

GST Alert 10/2018-19

Date 02.01.2019

### Recent Changes made in GST Law

Government has come out with a series of notifications and circulars making wide ranging changes. Following is a gist of certain relevant changes, these were decided upon by the GST council in its 31<sup>st</sup> meeting held on 22.12.2018:

**Please note, that the effective date of applicability of following amendments shall be 1.01.2019 (wherever not mentioned separately) and will be applicable for both intra as well inter-state transactions wherever applicable.**

#### **1. Changes in Rate of Goods – 24/2018-CTR**

GST Rates on certain goods have been reduced, details of the same can be accessed from the following notification

<http://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-24-2018-cgst-rate-english1.pdf>

#### **2. Exemption on some Goods – 25/2018-CTR**

Following goods have been exempted from levy of GST

- a. Vegetables (uncooked or cooked by steaming or boiling in water), frozen – HSN 0710
- b. Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption – HSN 0711
- c. Music, printed or in manuscript, whether or not bound or illustrated – HSN 49040000
- d. Supply of gift items received by the President, Prime Minister, Governor or Chief Minister of any State or Union territory, or any public servant, by way of public auction by the Government, where auction proceeds are to be used for public or charitable cause – HSN Any Chapter

Details of the same can be accessed from the following notification: -

[www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-2018-cgst-rate-english.pdf](http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-2018-cgst-rate-english.pdf)

### 3. Exemption for Supply of Gold by nominated agencies – 26/2018-CTR

Exempts GST on supply of gold by nominated agencies under the scheme for "Export Against Supply by Nominated Agency" as referred to in paragraph 4.41 of the Foreign Trade Policy, read with relevant provisions of Chapter 4 of Handbook of Procedures, to registered persons, subject to fulfillment of certain conditions.

Details of the same can be accessed from the following notification

<http://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-26-2018-cgst-rate-english.pdf>

### 4. Changes in Rate for Services – 27/2018-CTR

A. GST Rates on certain services have been changed as under:

Sr. No.	Service Description	Condition	Earlier Rate	New Rate (from 1.01.19)
1.	Transportation of passengers, by air, by non-scheduled air transport service or charter operations, engaged by <b>specified organisations in respect of religious pilgrimage facilitated by the Government of India</b> , under bilateral arrangement.	Credit of input tax charged on goods used in supplying the service has not been taken	12%	5%
	Specified organisation shall mean, - (a) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or (b) 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002			
2.	Service of third-party insurance of "goods carriage". <b>This is not applicable to Passenger Vehicles.</b>	-	18%	12%
3.	Leasing or rental services with or without operator	-	Rate Applicable to Goods	18%
4.	Services by way of admission to exhibition of cinematograph films where price of admission ticket is above Rs. 100	-	28%	18%

B. In order to settle the confusion prevailing for applicable rate of GST on Construction of Solar Power Plants and other such renewable energy projects, amendments have been made whereby Supply of Goods would be taxed @ 5% and Supply of Services by way of construction or engineering or installation or other technical services would be taxed @ 18% for following projects.

- (a) Bio-gas plant
- (b) Solar power-based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)
- (e) Waste to energy plants / devices
- (f) Ocean waves/tidal waves energy devices/plants

**If the goods specified in this entry are supplied, by a supplier, along with supplies of construction or engineering or installation or other technical services, the value of supply of goods for the purposes of such projects shall be deemed as 70% of the gross consideration charged for all such supplies, and the remaining 30% of the gross consideration charged shall be deemed as value of the said taxable service.**

### **5. Exemption on some Services – 28/2018-CTR**

#### **A. Following Services have been exempted from levy of GST**

- a. Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, -
  - i. Department or Establishment of the Central Government or State Government or Union territory; or
  - ii. local authority; or
  - iii. Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services.

b. Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

c. Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income tax Act, 1961

B. Entry 67 of Notification 12.2017-CTR which gave exemption to certain courses provided by IIM has now been deleted. However, this deletion would not result in taxability of IIM Projects as most of the courses offered by IIMs became exempt vide entry 66 of 12/2017 on passing of Indian Institutes of Management Act, 2018. Accordingly deletion of entry 67 is only of academic interest, exemption to IIM courses continues as before.

