L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

2 JULY 2022

INDIRECT TAX

Hospitality Sector – Recommendations of 47th GST Council Meeting

Recommendations in the 47th GST Council Meeting to be made effective from 18th July 2022 by way of issuance of Notification

UPDATE NO. 30 OF 2022

Lakshmikumaran & Sridharan attorneys

exceeding expectations
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HOSPITALITY SECTOR- WITHDRAWAL OF EXEMPTION

Proposed Changes

- Currently, the accommodation services provided at a hotel, inn, guest house, club or campsite for residential or lodging purposes, where the value of supply of a unit of accommodation is less than or equal to INR 1000/- per day, are exempt from GST [Sl. No. 14 of the N/N. 12/2017 – CT (Rate)].

- It has been now proposed to withdraw the above exemption and to tax the services @ 12%.

L&S Comments:

- E-Commerce Operators shall also give effect to the above amendment by complying with Section 52 (TCS related provision) and Section 9(5) of the CGST Act when the hotel accommodation services are provided through them.

- The revised rate for hotel accommodation services will be as follow:

S.No.	Value of supply of a unit of accommodation per unit per day or equivalent	Rate
1.	Value is less than or equal to seven thousand five hundred rupees	12%
2.	Value is more than seven thousand five hundred rupees	18%

HOSPITALITY SECTOR – INDIAN TOUR OPERATOR SERVICES

Proposed Changes

- It has been proposed that the 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.

L&S Comments:

- The services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India was exempt from tax both in services tax and GST regime [Entry 54 of N/N 9/2017- IGST (R)]. However, there was no clarity in respect of services provided to foreign tourist for tour conducted partially in India.

- This amendment can create a stir for the tour operators who determine place of supply of their services to a foreign resident as per Section 13(2) of the IGST Act and hence, claims the benefit of export of service for the entire leg of service.

- We await more clarity on the mechanism to be followed for the applicability of partial taxability.

HOSPITALITY SECTOR – ICE CREAM PARLOR

Proposed Clarification

- It is proposed to regularize the payment of GST @ 5% without ITC on the supply of ice-cream by ice-cream parlors during the period 1 July 2017 to 5 October 2021 in light of ambiguity in GST rates and to avoid unnecessary litigation.

L&S Comments:

- It was clarified *vide* circular that where ice cream parlors sell already manufactured ice-cream, the supply shall be treated as supply of goods taxable at the rate of 18% [*Refer Circular No. 164/20/2021-GST, dated 6-10-2021*].
- This clarification is proposed to regularize the practice of discharging GST @ 5% without ITC followed by ice-cream parlours prior to issuance of the above mentioned Circular.

HOSPITALITY SECTOR – RENTING OF RESIDENTIAL DWELLING

Renting of residential dwelling for use as residence by registered person

- The services by way of renting of residential dwelling for use as residence is exempted from levy of GST.
- However, the availability of the above exemption where recipient is business entities / registered persons is already disputed by the GST authorities.
- The council has proposed to withdraw the exemption on Renting of residential dwelling to business entities (registered persons).

L&S Comments:

- This will adversely impact the companies who take residential accommodation on rent for their directors / seconded employees etc. Going forward, the same will be taxable. In such case, it needs to 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.
- This would also impact the assessees who were availing exemption for hostel renting in the light of judgement of Karnataka High Court in the case of *Taghar Vasudeva* [2022 VIL 110 (Kar)].

HOSPITALITY SECTOR – OTHER CHANGES

Transport of passenger by air to and from NE states

- At present the transport of passengers by air to and from North Easter (NE) states & Bagdogra is exempt irrespective of the class of travel.
- It has been proposed to restrict the exemption only in respect of economy class.

Transport of passengers by public transport

- S. No. 17(d) of NN 12/2017-C.T.R exempts transport of passengers by public transport other than predominantly for tourism purpose, in a vessel between places located in India.
- The above notification does not define 'public transport'.
- It has been proposed to clarify that 'public transport' means such transport which is open to public for point to point transport [e.g. such transport in Andaman and Nicobar islands].
- Thus, the ambiguity around the meaning of 'public transport' in the above entry is sought to be removed.

HOSPITALITY SECTOR – CHANGE IN RATE OF TAX

S.No.	Transaction	Current GST Rate	Proposed GST Rate
1.	Supply of – Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc.	12%	18%
2.	Transport of goods and passengers by ropeways	18%	5% (with ITC of services)

LOCATIONS

NEW DELHI
5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: Lsdel@lakshmisri.com

MUMBAI
2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: Lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: Lsmds@lakshmisri.com

BENGALURU
World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: Lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: Lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: Lsahd@lakshmisri.com

PUNE
607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: Lspune@lakshmisri.com

KOLKATA
2nd Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: Lskolkata@lakshmisri.com

CHANDIGARH
SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: Lschd@lakshmisri.com

GURUGRAM
OS2 & OS3, 5th Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: Lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)
3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: Lsallahabad@lakshmisri.com

KOCHI
1st Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam, Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: Lskochi@lakshmisri.com

JAIPUR
2nd Floor (Front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur, Rajasthan 302 015
PHONE: 0141–456 1200
E-MAIL: Lsjaipur@lakshmisri.com

NAGPUR
1st Floor, HRM Design Space,
90-A, Next to Ram Mandir,
Ramnagar, Nagpur 440033
PHONE: +91-712-2959038/2959048
E-MAIL: Lsnagpur@lakshmisri.com

www.lakshmisri.com

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

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