L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

L&S GST Update No. 29 of 2019
01st October, 2019

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Highlights of changes effective from 1-10-2019 in GST Rates : Services

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Hotel Accommodation, Food and Beverage Services

Changes in Hotel Accommodation service

Categories	Old Rate	New Rate
(i) Value of supply less than Rs. 1,000	Nil	Nil
(ii) Value of supply equal to Rs. 1,000	12%	Nil
(iii) Value of supply of a unit above Rs. 1,000 but less than or equal to Rs. 7,500	≥ Rs. 1,000 < 2,500: 12% ≥ Rs. 2,500 < 7,500: 18% = 7,500 : 28%	12%
(iv) Value of supply of a unit above Rs. 7,500	28%	18%

✓ The above changes have been made effective w.e.f. 01.10.2019 vide following Notifications

- ➢ Notification No. 20/2019-C.T.(R) dated 30.09.2019
- ➢ Notification No. 21/2019-C.T.(R) dated 30.09.2019

Restaurant Services

Particulars	Old Rate	New Rate
At premises other than Specified Premises *		
(i) having declared tariff of any unit of accommodation of Rs. 7500	18% with ITC	5% with no ITC
(ii) having declared tariff of units of accommodation less than Rs. 7500	5% with no ITC	5% with no ITC
At Specified Premises *		
(i) having declared tariff of any unit of accommodation above Rs. 7500	18% with ITC	18% with ITC

Outdoor Catering Services

Particulars	Old Rate	New Rate
At Premises other than Specified Premises*		
- Outdoor catering - Composite supply of outdoor catering together with renting of premises	18% with ITC	• By suppliers providing hotel accommodation at specified premises: 18% with ITC • By suppliers located in specified premises: 18% with ITC • By suppliers other than mentioned above: 5% with no ITC
At Specified Premises*		
- Outdoor catering - Composite supply of outdoor catering together with renting of premises	18% with ITC	18% with ITC

Other accommodation, food and beverage services

Particulars	Old Rate	New Rate
Supply, of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms	5% with no ITC	5% with no ITC
Other Accommodation, food and beverage services Explanation: GST @ 5% with no ITC given for outdoor catering and restaurant services is mandatory.	18% with ITC	18% with ITC

Relevant definitions under Notifications

Term	Meaning
Restaurant service	It means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.
Outdoor Catering	It means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature

Relevant Definitions under Notifications

Term	Meaning
Hotel Accommodation	It means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.
Specified Premises	It means premises providing "hotel accommodation" services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

Open issues for Hotel Accommodation, Food And Beverage Services

- ✓ Applicability of anti-profiteering provisions in case inclusive rates charged to customers?
- ✓ Applicable rate of GST on advances received before 01.10.2019 but services supplied after 01.10.2019?
- ✓ Applicable GST rate on caterings provided on contractual arrangement basis in canteens, mess, cafeteria or dining hall of institutions, hospitals, offices etc.?

Alcoholic Liquor License

***Vide* Notification No. 25/2019 C.T.(R), dated 30.09.2019,** **the following service has been notified to be neither as a supply of goods nor a supply of service, namely:**

"Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called."

Implications of amendment:

- ✓ Grant of alcoholic liquor licence for human consumption will not be taxable under GST.

Open Issues:

- ✓ Taxability of such service from 01.07.2017 to 30.09.2019?
- ✓ Eligibility to claim refund of GST deposited for prior period?

Real Estate Sector

Amendment of Notification No. 4/2018-C.T.(R) *vide* Notification No. 23/2019-C.T.(R)

- ✓ **Where development rights are supplied before 1.04.2019**

  - Notification No. 4/2018-C.T.R provided for time of supply for construction services and development rights. It provides the time of supply as the time when developer transfers –
    - possession or
    - the right in the constructed units

    by entering into a conveyance deed or similar instrument (i.e. allotment letter)

  - *Now the said notification has been amended to not apply in case where development right has been supplied on or after 1.04.2019*

- ✓ **Where development rights are supplied after 1.04.2019**
  - Same is governed by Notification No. 6/2019-C.T.R

Amendment of Notification No. 7/2019-C.T.(R) *vide* Notification No. 24/2019 C.T.(R)

✓ Reverse Charge Liability in case of Cement

Old Entry	New Entry
Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975

Amendment of Notification No. 7/2019-C.T.(R) *vide* Notification No. 24/2019 C.T.(R)

L&S Comments

- Procurement of cement from unregistered suppliers attracts RCM liability and the threshold of 80% does not apply.

- The amendment made RCM applicable in following cases also
  - Commercial units in REP
  - Residential projects where promoter has exercised option to pay at 12% with ITC.

- Clarity on RCM liability on capital goods is still awaited

Amendment of Notification No. 11/2017-C.T.(R) *vide* Notification No. 20/2019 C.T.(R)

✓ Amendment of Paragraph 2A in Notification No. 11/2017-C.T.(R) to substitute ‘registered person’ with ‘person’

Where a ~~registered~~ person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above

L&S Comments

- Amendment brings clarity and makes this notification consistent with other notifications.

