

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Snapshot of 52nd GST Council recommendation
- Details of Notification & Circulars Issued

Goods and Service Tax

Customs and Others

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Clarification Issued on Taxability of personal guarantee and corporate guarantee in GST

| Particular | Personal Guarantee by Directors | Corporate Guarantee by Related Persons or Holding Companies |
|----------------------|---|---|
| Activity | Directors providing personal bank guarantees to secure credit facilities for their company. | Providing corporate guarantees to banks/financial institutions for credit facilities to related companies. |
| Clarification | Providing personal guarantees by directors to banks for credit facilities to their companies will be treated as a supply of service. | Providing corporate guarantees by related parties, including holding companies for their subsidiaries, to banks for credit facilities is considered a supply of service. |
| Reasoning | Directors and the company are treated as related persons, and as per tax law, transactions between related persons are treated as supply, even without consideration. | When related companies or a holding company provides a corporate guarantee, it is treated as supply between related persons. |
| Valuation | The open market value is considered zero, and hence, no GST is payable if no consideration is received by the director directly or indirectly. However, in exceptional cases, where remuneration is paid, the taxable value is the remuneration received. | The taxable value will be determined as per Rule 28 of CGST Rules. To ensure uniformity, a new sub-rule (2) has been introduced in Rule 28, specifying the method for determining the taxable value of such services. This applies irrespective of whether full Input Tax Credit (ITC) is available to the recipient. |
| Exception | If no consideration is given to the director by the company, directly or indirectly, there is no open market value, and the taxable value may be treated as zero. In such cases, no GST is payable. | This sub-rule (2) of Rule 28 does not apply to personal guarantees provided by directors, which are valued as per person guarantee clarification. |

Applicability:

The clarification provided by the Board is effective from the date of issuance of the relevant notification (Notification No. 52/2023 dated 26.10.2023).

In the Notification it is stated that the value of supply of services by a supplier to a related person, involving the provision of a corporate guarantee to a banking company or financial institution on behalf of the recipient. The value of this supply shall be deemed as one percent of the amount of the guarantee offered or the actual consideration, whichever is higher.

[Circular No.204/16/2023-GST, dated 27 October, 2023](#)

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Clarification Issued on determination of Place of Supply for Transportation, Advertising, and Co-Location Services under GST

Key aspects:

A. Place of Supply for Transportation Services:

- Sub-section (9) of section 13 of the Integrated Goods and Services Tax Act, which determined the place of supply for transportation services of goods, has been omitted by the Finance Act, 2023, effective from 01.10.2023.
- After this amendment, the place of supply for transportation services (excluding mail and courier) where either the supplier's or recipient's location is outside India will be determined by the default rule under section 13(2) of the IGST Act, not as performance-based services under section 13(3).
- When the recipient's location is available, the place of supply will be the recipient's location. In cases where the recipient's location is not available in the ordinary course of business, the place of supply will be the supplier's location.

B. Place of Supply for Advertising Services:

- In the case of advertising services, where a vendor supplies space or rights to use space on hoardings or billboards for displaying advertisements, the place of supply will be the location where the hoarding or structure is located.
- When the advertising company procures the services of a vendor to display their advertisement at a specific location, the place of supply will again be the location of the hoarding/structure.

C. Place of Supply for Co-location Services:

- Co-location services primarily involve hosting and information technology (IT) infrastructure provisioning services.
- The place of supply for these services is not determined by the location of immovable property. Instead, it is determined based on the location of the recipient of co-location services.
- However, in cases where the agreement is limited to providing physical space for servers and basic infrastructure without additional IT infrastructure services, the place of supply will be determined based on the location of the immovable property.

[Circular No. 203/15/2023-GST, dated 27 October, 2023](#)

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Export of service's realisation in INR allowed – Circular clarified

Key aspects:

- The circular clarifies the admissibility of export remittances received in Special INR Vostro accounts, as permitted by RBI, for the purpose of considering the supply of services as an export of services under the IGST Act, 2017.
- It is likely applicable to current and future transactions following the RBI's Circular No. 10 dated 11th July 2022.

