L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

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INDIRECT TAX

# 47th Meeting of the GST Council – Highlights on changes in rates of GST

UPDATE NO. 25 OF 2022


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exceeding expectations
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Sector specific rates and exemptions related recommendations made by the GST Council in its 47th Meeting held on 28 and 29 June 2022:

1. Real Estate and Infrastructure
2. Transportation and logistics
3. Hospitality (lodging, food & drink, travel & tourism)
4. Healthcare
5. Job works
6. Casino, racecourse, and online gaming
7. Electric vehicles
8. FMCG
9. Fly Ash
10. Waste
11. Misc

## A. SECTOR SPECIFIC RECOMMENDATIONS

### 1. Real Estate and Infrastructure

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate change to be notified | Rate increase from 12% to 18%:<br>• Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc.<br>• Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof<br><br>Rate increase from 5% to 12%:<br>• Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof | For correcting inverted rate structure |

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| Clarification | Plots:<br><br>Sale of land after leveling, laying down of drainage lines etc. is sale of land and does not attract GST. | This is a welcome clarification providing major relief to the real estate sector and will put ongoing disputes to rest.<br><br>This clarification is in line with the judgement of the Hon'ble Gujarat High Court in the case of *Munjaal Mansihbhai Bhatt*[1] wherein the Court held that sale of land includes sale of developed plots.<br><br>However, the bare text of the clarification is awaited to comment whether it intends to cover only the sale of plots post development activities or development of plots on behalf of the customer also.<br><br>Further, it would be interesting to see whether the clarification will have impact on the plot sellers who charge separate amount for development activities treating it to be a separate service. |
| Clarification | PLC:<br><br>Allowing choice of location of a plot is part of supply of long-term lease of plot of land. Therefore, location charge or preferential location charges (**'PLC'**) are part of consideration charged for long term lease of land and shall get the same treatment under GST. | This clarification seems to be issued in the light of ongoing disputes raised before the authorities since the department is demanding 18% GST on PLC as an independent supply.<br><br>This is a benevolent clarification for the real estate sector wherein it has been stated that PLC is not an independent supply but inextricably linked with supply of long-term lease of plot. Accordingly, PLC charged |

1. 2022 VIL 319 (Guj.)

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| | | towards lease of plot shall be subject to same rate of GST as applicable on lease of plot.<br><br>This clarification may be applied for the taxability of PLC charged by the developer for sale of units pre or post OC/CC, sale of plots etc. |
| Clarification | Additional fee/toll:<br><br>Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and shall be given the same tax treatment as given to toll charges. | This clarification equates additional fees for not having Fastag at par with toll charges (which is exempt) and not as a service of toleration of an act or penalty etc.<br><br>This clarification may have impact wherein the taxpayers contend various penal charges to be out of the GST net. |

## 2. Transportation and Logistics

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate changes to be notified | Rate reduction from 18% to 5% (with ITC of services):<br>• Transport of goods by ropeway<br><br>Rate reduction from 18% to 12%:<br>• Renting of truck/goods carriage where cost of fuel is included | It appears that exemption given to renting services to GTA under S. No. 22 of NN 12/2017-C.T.R. dated 28 June 2017 will continue. |
| Clarification | Renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 (rental services of transport vehicles with operators) and attracts GST at 18%. GST on such renting where | This is a welcome amendment. Reduced rate benefit was earlier available for time charter of vessel and to motor vehicles designed to carry passengers where the |

