L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

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INDIRECT TAX

GST rate changes: Transportation, Logistics and Hospitality Sectors

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exceeding expectations
SINCE 1985

In pursuance of the recommendations of the 47th GST Council Meeting (**'GCM'**) held on 28 and 29 June 2022, certain Notifications have been issued on 13 July 2022 by the Central Board of Indirect Taxes and Customs (**'CBIC'**) for implementing the rate changes with respect to the supplies of various goods and services, and such Notifications will come into effect from 18 July 2022.

The Notification No. 03/2022-Central Tax (Rate) dated 13 July 2022 ('**NN 03/2022'**) has brought about the rate changes in the Notification No. 11/2017-Central Tax (Rate), dated 28 June 2017 (**'Rate Notification'**), whereas the Notification No. 04/2022-Central Tax (Rate), dated 13 July 2022 (**'NN 04/2022'**) is bringing about the changes in the Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017 (**'Exemption Notification'**), and the Notification No. 05/2022-Central Tax (Rate), dated 13 July 2022 (**'NN 05/2022'**) has implemented the relevant changes in the Notification No. 13/2017-Central Tax (Rate), dated 28 June 2017 (**'RCM Notification'**).

The same changes, as elaborated upon hereunder, have also been brought about by the corresponding IGST Notifications in respect of inter-State supplies.

I. TRANSPORTATION AND LOGISTICS

1. Changes applicable for Goods Transport Agencies

Changes in the Rate Notification

Current Position

- Earlier, under Sl. No. 9(iii) of the Rate Notification, goods transport agencies ('**GTAs'**) could opt for either of the following options:

  a. To discharge GST @ 12% on forward charge basis with no restriction on claiming corresponding input tax credit of goods or services used in providing such services; or

  b. To opt for GST @ 5% on reverse charge basis, i.e. the recipient of the GTA services would be liable to pay the tax, with restriction on claiming input tax credit with respect to the goods and services used in supplying such services

- Further, the option to pay GST at the rate of 12% could be exercised by the GTA only once, and could not be altered later on.

Revised Position

- The said entry has been substituted and GTAs have been given an option to discharge GST @ 5% under forward charge mechanism without claiming input tax credit on goods or service used in providing such services.

- Thus, GTAs can now opt to discharge GST under forward charge mechanism either @ 5% with no input tax credit or @ 12 % with full input tax credit. Further, the option to transfer the liability on the recipients to pay GST @ 5% on GTA services (i.e. reverse charge mechanism) will continue.

- Further, GTAs can now exercise or change the option to either pay the GST on forward charge basis or on reverse charge basis on or before 15th March of the preceding FY.

- For the FY 2022-23, it has been provided that the said option has to be exercised, in the same manner, on or before 16 August 2022, and for the intervening period of 18 July 2022 to 16 August 2022, invoices for supply of GTA services charging the rates, as applicable, on forward charge basis can be issued by the GTA even before exercising the said option.

- Accordingly, the Annexure V has been inserted into the Rate Notification, which is the form for exercising the option by a GTA to pay GST on the GTA services supplied by them under forward charge before the commencement of any FY, and the said Form has to be duly filled and submitted before the jurisdictional GST Authority.

- Furthermore, the definition of 'goods transport agency' has been removed from the Sl. No. 9(iii), and the same definition has been re-introduced as clause (xxxx) of paragraph 4, i.e. Explanation to the Rate Notification.

Changes in the RCM Notification

- On the basis of the above changes, consequent changes have been introduced in Sl. No. 1 of the RCM Notification as well. Thus, the applicability of reverse charge mechanism has been removed on the receipt of GTA services where:

    - The GTA has taken registration under GST law; and

    - He has exercised the option to pay on GST on his services under forward charge mechanism; and

    - He has issued a tax invoice charging GST at applicable rate on the same; and

- He has made the following declaration on his invoice:

  'I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year _____ under forward charge.'

L&S comments:

- The GTA now has the option to pay GST @ 5% or 12% on the supplies made by them under forward charge, depending on whether they wish to avail ITC with respect to the goods and/or services used for making such supplies.
- Further, they will not be restricted to paying GST on forward charge basis once they have exercised such an option once. Now, they can make the choice of payment under forward charge or reverse charge for each FY by filing the Form under Annexure V to the Rate Notification before the jurisdictional GST Authority.
- Further, the mechanism to be followed by a GTA for availing/exercising such options has been provided by this amendment.
- Accordingly, if a GTA has opted to pay GST on forward charge basis for a particular FY, they have to submit the aforesaid Form and also have to append a declaration to that effect to the tax invoices issued by them to the service recipients. This has the effect of informing the recipients of the GTA supplies that no GST has to be paid by them on reverse charge basis.