GST Provisions:

Section 2 (6)(iv) of the IGST Act 2017

Relevant Notification and Circulars referred:

RBI's A.P. (DIR Series) Circular No. 10 dated 11th July 2022: This circular establishes the mechanism for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts.

Foreign Trade Policy (FTP) 2023: Refers to Para 2.52 (d) of the FTP, which allows invoicing, payment, and settlement of exports and imports in INR, subject to compliance with RBI's Circular No. 10 dated 11th July 2022.

Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016: This regulation permits AD banks in India to open Rupee Vostro Accounts, which is a key aspect of the circular's clarification.

[Circular No. 202/14/2023-GST, dated 27 October, 2023](#)

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Clarifications regarding applicability of GST on certain services

Key aspects:

1. **Leasing of Motor Vehicles:** The circular provides clarification regarding the inclusion of leasing of motor vehicles without operators in the "same line of business" as passenger transport services and renting of motor vehicles.
2. **GST on Reimbursement of Electricity Charges:** It addresses the GST applicability on reimbursement of electricity charges received by real estate companies, malls, airport operators, etc., from their lessees/occupants.
3. **GST Rate for Job Work on Barley:** Job work for converting barley into malt attracts 5% GST, as it's considered job work in relation to food products.
4. **GST Exemptions for District Mineral Foundations Trusts (DMFTs):** Discusses whether DMFTs set up by State Governments are considered Governmental Authorities and eligible for the same GST exemptions as other Governmental Authorities.
5. **Exemption from GST for Supplies to CPWD:** Clarifies the eligibility for GST exemption for the supply of pure services and composite supplies, with goods not exceeding 25% of the total value, made to the Central Public Works Department (CPWD).

[Circular No.206/18/2023-GST, dated 31 October, 2023](#)

Clarification regarding GST rate on imitation zari thread or yarn based

The final clarification in the circular is that imitation zari thread or yarn made from metallized polyester film/plastic film falling under HS 5605 is covered by Sl. No. 218AA in Schedule I, attracting a 5% GST rate. Additionally, it was clarified that no refund will be permitted on polyester film (metallized)/plastic film due to tax rate inversion.

[Circular No. 205/17/2023-GST, dated 31 October, 2023](#)

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Key Amendments in Central Goods and Services Tax Rules, 2023

The rules' short title is "Central Goods and Services Tax (Fourth Amendment) Rules, 2023," and they came into effect upon their publication in the Official Gazette.

- 1. Corporate Guarantee Valuation:** Rule 28 of the CGST Rules is renumbered as sub-rule (1). Additionally, a new sub-rule (2) is introduced. This sub-rule addresses the value of supply of services by a supplier to a related person, involving the provision of a corporate guarantee to a banking company or financial institution on behalf of the recipient. The value of this supply shall be deemed as one percent of the amount of the guarantee offered or the actual consideration, whichever is higher.
- 2. Shifting from 'Order' to 'Intimation':** Rule 142 is modified to change "proper officer shall issue an order" to "proper officer shall issue an intimation."
- 3. New Refund Timeline in GST:** Rule 159 Adjustment Rule 159, Sub-rule (2) is amended to include that the period for seeking a refund of excess balance in the electronic cash ledger is within one year from the date of issuance of the order under Sub-rule (1) or earlier, whichever applies.
- 4. FORM GST REG-01 Update:** FORM GST REG-01 is updated to include a new clause for "One Person Company."
- 5. FORM GST REG-08 update:** In FORM GSTR-8, serial number 5 is omitted. The section pertaining to interest and late fee payable and paid is revised, with separate entries for interest on TCS and late fees for Central Tax and State/UT Tax. Debit entries in the cash ledger for TCS, interest, and late fee payments are included.
- 6. Revised Eligibility Criteria in FORM GST PCT-01:** In FORM GST PCT-01, changes are made to the enrollment options for various professionals such as Chartered Accountant, Company Secretary, Cost and Management Accountant, Graduate or Postgraduate or its equivalent degree in Law or in Commerce or in Banking including Higher Auditing or in Business Administration or in Business Management and other.
- 7. Order Duration and Cease Conditions:** A new paragraph is added to FORM GST DRC-22, specifying when the order ceases to have effect, either upon the issuance of FORM GST DRC-23 by the Commissioner or after one year from the date of issuance, whichever is earlier.