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| | cost of fuel is included in the consideration charged is being prescribed at 12%. | cost of fuel is included in the consideration charged.<br><br>The proposed amendment is captured under the heading clarification in relation to GST rate of services instead of recommendation for change in rate of tax. Therefore, more clarity is awaited on this. |
| Exemptions withdrawn to be notified | • Transportation by rail or a vessel of railway equipment and material<br>• Storage or warehousing of commodities which attract tax (nuts, spices, copra, jaggery, cotton etc.)<br>• Fumigation in a warehouse of agricultural produce. | |
| Clarification | Services associated with transit cargo both to and from Nepal and Bhutan are covered by exemption under entry 9B of NN 12/2017-C.T.R. dated 28 June 2017. | The existing notification provides exemption only in respect of supply of services associated with transit cargo "to" Nepal and Bhutan.<br><br>It has to be seen whether the proposed clarification throws light on the meaning of transport cargo and also on the nature of associated services. |
| Change to be notified | All taxable service of Department of Posts would be subject to forward charge. Hitherto certain taxable services of Department of post were taxed on reverse charge basis. | Now, all the taxable service provided by Department of Posts would be subject to forward charge. Currently, only the services by way of speed post, express parcel post, life insurance, and agency services provided by the Department of Post to a person other than Central Government, State Government or Union |

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| | | territory or local authority is taxable under forward charge. |
| Change to be notified | Goods transport agency (GTA) is being given option to pay GST at 5% or 12% under forward charge; option to be exercised at the beginning of Financial Year. RCM option to continue. | This is a welcome change whereby the GTA can commercially decide at the beginning of each financial year to discharge GST on supply of GTA services under forward charge or reverse charge.<br><br>Currently, as per the conditions provided under S. No. 9(iii) of NN 11/2017-C.T.R. dated 28 June 2017, once an option to discharge GST at the rate of 12% is opted by GTA, the same shall continue forever, and there was no mechanism available to the GTA to change the selected option. |
| Clarification | Ginned or baled fibre is covered in entry 24B of NN 12/2017-C.T.R. dated 28 June 2017 in the category of raw vegetable fibres. The exemption under this entry is being rationalized. | Scope of services by way of storage or warehousing of raw vegetable fibres clarified. |

## 3. Hospitality (lodging, food & drink, travel & tourism)

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate changes to be notified | Rate reduction from 18% to 5% (with ITC of services):<br>• Transport of passengers by ropeway | |
| Exemption restricted to be notified | Exemption on transport of passengers by air to and from NE states & Bagdogra is being restricted to economy class | |

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| Exemption withdrawn to be notified | Renting of residential dwelling to business entities (registered persons) | This will adversely impact the companies who take residential accommodation on rent for their directors/seconded employees etc. Going forward, the same shall be taxable. In such case, it shall be analyzed whether companies would be entitled for ITC specifically in the light of restriction under Section 17(5)(g) of the CGST Act for personal consumption.<br><br>This would also impact the assesses who were taking exemption for hostel renting in the light of judgement of Karnataka High Court in the case of *Taghar Vasudeva*[2]. |
| Exemption rationalized | Hotel accommodation priced up to INR 1000/day shall be taxed at 12% | It has to be seen whether exemption under S. No. 14 of NN 12/2017-C.T.R. dated 28 June 2017 for places other than hotels such as guest house, hostels etc. shall continue or not.<br><br>ECOs shall also give effect to the above amendment by complying with Section 52 (TCS related provision) and Section 9(5) of the CGST Act (payment by aggregator) when the hotel accommodation services are provided through them. |

2. 2022 VIL 110 (Kar.)

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| Clarification | Due to ambiguity in GST rates on supply of ice-cream by ice-cream parlors, GST charged@ 5% without ITC on the same during the period 1 July 2017 to 5 October 2021 shall be regularized to avoid unnecessary litigation. | This clarification has been issued in context of clarification provided by Circular No. 164/20/2021-GST, dated 6 October 2021 wherein it was clarified that sale of already manufactured ice-creams which does not involve any cooking/preparation will qualify to be supply of goods leviable to GST @ 18%.<br><br>This clarification is proposing to regularize the practice of discharging GST @ 5% without ITC followed by ice-cream parlours pre issuance of the above mentioned Circular.<br><br>However, apart from ice-cream parlors, there are other stores as well like bakery, etc. which will continue to face the heat from the department. |
| Clarification | Renting of motor vehicles for transport of passengers to a body corporate for a period(time) is taxable in the hands of body corporate under RCM. | This seems to throw light of the nature of rental on a time basis. |
| Clarification | The expression 'public transport' used in the exemption entry at S. No. 17(d) of NN 12/2017-C.T.R. dated 28 June 2017 which exempts transport of passengers by public transport other than predominantly for tourism purpose, in a vessel between places located in India, means that such transport | This clarification seems to throw light on the meaning of 'public transport' which is not defined in the Notification. |