2. New rates introduced for transportation by ropewayss

Transportation of goods by ropeways

- A new sub-entry has been introduced at Sl. No. 9(via) of the Rate Notification for specifying the rate of GST for services of transportation of goods by ropeways @ 5%, on the condition that the input tax credit in respect of the goods used in the supply of such services has not been taken.
- Earlier, the transportation of goods by ropeways would have been covered in the residual sub-entry under Sl. No. 9, and the rate of GST applicable was 18%.

Transportation of goods by ropeways

- A new sub-entry has been introduced at Sl. No. 8(via) of the Rate Notification for specifying the rate of GST for services of transportation of passengers by ropeways, whether with or without accompanied belongings, @ 5%, on the condition that the input tax credit in respect of the goods used in the supply of such services has not been taken.

- Earlier, such transportation of passengers by ropeways would have been covered in the residual sub-entry under Sl. No. 8, and the rate of GST applicable was 18%.

L&S comments:

- These are welcome amendments since a lower rate of GST @ 5% has been prescribed for the transportation of passengers and/or goods by ropeways, by carving it out of the residual sub-entries under Sl. Nos. 8 and 9, respectively.

3. New entry introduced for rental services of goods carriage

- A new sub-entry has been introduced at Sl. No. 10(ia) of the Rate Notification for specifying the rate of GST for the rental services of goods carriage, with operators, where the cost of fuel is included in the consideration charged from the service recipient, @ 12%.

- Earlier, the aforesaid rental services would have been covered in the residual sub-entry under Sl. No. 10, and the rate of GST applicable on such residual sub-entry was 18%.

L&S comments:

- Prior to the amendment, there was a separate GST rate specified for the renting of motor vehicles designed to carry passengers, where the cost of fuel is included in the consideration charged from the service recipient, and the applicable rate was 5%. Now, under similar circumstances, the rate of GST applicable on renting of goods carriage has also been specified at a rate lower than the residual GST rate of 18%. Thus, this is a welcome amendment.

4. Changes applicable for the support services in transportation

- Under Sl. No. 11 of the Rate Notification, the sub-entries (i) and (ii) have been substituted as follows:

Earlier Entry	New Entry
(i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). Explanation.- 'goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.	Supporting services in transport. Explanation: This entry does not include Goods Transport Agency (GTA) services, which falls under Heading 9965.
(ii) Supporting services in transport other than (i) above.	

- Under the earlier entry, sub-entry (i) covered the services of a GTA in relation to the transportation of goods, and the GST rate applicable on the same was as follows:

  a. 5% on reverse charge basis, i.e. the recipient of the GTA services would be liable to pay the tax, provided that ITC with respect to the goods and services used in supplying such services has not been taken; OR

  b. 12% on forward charge basis, where the GTA themselves would be liable to pay such tax,

- On the other hand, all the other support services to transportation were covered under sub-entry (ii), on which the applicable rate of GST was 18%.

- With the substitution of the said entry, the GTA services, as covered under Heading 9965 have been excluded from the scope of the support services to transportation liable under Sl. No. 10 for levying GST at the rate of 18%.

L&S comments:

- Earlier, Sl. No. 11 of the Rate Notification covered the GTA services under Heading 9967, which were also covered under Sl. No. 9(iii), i.e. Heading 9965, thereby causing confusion as to the classification of the said services under the GST law. This ambiguity has been resolved by this amendment.

5. Withdrawal of exemption relating to railway transportation

- Under Sl. No. 20 of the Exemption Notification, the services by way of transportation by rail or a vessel from one place in India to another of railway equipments or materials was exempted from GST.

- *Vide* the amendments made by the NN 04/2022, the above exemption has been withdrawn.

L&S comments:

- Consequently, the transportation of such railway equipments and materials by way of rail or a vessel from one place in India to another will be taxable at the applicable rates of GST specified under Sl. No. 9 of the Rate Notification, unless otherwise exempted.

6. Withdrawal of exemption relating to GTA services

- Under Sl. No. 21 of the Exemption Notification, the GTA services by way of transportation in a goods carriage of goods were exempted, where:

  a. The consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed INR 1500;

  b. The consideration charged for transportation of all such goods for a single consignee does not exceed INR 750.

