



GST Council hits half-century An all-round performance

While marking its 50th meeting milestone, the GST Council has announced a slew of recommendations relating to changes in GST rates, measures for trade facilitation and for streamlining GST compliances.

Some of the key announcements are analyzed below:

Comments on trade facilitation measures

- The clarity on no GST liability as well as no liability to reverse ITC in cases involving warranty replacement of parts and repair services during the warranty period should provide a much-needed respite to the manufacturers. There were debates after the Hon'ble Supreme Court judgment in the case of Mohd. Ekram Khan & Sons vs. CTT [(2004) 6 SCC 183], pertaining to the erstwhile State Value Added Tax regime, about taxing such supplies. It is heartening that the GST Council has taken a very pragmatic view of the matter and clarified the issue in favor of the trade, thus, saving a huge amount of time and cost in litigation on this issue.
- The scheme of classification has an entry 99717 for services of holding financial assets such as equity, securities, and other assets of trust and funds, etc.

Basis this, the tax authorities were taking the view that the holding company is providing a service to the subsidiary company by holding the subsidiary's share. Litigation on this count had started to be initiated. The clarification that mere holding of

securities of a subsidiary company by a holding company cannot be treated as a supply of services and, therefore, cannot be taxed under GST would nib such litigation in the bud. It's another case of a proactive approach by the GST Council to identify frivolous issues to avoid unnecessary protracted litigation.

- One of the most vexatious issues since the inception of GST has been the input service distribution (ISD) mechanism, which was introduced as a facilitation measure so that the input tax credit can be transferred to the relevant registration of a taxpayer. While it was not supposed to be mandatory, there were debates on it. The GST Council has clarified that for the past period, it would not be considered mandatory to rest the debate in the past. However, in the future, it will become mandatory.
- The process of transferring credit through ISD resulted in compliance hassles. Hence, the taxpayers resorted to raising a supply invoice to their other registration, popularly called "cross-charge." This was done on the premise that the first registration received the entire service and then provided the service to other registrations. This was an easier method to achieve the same objective of having the credit in the registration who has benefited from the underlying service. After the amendment in law based on the GST Council's recommendation, this would not be available.

- Taxability of internally generated services provided by one distinct person to another distinct person, popularly called “cross-charge,” was an area of ambiguity, such as whether the salary cost of an employee located in a corporate office should also be cross-charged to other GST registrations of the taxpayer (i.e., distinct person) – debate being whether the employee is of the entity or the State where the corporate office was located. This was a breeding ground of huge litigation. GST Council has recommended to issue a clarification in this regard. Hopefully, the Central Board of Indirect Tax and Customs (CBIC) will take a balanced and pragmatic view while issuing the circular, as it has been taking since last year or so.
- The decision to levy 28% GST on full value of bets/face value of chips will certainly impact the online gaming, casinos, and horse racing industry, which had hitherto been waiting with bated breath for the Council’s final verdict. However, it could only be a matter of time before doors of the judiciary are knocked upon to seek relief against such a move.
- We are now one more step closer to having a functional GST Appellate Tribunal, with the Council recommending that the enabling provisions of Finance Act 2023 be notified by the Centre w.e.f. 1 August 2023. The State Benches would be started in a phased manner.
- With the recent shift in focus on OIDAR services, with amendments being proposed to the definition to remove certain ambiguities vis-à-vis “essentially automated” and “involving minimal human intervention” nature of such electronically supplied services, the GST Council has proposed an amendment to the relevant GST return format, viz. Form GSTR-5A to capture the details of supplies made to registered persons in India. While such services are not taxable in the hands of OIDAR service providers, the same shall enable the Government to track the payment of GST on a reverse charge basis by the registered recipients of such supplies. This would, in turn, help plug any leakage in GST revenue collection vis-à-vis electronic supplies of services from outside India. However, it would be equally important to intimate and make these transactions available to the registered recipients in their GSTR-2Bs, which are currently linked only to GSTR-1s.
- To strengthen the GST registration process, the GST Council has recommended that the details of the bank account, in name and PAN of the registered person, shall be furnished within 30 days of grant of such registration or before filing of GSTR-1 / IFF, whichever is earlier. Non-compliance will entail system-based suspension of the registration. The Council has also recommended conducting a pilot in the UT of Puducherry for risk-based Aadhaar authentication of registration applicants, similar to the one conducted in Gujarat. Based on the success, we could soon see such measures being mandated across the States for obtaining GST registration, which should effectively tackle the menace of fake and fraudulent cases.

Comments on compliance streamlining measures

- The GST Council has also decided to bring in a system-based intimation mechanism to deal with differences in ITC between Form GSTR-3B and Form GSTR-2B above a certain threshold, along with the procedure for auto-compliance on the part of the taxpayers to explain reasons thereof or take remedial action. Said measure is similar to the one introduced with respect of difference in tax liabilities in GSTR-1 vs. GSTR-3B. The same should help reduce the scrutiny proceedings which are generally seen to culminate into show cause notices/audits. However, it may be pertinent to note that in case of difference in tax liabilities, the law prescribes for recovery of taxes under prescribed modes; it would be interesting to see if similar provisions are made applicable in respect of ITC mismatches, particularly where the explanation or reasons furnished by the taxpayer is not found to be acceptable by the GST officer.

With departmental audits being initiated by the GST authorities to review the returns and records of taxpayers for the past five years, the aforesaid trade facilitation measures and clarity on the tax positions would certainly help mitigate any potential disputes and would further ease up the doing of business in India.



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