

GST Alert 03/2018-19

Date 27.07.2018

Recent Changes made in GST Law

Government has come out with a series of notifications making wide ranging changes. Following is a gist of these changes, these were decided on by the GST council in its 28th meeting held on 21.07.2018:

Please note, that the effective date of applicability of all the following amendments shall be 27.07.2018 and will be applicable for both intra as well inter state transactions wherever applicable.

I. Changes in GST Rate applicable on Certain services (Noti. 13/2018 CTR)

Rates for certain services have been restructured as under:

1. Supply of food by a canteen in a factory or office

Many companies and offices provide facilities of inhouse canteen to their employees either due to the statutory requirements or voluntarily. There were various interpretations floating whereby classification of those services was under question. Government did try to clarify the doubts vide circular 28/2018 dated 8.01.2018. Council has now thought it prudent to put the controversy to rest and amended entry 7 appropriately whereby any company directly or through any independent contractor providing food to its employees would be chargeable under the restaurant entry and taxable at the rate of 5%. Earlier these were rightly or wrongly getting classified as Catering Services and 18% GST was being leviable.

Such companies or contractor will not be eligible to claim ITC.

This amendment would raise a question on the rate of tax payable by a contractor. In our view if he supplies food to the company and company in turn charges from the employees, both the company as well as the contractor would be taxable at 5% but company would not be eligible to claim ITC of the tax charged by the contractor.

2. Supply of food or drinks by Indian railways inside trains or on platform

Supply of food or drinks, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees inside the train or at platforms will be taxable at the rate of 5%. Such organisations, companies or licensees will not be eligible to claim ITC

3. Hotel Accommodation Services

One of the biggest hassles faced by the hotel industry was that GST rates made applicable to them were not transaction value based but were based on Declared tariffs. Hotel having declared tariff above 7,500 per night per room were taxable @ 28% even if the actual room tariff charged by them was below 7500. Council in one of the most praiseworthy decisions has now done away with the concept of 'Declared tariff' based classification and from 27th July onwards hotels would be required to charge rates based on actual value charged from the customer irrespective of what the declared tariff is.

Only where the actual room rate charged is above 7500 would the hotel be required to charge 28% tariff.

This will bring a huge relief to the hotel industry as a whole and is a welcome change.

4. Outdoor Catering

Outdoor catering definition is restructured to exclude supply of food by organisations or companies in their own premises either directly or through independent contractors. Now only those outdoor catering services would be taxable at the rate of 18% which are provided at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions **that are event based and occasional in nature.**

5. Multimodal Transport

Transportation of goods by road is taxable either at 5% (under RCM) or 12% under forward charge. Whereas transport of goods by air was taxable at 18%. Many a times transportation of goods are done by more than one mode of transport, classification challenges arise in such situations. Such transactions shall now be classified as Multimodal Transport services and **taxable at the rate of 12% with ITC.**

Multimodal transportation shall mean transportation of goods by road, air, rail, inland waterways or sea by 2 or more different modes of transport from the place of acceptance of goods to the place of delivery of goods by a Multimodal Transporter

Multimodal transporter means a person who undertakes to perform multimodal transportation against freight and acts as principal who assumes responsibility for the performance of the said contract. He must not be an agent of the carrier participating in the multimodal transportation.

6. Sale of e-book on online platforms

Supply consisting only of e-book will be taxable at the rate of 5% with ITC

e-books means an electronic version of a printed book supplied online which can be read on a computer or a hand held device.

II. Changes in Scope of Exemptions on Services (Noti 14 & 16/2018 CTR and 15/2018 IGST Rate

Sr. No.	Description	Existing Rate	New Rate
1.	<p>Earlier any services provided by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W or Panchayat under article 243G of the Constitution were exempted</p> <p>Now, this entry shall be applicable only for services provided by Governmental authority, because vide another notification 16/2018-CTR such services provided by Central, State governments, Union Territories and local authorities shall not be a Supply of goods or services.</p> <p>All in all the effect remains same.</p>	Nil	Nil
2.	<p>Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto Rs. 25000 per month per member. Charges taken from the residents are inclusive of boarding, lodging and maintenance.</p>	18%	Nil

Sr. No.	Description	Existing Rate	New Rate
3.	Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.	18%	Nil
4.	Services by a hotel, inn, guest house, club or campsite for residential or lodging purposes where the room rate charged per night per room is below Rs. 1000. Earlier this exemption was available only if the declared tariff of that room was below Rs. 1000.	Nil	Nil
5.	Services by way of transportation of goods by an aircraft or vessel from customs station of clearance in India to a place outside India.	Nil upto 30.09.2018	Nil upto 30.09.2019
6.	Services by way of warehousing of minor forest produce.	18%	Nil
7.	Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948	18%	Nil
8.	Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.	18%	Nil
9.	Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings(PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the financial institutions.	18%	Nil
10.	Services by way of reinsurance of the insurance schemes where total premium is paid by Governments	18%	Nil
11.	Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.	18%	Nil
12.	Services by way of artificial insemination of livestock (other than horses).	18%	Nil
13.	Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf	Nil	Nil