- *Vide* the amendments made by the NN 04/2022, the above exemptions have been withdrawn.

L&S comments:

- Consequently, the above categories of GTA services have become taxable at the applicable rates under Sl. No. 9(iii) of the Rate Notification.

7. Changes made to the exemption relating to warehousing and storage services

- The exemption entry at Sl. No. 24B of the Exemption Notification has been substituted as follows:

Earlier Entry	New Entry
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.*	Services by way of storage or warehousing of cereals, pulses, fruits and vegetables.

- Under the earlier entry, the storage and warehousing services with respect to a wide variety of goods were exempted. Now, the number of goods for which such storage and warehousing services are exempted has been reduced to only cereals, pulses, fruits and vegetables.

L&S comments:

- The intention of substituting this entry, as per the GCM, was to withdraw the exemption on storage and warehousing services which are being used for commodities which themselves attract GST.

8. Withdrawal of exemptions relating to the fumigation in a warehouse of agricultural produce

- Exemption available to services by way of fumigation in a warehouse of agricultural produce under Sl. Nos. 53A and 54(h) of the Exemption Notification has been withdrawn by the amendments made *vide* NN 04/2022.

L&S comments:

- On the withdrawal of the above exemptions, the rates of GST prevailing under the Rate Notification in respect of such services will become applicable.
- However, the support service of fumigation in a warehouse of agricultural produce has been covered under Sl. No. 24 of the Rate Notification, wherein Nil rate of GST has been prescribed thereon. Since there has been no corresponding amendment made to this entry of the Rate Notification, such services, while not exempt, can be treated as nil-rated under the GST law, unless any clarification is issued in this regard.

II. HOSPITALITY

1. Changes in rates relating to hotel accommodation services

Changes in the Exemption Notification

- Sl. No. 14 of the Exemption Notification, which exempted the servicessupplied by a hotel, inn, guest house, club, campsite, etc., for residential or lodging purposes, where the value of supply of a unit of accommodation was less than or equal to INR 1000 per day, has also been withdrawn.

Changes in the Rate Notification

- As a result of the above amendment, the entry relating to hotel accommodation services under Sl. No. 7(i) of the Rate Notification has been amended as follows so as to levy GST @ 12% on such supplies

Earlier Entry	New Entry
Supply of 'hotel accommodation' having value of supply of a unit of accommodation *above one thousand rupees but* less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	Supply of 'hotel accommodation' having value of supply of a unit of accommodation less than or equal to seven thousand five hundred rupees per unit per day or equivalent.

L&S comments:

- Thus, the supply of all hotel accommodation services, whether supplied by a hotel, inn, guest house, club, campsite, etc. has become taxable under the GST law, and any such supply, where the value of the unit of accommodation is less than or equal to INR 7500 per day, the rate of GST applicable would be 12%.

- On the other hand, where the value of a unit of accommodation exceeds INR 7500 per day, the applicable rate of GST will be 18%.

- It needs to be analysed for the hostels which were not discharging GST on renting of hostel rooms by availing the benefit of this entry earlier, whether they would be entitled for exemption under a separate entry for renting of residential dwellings for use as residence.

- Further, e-commerce operators also have to give effect to the above amendment by complying with the provisions of Section 52 and Section 9(5) of the CGST Act, when such hotel accommodation services are being provided through them.

2. Partial withdrawal of exemption relating to transportation of passengers by air for certain destinations

- Sl. No. 15 of the Exemption Notification has been amended to reduce the scope of the exempted services of transportation of passengers by air in respect of certain destinations, to only the economy class.

Earlier Entry	New Entry
Transport of passengers, with or without accompanied belongings, by- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;	Transport of passengers, with or without accompanied belongings, by- (a) *air in economy class*, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

L&S comments:

- In terms of this amendment in the exemption entry, the transportation of passengers by air in business class, where the flights are embarking from or terminating in the States specified therein will be exigible to GST.

- The taxability of such tickets which have already been issued before 18 July 2022 but transportation will take place after 18 July 2022 will have to be examined carefully.

3. Insertion of a new exemption entry relating to the services of tour operators

- In pursuance of the recommendations of the GCM, a new exemption entry has been added at Sl. No. 52A of the Rate Notification, in respect of tour operator services, which are performed partly in India and partly outside India, when supplied by a tour operator to a foreign tourist, and the exemption has been granted to the extent of the value of the tour operator services which are performed outside India.

