

50th GST Council meeting: Key recommendations and decisions

12 July 2023



Summary

The 50th Goods and Services Tax (GST) Council meeting was convened in New Delhi on 11 July 2023 wherein the Council has proposed several recommendations *inter alia* changes in the GST rates on certain goods and services, issue clarifications on certain issues, measures for trade facilitation, streamlining GST compliances, etc.

The recommendations of the GST Council shall be given effect through notifications and/or circulars and/or amendments in the law.

Key recommendations/decisions made by the GST Council:

A. Legislative changes:

Taxability of online gaming, casinos, and horse racing	<ul style="list-style-type: none">• Schedule III of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be amended to include online gaming, casinos, and horse racing under taxable actionable claims.• Casino, horse racing and online gaming to be taxed @ 28% on the full-face value of chips purchased/bets placed.
Input Distributor Service (ISD) mechanism	<ul style="list-style-type: none">• A clarification to be issued that the ISD mechanism is not mandatory for the distribution of input tax credit (ITC) of common input services procured from third parties to the distinct persons.• Amendments to be made in the GST law to make the ISD mechanism mandatory for the distribution of ITC of input services in a prospective manner.
Constitution of GST Appellate Tribunal (GSTAT)	<ul style="list-style-type: none">• Provisions of Finance Act, 2023, relating to GSTAT, to be notified w.e.f. 1 August 2023.• Rules governing the appointment and conditions of the President and members of the proposed GSTAT to be prescribed.• The number of state benches to be started in a phase wise manner.
Place of supply of goods supplied to unregistered person (URP)	<ul style="list-style-type: none">• Specific provision of place of supply in respect of supply of goods to URP to be notified.
Manual filing of appeals	<ul style="list-style-type: none">• Necessary amendment to be made in appeal procedures to allow the manual filing of appeals in specified circumstances.• A special procedure to be provided for the manual filing of appeals against the orders passed by proper officers in respect of Form TRAN 1/ TRAN 2 filed in pursuance of the directions of the apex court in the case of Filco Trade Centre Private Limited.
Mechanism to deal with differences in ITC	<ul style="list-style-type: none">• A mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in Form GSTR-3B vis-a-viz Form GSTR-2B above a certain threshold.• Insertion of a new rule 88D and Form DRC-01C, along with an

	amendment in the provisions restricting the furnishing of subsequent returns.
Procedure for recovery of tax and interest w.r.t. difference between GSTR-1 and GSTR-3B	The introduction of Rule 142B and Form GST DRC-01D for the recovery of tax and interest that has not been paid and for which no satisfactory explanation has been furnished by the registered person.

B. Clarifications to be issued:

GST on holding of securities of a subsidiary company	No GST on mere holding of securities in a subsidiary company, as there is no supply of services made by the holding company.
Services by director to company/body corporate	<ul style="list-style-type: none"> No tax under RCM on services provided by a director to the company/body corporate in a personal capacity. Services provided by a director of a company/body corporate in the capacity of a director shall only be taxable under the RCM.
Taxability of supply of food and beverages in cinema halls	<ul style="list-style-type: none"> Supply of food and beverages in cinema halls, if they are supplied by way of or as part of service and supplied independently of the cinema exhibition service, shall be taxable as restaurant services @5% (with no ITC). If the sale of a cinema ticket and the supply of food and beverages are clubbed together, the entire supply will be treated as composite supply and attract GST as service of exhibition of cinema.
Warranty replacement of parts and repair services during warranty period	<ul style="list-style-type: none"> No GST chargeable on the replacement of parts and repair services used during the warranty period without any consideration charged from customers. No ITC reversals to be made by the manufacturer.
Taxability of cross charge between distinct persons	The taxability of internally generated services provided by one distinct person to another distinct person.
GST refund of accumulated ITC	The refund of accumulated ITC for a tax period to be restricted to ITC on inward supplies reflected in Form GSTR-2B of the said tax period or any previous tax period.
Manner of calculation of interest amount u/s 50(3) in respect of wrongly availed and utilised Integrated Goods and Services	In case of wrong availment of the IGST credit, the cumulative balance of the ITC lying in the electronic credit ledger under the heads of IGST, CGST and SGST to be considered for the purpose of calculating interest liability.