[Notification No. 52/2023 –Central Tax, dated 26 October, 2023](#)

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Key Amendments in various Central Tax (Rate) Notification

| Particular | Notification No. | Changes | Effect |
|---|----------------------------|--|--|
| Change in ITC for services related to Passenger Transport and Rental of Motor vehicle for passenger transport | 12/2023-Central Tax (Rate) | Amendments to Serial Numbers 8 and 10 of Notification No. 11/2017-Central Tax (Rate) | Impacts input tax credit calculation for input services in the same line of business charging central tax in services related to Passenger Transport and Rental of Motor vehicle for passenger transport |
| Exemption of tax on certain services supplied to Government | 13/2023-Central Tax (Rate) | Introduction of Serial Number 3B, Amendments to Serial Numbers 6, 7, 8, and 9 | Exempts certain services like water supply; public health; sanitation conservancy; solid waste management; and slum improvement and upgradation. provided to Governmental Authorities and clarifies tax treatment for Department of Posts and Ministry of Railways that services provided by them to government will be not exempt |
| Taxation Changes Affecting Services by Indian Railways and Department of Posts | 14/2023-Central Tax (Rate) | Amendment to Serial Number 5 and 5A | Specifies reverse charge mechanism for services by Department of Posts and Ministry of Railways and exemptions. |
| Taxation amendment Impact on Construction and Real Estate Sector | 15/2023-Central Tax (Rate) | Amendment to the Opening Paragraph | Redefines supplies not eligible for refund of unutilized ITC to construction-related supplies. |
| Taxation changes Impact on Omnibus Services and Transportation Sector | 16/2023-Central Tax (Rate) | Amendments to Clause (i), Insertion of a New Clause (ia), and Explanation Amendment | Modifies tax treatment of passenger transportation services by motor vehicles, specifying exemptions for certain cases. |

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Key Amendments in various Central Tax (Rate) Notification

| Particular | Notification No. | Changes | Effect |
|--|----------------------------|--|---|
| Tax rate amendment Impact on Molasses and Millet Flour Preparations | 17/2023-Central Tax (Rate) | Amendments in Schedules I, III, and IV | Adjusts CGST rates for various items, including the supply of molasses and food preparations. |
| Taxation Change: Impact on Millet Flour Food Preparations | 18/2023-Central Tax (Rate) | Amendment in the Exemption Schedule | Exempts specific food preparation items from CGST when not pre-packaged and labeled. |
| Changes in CGST Rates and Entity Definitions | 19/2023-Central Tax (Rate) | Amendment in Reverse Charge Mechanism (RCM) Taxation | Expands entities liable for reverse charge mechanism for specified goods. |
| Key Changes in CGST Rates for Imitation Zari Thread or Yarn | 20/2023-Central Tax (Rate) | Amendment in the Notification Related to Unutilized ITC Refund | Allows refund of Input Tax Credit for specific goods related to polyester film/plastic film. |