Sr. No.	Description	Existing Rate	New Rate
	<p>of the State Government on the mineral dispatched by the mining lease holders.</p> <p>Provided that at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay the difference.</p>		
14.	<p>Services provided by an unincorporated body or a non-profit entity registered under any law, engaged in,-</p> <p style="padding-left: 40px;">(i) activities relating to the welfare of industrial or agricultural labour or farmers; or</p> <p style="padding-left: 40px;">(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,</p> <p>to its own members against consideration in the form of membership fee upto an amount Rs 1000/ per member per year.</p>	18%	Nil
15.	<p>Services of conduct of examination provided to the students by Central and State Educational Boards, these boards shall be treated as Educational Institution for this purpose.</p>	18%	Nil
16.	<p>Any service supplied by an Indian Branch to its foreign Branch.</p> <p>As per section 2 (6) of the IGST Act, services provided by Indian Branch to a foreign (branch) person does not qualify as exports even if the consideration is received in Foreign Currency.</p> <p>Due to Place of supply provisions certain services provided by Indian branch to its foreign branch were taxable as Place of supply of that service was falling in India, due to this exemption all such services will also be exempt.</p>	18%	Nil

Sr. No.	Description	Existing Rate	New Rate
17.	Import of services by United Nations or a specified international organisation for their official use. Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947	18%	Nil
18.	Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein. Certain conditions as prescribed in notification 15/2018-IGR will have to be fulfilled	18%	Nil

III. Change in Rate on Goods (Noti 18/2018-CTR)

GST Rates for following goods have changed.

(In order to find change in GST rate for a product first locate its HSN and then look for it in the below table)

HSN Code	Description	Existing Rate	New Rate
2207	Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol)	18%	5%
2515 (Except 25151210, 25151220, 25151290) or 6802	Ecaussine and other calcareous monumental or building stone alabaster [other than marble and travertine], other than mirror polished stone which is ready to use In simple terms, unpolished Kota stone and similar stones (except marble and granite)	18%	5%
2809	Fertilizer grade phosphoric acid	12%	5%
61 or 6501 or 6505	Article of apparel and clothing accessories or cap/topi, knitted or crocheted, of sale value not exceeding Rs 1000 per piece	12%	5%
64	Footwear having a retail sale price not exceeding Rs.1000 (earlier 500) per pair, provided that such retail sale price is indelibly marked or embossed on the footwear itself	5%	5%
87	Fuel Cell Motor Vehicles	28 + Comp Cess	12% (No Comp Cess)
3208, 3209 & 3210	Paints and varnishes (including enamels and lacquers)	28%	18%

HSN Code	Description	Existing Rate	New Rate
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines	28%	18%
8450	Household washing machines	28%	18%
85076000	Lithium-ion Batteries	28%	18%
8508	Vacuum cleaners	28%	18%
8509	Electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508 [other than wet grinder consisting of stone as a grinder]	28%	18%
8510	Shavers, hair clippers and hair-removing appliances, with self-contained electric motor	28%	18%
8516	Electric water heaters	28%	18%
8528	Television set (including LCD or LED television) of screen size not exceeding 68 cm	28%	18%
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological unit)	28%	18%
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles	28%	18%
8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof [other than Self-loading or self-unloading trailers for agricultural purposes, and Hand propelled vehicles (e.g. hand carts, rickshaws and the like); animal drawn vehicles}	28%	18%
96072000	Parts of slide fasteners	28%	18%
9616	Scent sprays and similar toilet sprays, and mounts and heads therefor; powder-puffs and pads for the application of cosmetics or toilet preparations	28%	18%

IV. Expansion of Scope of Reverse Charge Mechanism (Noti 15/2018 CTR)

Services supplied by Individual Direct Selling Agents (DSAs) to bank or non-banking financial company (NBFC) is added to the list of compulsory Reverse Charge list.

In such cases, individual will no longer be required to pay GST, banks or NBFC will now be liable to pay GST under RCM

V. Clarification for services provided to Government, local authority etc. (Noti 17/2018 CTR)

Works contract services provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business are taxable at the rate of 12%.

Many of the work orders are given by Governments and local authorities where it is difficult to prove that the work done will be used for business or commercial purposes or not.

Now it has been clarified that the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. This will help in bringing clarity to this entry to a large extent where the work orders are issued by Governments or Local authorities.

VI. Change in Scope of Exemption from levy of GST on Goods (Noti. 19/2018-CTR)

Following goods have been exempted from levy of GST:

- a) Sal leaves, siali leaves, sisal leaves, sabai grass
- b) Vegetable materials, for manufacture of jhadoo or broom sticks
- c) De-oiled rice bran
- d) Deities made of stone, marble or wood
- e) Sanitary towels (pads) or sanitary napkins; tampons
- f) Rakhi (other than those made of goods falling under Chapter 71)

VII. Input Tax Credit Refund for Textile Sector (noti 20/2018-CTR)

Many of the items produced by textile industry was put under 5 / 12 % rates whereas raw materials and services used by them were under higher tax rates which created a situation of

inverted duty structure. Section 54 (3) of the CGST Act provides for refund of excess credits but vide notification 5/2017-CTR refund of such excess credits were specifically debarred.

From 1st August 2018 such textile units who are under inverted duty structure will be able to claim refunds of accumulated credits, however all credits which are lying in balance after discharging liabilities upto 31st July 2018 shall lapse and will not be eligible to carried forward or refunded.

This is a welcome move nonetheless, but we do not agree with the phenomenon of disallowance of validly taken ITC. They could have provided that ITC taken on or before 31st July 2018 will not be refunded but making it lapse is against the GST law and its spirit and in our view will not stand judicial scrutiny, detailed alert on this issue will be sent separately.

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.