#### **6. Reverse Charge Mechanism – Certain more Services have been brought under RCM – 29/2018-CTR**

Following services have been brought under RCM

<b>S. No.</b>	<b>Name of Service</b>	<b>Status of Service Provider</b>	<b>Status of Svs Recipient</b>	<b>Description of Service</b>	<b>Tax payable by Provider</b>	<b>Tax payable by Recipient</b>
1	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory	Services provided by business facilitator (BF) to a banking company	<b>Nil</b>	<b>18%</b>
2	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	<b>Nil</b>	<b>18%</b>
<b>3</b>	<b>Security services (services of supply of security personnel)</b>	<b>Any person other than a body corporate</b>	<b>Person registered under GST</b>	<b>Security services (services provided by way of supply of security personnel)</b>	<b>Nil</b>	<b>18%</b>

### Time of Supply for Security Services

As Security Services are now brought into the RCM net, question would arise as to the taxability of invoices being raised for period on or before December 2018, who would be liable to pay GST for such past period invoices whose payments are made in January 19 or thereafter. Thumb rule of any tax law is that once a time for payment of tax has been affixed, it cannot be again subjected to the time of supply test. Hence, where the invoice has been issued on or before 31.12.2018, then the Security Service Supplier will be liable to pay tax irrespective of the fact as to when the payment is received by him. If the invoice is made on or after 1.01.2019 then the service recipient would only be liable to pay tax.

There could be 3 different scenarios possible going forward

- a. Services completed and invoice made on or before 31.12.2018 but payment made after 31.12.2018

As discussed above, Security Service Supplier will be liable to pay tax irrespective of the fact as to when the payment is received by him.

- b. Services completed on or before 31.12.2018 but invoice as well as payment made in January 2019

Service Recipient will be liable to pay GST

- c. Services completed, invoice as well as payment made on or after 31.12.2018

Service Recipient will be liable to pay GST

Similar issue arose in Service tax regime as well and it was clarified as under:

***10.1.7 Is the reverse charge applicable on services provided and complete before 1.7.2012 though payments were made after 1.7.2012?***

*For any service whose point of taxation has been determined and whole liability affixed before 1.7.2012 the new provisions will not apply. Merely because payments are being made after 1.7.2012 will not add any additional liability on the service receiver in respect of such services.*

Lastly a text used in the entry will raise questions as whether Security Services other than providing security manpower will be included in RCM or not, hope GST Council issues a clarification on this early enough.

**7. Multimodal Transportation of Goods – 30/2018-CTR**

GST rate of 12% on Transportation of goods by 2 or more types of modes of transport was notified first vide notification 13/2018-CTR dated 26.07.2018. Vide notification 30/2018-CTR retrospective amendment effective from 26.07.2018 has been made whereby rate of 12% would be available only if the transportation of goods is from a place in India to another place in India.

**8. TDS will not be applicable on Supplies by Government to Government – 73/2018-CT**

TDS will not be deductible on the Supply of goods or services or both between Government Departments, PSU's and persons specified under clauses (a), (b), (c) and (d) of section 51 (1) of the CGST Act.

**9. Waiver of Late Fee – 75,76 & 77/2018-CT****GSTR 1**

Late fee is fully waived on delayed furnishing of FORM GSTR-1 for the period July, 2017 to September, 2018 if the same is filed between 22.12.2018 to 31.03.2019.

**GSTR 3B****A. Person filing GSTR 3B where some tax is payable**

If GSTR 3B for period July 17 onwards is already filed prior to 22.12.2018 but is filed after the due date, then the late fee would be Rs. 50 per day.

**B. Nil GSTR 3B**

If NIL GSTR 3B for period July 17 onwards is already filed prior to 22.12.2018 but is filed after the due date, then the late fee would be Rs. 20 per day.

**C. Person filing GSTR 3B for July 17 to Sept 18 on or after 22.12.2018**

Late fee is fully waived on delayed furnishing of FORM GSTR 3B for the period July 17 to September 18 if the same is filed between the period from 22.12.2018 to 31.03.2019.