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Key Amendments in various Integrated Tax (Rate) Notification

| Particular | Notification No | Changes | Effect |
|--|-------------------------------|---|---|
| Amendments in Integrated Tax Rates for Transportation and Licensing Services | 15/2023-Integrated Tax (Rate) | Amendments to Serial Numbers 8 and 10 | Changes conditions for tax rates on hiring motor cabs for transportation and limits input tax credit to 5% if supplier charges more |
| Exemption of tax on certain services supplied to Government | 16/2023-Integrated Tax (Rate) | Introduction of Serial Number 3B, Amendments to Serial Number 6, Amendments to Serial Numbers 7, 8, and 9 | Introduces nil tax rates for services provided like water supply; public health; sanitation conservancy; solid waste management; and slum improvement and upgradation. provided to Governmental Authorities, clarifies tax treatment for Ministry of Railways and Department of Posts services that services provided by them to government will be not exempt. |
| Clarity in Tax Rates for Central Government Services | 17/2023-Integrated Tax (Rate) | Amendments to Serial Number 6, Inclusion of Ministry of Railways | Specifies services exempt from Central Government tax category and includes Ministry of Railways as a separate category. |
| Amendments to Construction Services Tax Rates | 18/2023-Integrated Tax (Rate) | Modification of Opening Paragraph | Provides a clear definition for taxable construction services, including conditions for when tax does not apply. |
| Revamped Tax Regulations for Passenger Transportation Services | 19/2023-Integrated Tax (Rate) | Modification of Clause (i), Introduction of Clause (ia), Explanation for "Company" | Refines the scope of tax regulation for passenger transportation services and distinguishes service providers based on their status as a company. |
| Revised Tax Rates for Molasses and Implications | 20/2023-Integrated Tax (Rate) | Taxation changes for Molasses and Millet Flour Preparations | Modifies tax rates for molasses and certain food preparations made from millet flour. |
| Changes in Taxation of Millet Flour Preparations | 21/2023-Integrated Tax (Rate) | Amendment in Schedule | Changes the tax implications for specific food preparations made from millet flour. |

Snapshot of 52nd GST Council recommendation - Details of Notification & Circulars Issued

Key Amendments in various Integrated Tax (Rate) Notification

| Particular | Notification No. | Changes | Effect |
|--|-------------------------------|-----------------------------------|--|
| Changes in Taxation Framework for Railways | 22/2023-Integrated Tax (Rate) | Amendment in S. No. 6 | Excludes Ministry of Railways from the entities subject to the new tax rate. |
| Amendments to Taxation Framework | 23/2023-Integrated Tax (Rate) | Introduction of Serial Number 6AA | Provides clarity and specificity regarding taxation and refund of input tax credit for imitation zari thread or yarn production using polyester film/plastic film. |

Darda

Driven by Quality, Powered by Ideation

Darda Advisors LLP offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our approach is to provide customized and client-specific services. We provide well-thought-out strategies and solutions to complex problems in tax and regulatory matters. Our service offerings are:

Invest India Services

- Invest India Study
- Inception And Incorporation Relate
- Incentives, Subsidies and Grant Service
- Start-Up India and MSME Services



Indirect Tax Services

- GST Services
- Representation and Litigation Support
- Corporate Training
- SEZ/EOU/STP Services
- Customs and International Trade
- GCC VAT

Other Services

- Corporate Secretarial Services
- Corporate & International Tax Services
- Certification & Attestation Services
- Financial Advisory Services
- Accounting Advisory Services
- RBI Services



www.dardaadvisors.com



da@dardaadvisors.com

Our Locations

Hyderabad

6-3-1086, 5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad - 500082, TS

Chennai

13, T.K. Mudali Street, Choolai, Chennai - 600112, Tamil Nadu

Delhi-NCR

N 93, Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018

Bhilwara

Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara - 311001, Rajasthan

Disclaimer:

For private circulation and internal use only. The information contained herein is of general nature and not intended to address the circumstances of the particular individual or entity. The information in this document has been obtained or derived from sources believed by Darda Advisors LLP (DA) to be reliable but DA does not represent that this information is accurate or complete. Readers of this publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible, based on the contents of this publication. DA neither accepts nor assumes any responsibility or liability to any reader of this publication in respect of the information contained within it or for any decision's readers may take or decide not to or fail to take.