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| | should be open to public for point-to-point transport [e.g. such transport in Andaman and Nicobar islands]. | |
| Change to be notified | Service provided by Indian Tour operator to a foreign resident for a tour partially in India and partially outside India is to be subject to tax proportionate to the tour conducted in India for such foreign tourist subject to conditions that this concession does not exceed half of tour duration. | The proposed amendment may have an adverse impact on the tour operators (P2P basis) who were determine place of supply of their services to a foreign resident as per Section 13(2) of the IGST Act and hence, claiming the benefit of export of service.<br><br>Clarity is awaited on the mechanism to be followed for application of partial taxability. |

## 4. Healthcare

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate change to be notified | Reduction of rate from 12% to 5%:<br>• Ostomy Appliances<br>• Orthopedic appliance: Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens<br><br>Reduction of rate from 5% to Nil<br>• Import of Diethylcarbamazine (DEC) tablet supplied free of cost for National Filariasis Elimination Programme | |
| Clarification | Nicotine Polarilex Gum attracts a GST rate of 18%. | Earlier dispute arose regarding classification of such products. CTH 2404 has been specifically inserted under Chapter 24 of |

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| | | Schedule I to Customs Tariff Act, 1975 w.e.f. 1 January 2022 to classify 'Products containing tobacco, reconstituted tobacco, nicotine, or tobacco or nicotine substitutes, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body'. GST rate on said goods has been notified as 18% w.e.f. 1 January 2022. |
| Exemption withdrawn to be notified | Services provided by the cord blood banks by way of preservation of stem cells | |
| Exemption rationalized | Room rent (excluding ICU) exceeding INR 5,000/- per day per patient charged by a hospital shall be charged to the extent of room at 5% without ITC. | Currently, health care services provided by a clinical establishment, an authorised medical practitioner or paramedics is exempt from payment of GST as per Entry 74 of NN 12/2017-C.T.R. dated 28 June 2017.<br><br>Hospitals treat the room rent charged from the in-patient, during the course of treatment as a composite supply of health care services exigible for exemption from payment of GST.<br><br>The recommendation seems to take out the element of room rent exceeding INR 5,000/- from the bundle of healthcare services and tax it separately at the rate of 5% without ITC.<br><br>It has to be seen whether entire amount will be taxed once the limit is exceeded or only the excess amount will be subject to tax. |

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| Clarification | Services in form of Assisted Reproductive Technology (ART)/In vitro fertilization (IVF) are covered under the definition of health care services for the purpose of exemption under GST. | This is a welcome clarification clarifying services in the form of Assisted Reproductive Technology (ART) / In vitro fertilization (IVF) qualifies to be supply of healthcare services in view of ongoing disputes wherein the department is contending that such services cannot be treated as healthcare services. |

## 5. Job Work

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate change to be notified | Increase of rate from 5% to 12%:<br>• Job work in relation to processing of hides, skins and leather<br>• Job work in relation to manufacture of leather goods and footwear<br>• Job work in relation to manufacture of clay bricks | For correcting inverted rate structure |

## 6. Casino, racecourse, and online gaming

| Category | Recommendations | L&S Comments |
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| Rate change to be re-examined | The Council directed that the Group of Ministers on Casino, Race Course and Online Gaming re-examine the issues in its terms of reference based on further inputs from States and submit its report within a short duration. | **Highlights of press conference by The Hon'ble Finance Minister:**<br>GoM report has equated online gaming, race-course and casino to gambling. The GST rate is already 28% on online gaming and GoM was in favour of maintaining the status quo. State of Goa requested to draw an exception for casino. Considering such request and on further deliberations, it was decided to re-examine all |