Leasing and Rental Services

Amendment of Notification No. 11/2017-C.T.(R) vide Notification No. 20/2019-C.T.(R)

✓ Amendment in S. No. 10 (Rental Services of Transport Vehicles)

Heading	Services	Rate	ITC
Heading 9966 (Rental services of transport vehicles with operator)	(i) Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient	5% or 12%	Not eligible* or Eligible
	(ii) Time charter of vessels for transport of goods	5%	Not eligible*
	(iii) Rental services of transport vehicles with ~~or without operators~~, other than (i) and (ii) above.	18%	

L&S Comments

- After amendment, S. No. 10 will cover rental services with operators only
- Similar amendments have been made in the Annexure: Scheme of Classification of Services

Amendment of Notification No. 11/2017-C.T.(R) vide Notification No. 20/2019-C.T.(R)

- ✓ Omission of entries specifying rate of tax on ‘Leasing of aircrafts’ in S. No. 15(iv) and S. No. 17(v) by an operator.

- ✓ Omission of entries specifying rate of tax on ‘time charter of vessels for transport of goods’ in S. No.17(vii).

Impact

- ✓ Services of leasing of aircraft or vessels would be taxable at the rate as applicable on aircraft or vessel.

Amendment of Notification No. 11/2017-C.T.(R) vide Notification No. 20/2019-C.T.(R)

9966 vs 9973 aligned with the UN CPC

- ✓ Scope of S. No. 10 Headed 9966 'Rental Services of Transport Vehicles' now restricted to rental with operator only.

- ✓ Scope of S. No. 17 Headed 9973 'Leasing or Rental Services' now restricted to rental without operator only.

Issue

- ✓ Applicable rate of tax on leasing/renting of goods other than transport vehicle with operator.

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Mining Related Services

Amendment of Notification No. 11/2017-Central Tax Rate vide Notification No. 20/2019-C.T.(R)

✓ Insertion of New Entry in S. No. 21

Heading	Services	Rate	Condition
Heading 9983 (Other professional, technical and business services)	(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both	12%	-

✓ Amendment of Entry in S. No. 24

Heading	Services	Rate	Condition
Heading 9986 (Support services to agriculture, hunting, forestry, fishing, mining and utilities)	(ii) Support Services to ~~Service of~~ exploration, mining or drilling of petroleum crude or natural gas or both	12%	-

L&S Comments

- Classification of Mining and Drilling Services of petroleum crude?

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Job Work Services

Amendment of Notification No. 11/2017-C.T.(R) vide Notification No. 20/2019-C.T.(R)

✓ Insertion of new entries in S. No. 26

Heading	Services	Rate	Condition
Heading 9988 (Manufacturing services on physical inputs (goods) owned by others)	(ib) Services by way of job work in relation to diamonds falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975;	1.5%	-
	(ic) Services by way of job work in relation to bus body building;	18%	-
	(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	12%	-
	(iv) Manufacturing services on physical services owned by others…	18%	-

L&S Comments

- All Job worker services other than specified in the rate notification specifically shall qualify for 12%
- Job work [S.N0. (id)] vs other manufacturing services [S. No. (iv)]

Research and Development Services

Notification No. 04/2019-IGST

✓ **<u>Place of Supply in case of Specified R&D Services** in Pharma Sector w.e.f. 01.10.2019</u>**

The place of supply of R&D Services shall be **<u>location of the recipient</u>** if-

- contract for service is between the supplier located in taxable territory and recipient located in the non-taxable territory ; and such

- Condition to qualify 'export of services' are fulfilled.

<u>L&S Comments:</u>

The amendment has tried to resolve the earlier dispute of determining place of supply of R&D Services between general rule and performance based rule.

Research and Development related Services-

- Integrated discovery and development
- Integrated development
- Evaluation of the efficacy of new chemical/ biological entities in animal models of disease
- Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays
- Drug metabolism and pharmacokinetics of new chemical entities
- Safety Assessment/ Toxicology
- Stability Studies
- Bio-equivalence and Bioavailability Studies
- Clinical trials
- Bio analytical studies

The scope of above services has been defined under Notification.

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Services under Reverse Charge

Amendment of Notification No. 13/2017-C.T.(R) vide Notification No. 22/2017 C.T.(R)

- **RCM on publishers for services by authors made optional**

S. No.	Nature of Services	Supplier	Recipient of Service	
			Upto 30.09.2019	w.e.f. 01.10.2019
9A	Supply of services by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory.	Publisher located in the taxable territory except where author has taken registration GST and filed a declaration to pay tax under forward charge**

*** subject to certain conditions*

New entries under RCM

Sl. No.	Nature of Services	Supplier	Recipient
15	Services provided by way of renting of a motor vehicle*	Any person other than a body corporate, paying GST @ 5% on renting of motor vehicles with ITC only of input service in the same line of business	Any body corporate located in the taxable territory.
16	Services of lending of securities under Securities Lending Scheme, 1997 of India ("SEBI")	Lender	Borrower

* RCM was applicable on similar services even in pre GST regime.

Changes in Exemption

Amendment of Notification No. 9/2017-IGST Rate vide Notification No. 20/2019-IGST Rate

✓ New Exemptions

S. No.	Services	Conditions
12AA	Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory.	Following documents to be maintained for 5 years: 1) Copy of Bill of Lading 2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods 3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory 4) Copy of certificate of origin issued by service recipient located in non-taxable territory 5) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory;

Amendment of Notification No. 12/2017-C.T.(R) vide Notification No. 21/2019-C.T.(R)

✓ New Exemptions

S. No.	Services
9AA	Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India. Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020
24B	Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea
29B	Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.

Amendment of Notification No. 12/2017-Central Tax (Rate) vide Notification No. 21/2019-C.T.(R)

✓ New Exemptions

S. No.	Services
35	Services of general insurance business provided under Bangla Shasya Bima
82A	Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020.

✓ Extension of exemptions till 30.09.2020

S. No.	Services
19A	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.
19B	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.

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