### **GSTR 4**

Late fee is fully waived on delayed furnishing of FORM GSTR-4 for the period July, 2017 to September, 2018 if the same is filed between 22.12.2018 to 31.03.2019.

### **10. Extension of due date for ITC 04 – 78/2018-CT**

Due date for furnishing FORM ITC-04 for the period from July, 2017 to December, 2018 has been extended till 31.03.2019.

### **11. Clarification issued – Circular 76/50/2018-GST dated 31.12.2018**

Clarification on the following issues:

1. Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?
2. Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?
3. In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?
4. Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of notification No. 50/2018-Central Tax dated 13.09.2018.
- 5. What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?**
6. Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the CGST Act?

Please note all issues clarified vide circulars will have effect retrospectively as circulars only clarify existing position of law.

Details of the clarification can be accessed from the circular placed at following link

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-76.pdf>

**12. Clarification on certain matters related to refunds – Circular 79/53/2018-GST dated 31.12.2018**

Clarification on following issues related to refunds:

- a. All documents/undertaking/statements to be submitted along with the claim for refund shall be uploaded on the common portal. Option to submit the same physically.
- b. Procedure for processing the refund application.
- c. Manner of calculation of refund amount under inverted rate structure.
- d. Disbursal of refund amounts after sanction.
- e. Refund applications generated on the portal but not physically received in the tax office.
- f. Refund of accumulated Compensation Cess
- g. Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period
- h. Misinterpretation of the meaning of the term “inputs”
- i. Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure

Details of the clarification can be accessed from the circular placed at following link

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-79.pdf>

**13. Claim of ITC and corrections in GSTR 1 pertaining to 2017-18 allowed till due date of filing of GSTR 3B and GSTR 1 – Order no. 02/2018-CT dated 31.12.2018**

- A. ITC for FY 2017-18 can be claimed till the due date of furnishing of GSTR 3B for March 2019 (till 20.04.2019).
- B. Data uploaded in GSTR 1 for FY 2017-18 can now be amended / rectified till the due date for filing GSTR-1 for the month of March, 2019 (till 10.04.2019)

**14. Extension of due date for filing of Annual Return (GSTR 9 or 9A) and Reconciliation Statement (GSTR 9C) for FY 2017-18 – Order no. 03/2018-CT dated 31.12.2018**

Due date for filing of GSTR 9, 9A and 9C has been further extended till 30.06.2019

**15. Revised Formats for GSTR 9, 9A and 9C – 74/2018-CT**



Much awaited revised formats of GSTR 9, 9A (Annual returns) and GSTR 9C (Reconciliation Statement) have been notified

### **16. Clarification on certain matters related to Supply of food and beverage by educational institutions to its students – Circular 85/04/2019-GST dated 1.01.2019**

Supply of all services by an educational institution to its students, faculty and staff is exempt vide entry 66 of Notification No. 12/2017-CTR. Such services include supply of food and beverages by an educational institution to its students, faculty and staff. A supply is eligible for exemption under an entry of the said notification where the description given in column (3) of the table leaves no room for any doubt. Accordingly, it is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, vide Sl. No. 66 w.e.f. 01-07-2017 itself. However, such supply of food by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

*Formulated by:*

*N J Jain & Associates*

**Chartered Accountants**

**CA Nitesh Jain**

Managing Partner

**CA Gaurav Khetan**

Partner

**CA Praveen Maheshwari**

Partner

**CA Jay Dalwadi**

Partner

#### **Disclaimer**

*This GST Alert is only for the purpose of information and does not constitute or purport to be an advise or opinion in any manner. The information provided is not intended to create advisor-client relationship and is not for advertising or soliciting. N J Jain & Associates do not intend in any manner to solicit work through this Tax Alert. The Tax Alert is only to share information based on recent developments and regulatory changes. N J Jain & Associates is not responsible for any error or mistake or omission in this Tax Alert or for any action taken or not taken based on the contents of this Tax Alert. Business decisions are best taken in close consultation with the advisors.*