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| | | three i.e., Online gaming, race-course and casino.<br><br>The report of GoM will be submitted to council by 15 July 2022 and the next Council meeting will happen in the first week of August 2022 to discuss the same.<br><br>Treating all online gaming as gambling can be disputed, particularly in view of recent judgements of a few High Courts. |

## 7. Electric vehicles

| Category | Recommendations | L&S Comments |
|---|---|---|
| Clarification | Electric vehicles whether or not fitted with a battery pack, are eligible for the concessional GST rate of 5% | There were contrary rulings of authorities of advance rulings on availability of concessional rate for electronic vehicles which are supplied without battery packs particularly in case of battery as a service model.<br><br>This clarification seems to put an end to this controversy. |

## 8. FMCG

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate change to be notified | Rate increase from 12% to 18%:<br>• Tetra Pak (Aseptic Packaging Paper)<br><br>Exemption withdrawn:<br>• Hitherto, GST was exempted on specified food items, | • Scope of exemption shall be limited to products which do not qualify as pre-packaged or pre-labelled packages.<br>• Notification is awaited to |

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| | grains etc when not branded, or right on the brand has been foregone. It has been recommended to revise the scope of exemption to exclude from it pre-packaged and pre-labelled retail pack in terms of Legal Metrology Act, including pre-packed, pre-labelled curd, lassi and butter milk. | see the implications on wholesale packages.<br>• Once the rate changes are notified for FMCG products, procedure for change in MRP as per the Legal Metrology Act and rules shall have to be considered. |

## 9. Fly Ash

| Category | Recommendations | L&S Comments |
|---|---|---|
| Clarification | All fly ash bricks attract same concessional rate irrespective of fly ash content.<br><br>The condition of 90% fly ash content with respect to fly ash bricks applies only to fly ash aggregate, and not fly ash bricks. As a simplification measure, the condition of 90% content is being omitted. | The Authorities of Advance Rulings have ruled that fly ash bricks not having 90% or more fly ash content shall be chargeable to GST @ 18% as per residuary S. No. 453 of Schedule III to the NN 1/2017- C..T.R. dated 28 June 2017.<br><br>It is thus a welcome clarification as all the fly ash bricks, irrespective of the fly ash content shall enjoy concessional rate of 6% without ITC and 12% with ITC. |

## 10. Waste

| Category | Recommendations | L&S Comments |
|---|---|---|
| Rate change to be notified | Rate increase from 5% to 18%:<br>• E-waste | |
| Clarification | Sewage treated water is exempted from GST and is not the same as purified water provided in S. No. 99 of NN. 2/2017-CT(Rate). The word 'purified' is being omitted to make this amply clear. | The Authority for Advance Ruling had ruled that the 'Treated Water' processed from sewage water qualifies to be 'purified' water falling under S.No. 24 of Schedule III of NN 1/2017-C.T.Rate dated |

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| | | 28 June 2017 and taxable at 18%. Through this clarification, this issue seems to be resolved. |
| Exemption rationalized to be notified | Like CETPs, common bio-medical waste treatment facilities for treatment or disposal of biomedical waste shall be taxed at 12% so as to allow them ITC | |

## 11. Miscellaneous

### A. Goods Rate change – correction to inverted rate structure

| S. No. | Description | Old Rate | New Rate |
|---|---|---|---|
| 1. | Printing, writing or drawing ink | 12% | 18% |
| 2. | Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc. | 12% | 18% |
| 3. | Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps, submersible pumps; Bicycle pumps | 12% | 18% |
| 4. | Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is Air Based Atta Chakki; Wet grinder | 5% | 18% |
| 5. | Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery | 12% | 18% |
| 6. | LED Lamps, lights and fixture, their metal printed circuits board | 12% | 18% |
| 7. | Drawing and marking out instruments | 12% | 18% |
| 8. | Solar Water Heater and system; | 5% | 12% |
| 9. | Prepared/finished leather/chamois leather/ composition leathers | 5% | 12% |