Tax (IGST) credit	
Refund in case of non-compliance of time limit prescribed under Rule 96A of the CGST Rules	Admissibility of refund in cases where the export of goods or the realisation of payment for export of services is made after the specified time limit.
Calculation of adjusted total turnover for refund	The value of export goods for the purpose of adjusted turnover will be determined in the mechanism provided under explanation to Rule 89(4).

C. Change in GST rates notifications:

Declaration by Goods Transport Agency (GTA)	<ul style="list-style-type: none"> • The GTAs opting to pay GST under forward charge are not required to file a declaration every year. • A declaration, once filed, to be deemed valid for subsequent years unless the GTA changes its option. • The last date to exercise the option for paying GST under the forward charge will be changed from 15 March of the preceding Financial Year (FY) to 31 March. The start date will be 1 January of the preceding FY.
Compensation cess on all motor vehicles	Compensation cess @ 22% leviable on all utility vehicles (not limited to Special Utility Vehicles (SUVs), provided they meet the parameters of length exceeding 4,000 mm, engine capacity exceeding 1,500 cc and having ground clearance of 170 mm.

D. GST compliances:

Value of supply of goods from duty free shops (DFS) to be included in exempt supply	The value of the supply of goods from DFS at the arrival terminal in international airports to the incoming passengers will be included in the value of exempt supplies for the purpose of ITC reversal.
Annual returns	<ul style="list-style-type: none"> • Relaxations provided in FY 2021-22 in respect of various tables of Form GSTR-9 and Form GSTR-9C will be continued for FY 2022-23. • Exemption from filing the annual return for FY 2022-23 for taxpayers having annual aggregate turnover (AATO) up to INR 2 crore. • Form GSTR-3A will be amended to provide for the issuance of a notice to the registered taxpayers for their failure to furnish the annual return in Form GSTR-9 or Form GSTR-9A by the due date.

Extension of amnesty scheme	The extension of amnesty schemes till 31 August 2023 for non-filers of Form GSTR-4, GSTR-9 and GSTR-10, revocation of cancellation of registration and deemed withdrawal of assessment orders.
Tobacco, pan masala and other similar items	<ul style="list-style-type: none"> • Special procedure to be followed by the manufacturers of tobacco, pan masala and other similar items for the registration of machines and for filing special monthly returns. • Restriction of IGST refund in respect of exports of tobacco, pan masala and other similar items, as well as mentha oil, w.e.f. 1 October 2023. • Where it is not legally required to declare the retail sale price, the compensation cess will be levied at <i>ad valorem</i> rate, as was applicable on 31 March 2023.

E. Registration requirements:

Furnishing of bank account and Permanent Account Number (PAN) details	<ul style="list-style-type: none"> • Details of the bank account and PAN of the registered person to be provided within 30 days of the grant of registration or before filing GSTR-1/IFF, whichever is earlier. • In case of failure to provide valid bank account details, GST registration will be suspended and filing GSTR-1/IFF will be restricted.
--	--

Our comments

The GST Council, in its 50th meeting, held after a gap of around four months, discussed an extensive range of matters, varying from the taxation of online gaming, classification of utility vehicles, along with the tightening of registration procedures and ITC mechanism.

In a recent judgement, the Karnataka High Court, in the case of Gameskraft Technologies Private Limited, made a distinction between the games of chances and games of skills, and accordingly held that GST is not applicable on online gaming. However, the GST Council proposes to levy GST on online gaming @28% on the face value irrespective whether the games involve skill or chance. This move will be a big loss for the entire gaming industry. The applicability of legislative amendments, whether to be retrospective or prospective, is another wait and watch situation.

The clarity w.r.t. the ISD will bring relief to the industry and settle ongoing litigations for the past period. Further, many taxpayers have received notices w.r.t. GST liability on mere holding securities of a subsidiary company by a holding company. The clarification provided on this issue would provide a big relief to the holding companies. On the similar matter, the Karnataka HC, in the case of Metro Cash and Carry Private Limited, has stayed proceedings.

Even the clarification proposed w.r.t. services provided by the director is a significant and long-awaited clarity for businesses that had been paying GST on services provided by directors even in their private capacity.

The Council meeting has proved to be a major turning point in the GST history, and its decision will have a far-reaching implication on businesses and consumers across India.

Contact us



Scan QR code for our offices

www.grantthornton.in

For more information or for any queries, write to us at GTBharat@in.gt.com

© 2023 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.