- Further, the Explanation to the said entry defines the term 'foreign tourist' as '*a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes*'.

- The entry also specifies that the value of supply of the tour operator services performed outside India shall be either such proportion of the total consideration charged for the entire tour, which is proportionate to the ratio of the number of days for which the tour is performed outside India to the total number of days of the tour, or 50% of the total consideration charged for the entire tour, whichever is lesser.

  For making such calculations, a period of time equal to or more than 12 hours shall be considered one full day, and any duration of less than 12 hours shall be taken as half a day.

- The following illustrations have been provided for explaining the said computation mechanism:

i. Where a tour operator provides its services to a foreign tourist for a tour of 3 days in India and 2 days in Nepal, and the consideration is INR 1,00,000, the exemption will be calculated as either INR 40,000 (i.e. Rs. 1,00,000*2/5) or INR 50,000 (i.e. 50% of Rs. 1,00,000), whichever is lesser. Thus, the exemption will be for INR 40,000 and the taxable value will be INR 60,000.

ii. Where a tour operator provides its services to a foreign tourist for a tour of 2 days in India and 3 nights in Nepal, and the consideration is INR 1,00,000, the exemption will be calculated as either INR 60,000 (i.e. INR 1,00,000*3/5) or INR 50,000 (i.e. 50% of INR 1,00,000), whichever is lesser. Thus, the exemption will be for INR 50,000 and the taxable value will be INR 50,000.

iii. Where a tour operator provides its services to a foreign tourist for a tour of 2.5 days in India and 3 days in Nepal, and the consideration is INR 1,00,000, the exemption will be calculated as either INR 54,545 (i.e. INR 1,00,000*3/5.5) or INR 50,000 (i.e. 50% of INR 1,00,000), whichever is lesser. Thus, the exemption will be for INR 50,000 and the taxable value will be INR 50,000.

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 the Service Tax and the GST regime [under Sl. No. 54 of Notification No. 09/2017-Integrated Tax (Rate), dated 28 June 2017]. However, such exemption was not available for tours conducted partially in India and partially outside India.

- This amendment can create a stir for those 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, claim the benefit of export of services for the entire tour operator services, even though the tour is conducted partially in India. It needs to be examined whether this entry can create a charge on such services without corresponding amendments in the Place of Supply provisions.

- Further, the mechanism for computing the value of the exempt portion of supply for such tour operator services may cause a disadvantage for the Indian tour operators who are conducting tours for foreign tourists, where a majority of the tour duration is conducted outside India.

4. Changes in the exemption to renting of residential dwelling for use as residence

Changes in the Exemption Notification

- Under Sl. No. 12 of the Exemption Notification, an amendment has been made with respect to the scope of the exemption provided in relation to the services by way of renting of residential dwelling for use as residence, as presented hereunder:

Earlier Entry	New Entry
Services by way of renting of residential dwelling for use as residence.	Services by way of renting of residential dwelling for use as residence, *except where the residential dwelling is rented to a registered person.*

- Thus, the scope of the exemption has been restricted by way of this amendment brought about *vide* NN 04/2022. This exemption is no more available when the services are provided to registered persons.

Changes in the RCM Notification

- Consequently, a new entry has also been introduced in the RCM Notification at Sl. No. 5AA, specifying that where the services by way of renting of residential dwelling to a registered person under the GST law has been made chargeable to tax on reverse charge basis, with the liability to pay tax being imposed on such registered person.

L&S comments:

- This will adversely impact the companies who take residential accommodation on rent in their own names for providing residence to their directors, seconded employees, etc. Post this amendment, the same shall become taxable, and the companies will become liable to pay such tax on reverse charge basis.

- In such a case, it has to be analyzed whether the companies would be entitled for ITC specifically in the light of the restriction under Section 17(5)(g) of the CGST Act, in respect of personal consumption.

- It needs to be analyzed whether the companies would be liable for payment of CGST and SGST in the supplier's State if the company is not registered in that state or the company, even if registered, received services on GSTIN of different State. If yes, what would be the mechanism of payment of CGST and SGST in these cases?

- The taxability of advances paid before 18 July 2022 for renting of residential dwelling needs to be analyzed.

- This would also impact the assessees, who were taking exemptions in respect of hostel renting in the light of judgement of Karnataka High Court in the case of *Taghar Vasudeva* [2022 VIL 110 (Kar)].

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