## B. Other Goods Rate change including exemptions withdrawn/rationalized:

| S. No. | Description | Old Rate | New Rate |
|---|---|---|---|
| 1. | Cheques, loose or in book form | Nil | 18% |
| 2. | Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed | Nil | 12% |
| 3. | Parts of goods of heading 8801 | Nil | 12% |
| 4. | Petroleum/Coal bed methane | 5% | 12% |
| 5. | Scientific and technical instruments supplied to public funded research institutes | 5% | Applicable Rate |
| 6. | Tar (whether from coal, coal gasification plants, producer Gas plants and Coke Oven Plants. | 5/18% | 18% |
| 7. | Cut and Polished diamonds | 0.25% | 1.5% |
| 8. | IGST on specified defence items imported by private entities/vendors, when end-user is the Defence forces. | Applicable rate | Nil |

## C. Goods related clarification:

| S. No. | Description | L&S Comments |
|---|---|---|
| 1. | The GST rate on all forms of mango under CTH 0804, including mango pulp (other than mangoes sliced, dried) attract GST at the 12%. Entry is also being amended to make this amply clear. Raw or fresh mangoes continue to be exempt. | There are rulings of authorities of advance rulings who have held that mango pulp obtained from mango after carrying out process of cutting, de-stoning, refining and packing is not same as 'Mangoes fresh'. Mango pulp is specifically classified under Tariff Item 08045040 of Customs Tariff Act, 1975 but not under GST Tariff. Thus, it would fall under S. No. 453 of Schedule III to NN 1/2017-C.T.Rate dated 28 June 2017. Rate of 12% may be separately notified for mango other than raw, fresh, sliced and dried. |

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| 2. | Stones covered in S. No.123 of Schedule-I (such as Napa stones), even if they are ready to use and polished in minor ways [not mirror polished], attract concessional GST rate of 5% | |

## D. Services Rate change – correction to inverted rate structure

| S. No. | Description | Old Rate | New Rate |
|---|---|---|---|
| 1. | Services supplied by foreman to chit fund | 12% | 18% |

## E. Service exemption withdrawn:

| S. No. | Recommendation | L&S Comments |
|---|---|---|
| 1. | Services by RBI, IRDA, SEBI, FSSAI | Liability under forward charge vs reverse charge needs to be analysed. |
| 2. | Services by GSTN | |

## F. Service exemption withdrawn:

| S. No. | Recommendation |
|---|---|
| 1. | Tax exemption on training or coaching in recreational activities relating to arts or culture, or sports is being restricted to such services when supplied by an individual. |
| 2. | Like CETPs, common bio-medical waste treatment facilities for treatment or disposal of biomedical waste shall be taxed at 12% so as to allow them ITC |

## G. Service exemption withdrawn:

| S. No. | Clarifications | L&S Comments |
|---|---|---|
| 1. | Application fee charged for entrance or for issuance of eligibility certificate for admission or issuance of migration certificate by universities is exempt from GST. | There were disputes as to the applicability of S. No. 66 of NN 12/2017-C.T.R. dated 28 June 2017. |
| 2. | Activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%. | This clarification throws light on the meaning of print media. |
| 3. | Services provided by the guest anchors to TV channels in lieu of honorarium attract GST. | |

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## NOTE:

- The aforesaid interpretations and analysis are based on the press release and subject to change basis the Notifications and circulars which are yet to be issued.
- The Rate changes shall be made effective from 18 July 2022 by way of issuance of Notification(s).
- Applicability of anti-profiteering provisions shall have to be examined in case of change in rate of tax.
- Compliance of Legal Metrology (Packaged Commodities) Rules, 2011 shall have to be ensured in cases where the rate of tax on packaged commodities has been increased.

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