to consist of two tables for:
  - Reporting of outward supplies
  - Availing input tax credit based on uploaded invoices
- The seller can continuously upload invoices whereas the buyer can continuously view and lock such invoices for availing input tax credit. The proposed process would ensure auto-population of most parts of return basis the uploaded invoices (by the seller). Thereafter, the tax payments can be made by the buyer. The process is termed as "UPLOAD – LOCK – PAY".
- Taxpayers filing Nil return can file return by sending an SMS.

Periodicity of return

- The taxpayers having turnover up to ` 5 crores, can file quarterly return and need to pay tax monthly. The returns, namely, 'Sahaj' and 'Sugam' to be applicable for taxpayers making only B2C or making B2C + B2B supplies.
- Other taxpayers to file monthly return.

D. OPENING OF MIGRATION WINDOW FOR TAXPAYERS

- The GST Council approved the proposal to open the migration window for taxpayers who have provisional IDs but could not compete the migration process (to obtain the GSTIN). The facility has been made available till August 31, 2018.
- Waiver from payment of late fee for late filing of returns granted in such cases.

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