



दीप की झिलमिल लड़ी
आपके तन-मन-जीवन को
सुस्वास्थ्य और समृद्धि से
आलोकित करे।
आपकी हर सुबह शुभ संदेशा लाए,
हर साँझ सुख बरसाए।

शुभ
दीपावली

INDORE BRANCH OF CIRC OF ICAI



NEWSLETTER

October, 2023 • Price ₹ 20

Dear Members, Let me begin by extending my heartfelt festive greetings to all of you. This occasion of Navratri including all the festivals leading up to it, would be like a good opportunity for all of us to spend quality time with our families after the reasonably hectic September. I trust that you all make the best of this & use an opportunity to embrace our Indian culture in all its lightful colour and glory! Being a part of this prestigious Institute is a life-long enriching experience, and various programs organised by our Branch is a testimony to that. Indore Branch had previously conducted seminars on tax audit. Now, for this month, we are also going to organise seminar on annual compliance under ROC and overview of MSME Subsidy Scheme . It is to this end that programs such as these are helpful for members, and especially for young members who aim to develop their niche areas in practice. I would like to end by stating that our Institute is fortunate to have been blessed with members who have always upheld the highest degree of professionalism and best practices. This month, we are also organising Durga Puja and Garba Night for the members and their family. Once again, I wish you a Happy Navratri !
Thanks and regards,

Yours truly,
CA Mausam Rathi
Chairman-Indore Branch of ICAI



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52nd GST Council Meeting- Analysis



CA. Prateek Jain

The 52nd GST Council meeting, which took place on 7th October 2023, provided recommendations to address key contentious issues and announcements in respect of trade facilitation measures. Some of the key developments are the implementation of the amnesty scheme for filing of appeal in respect of orders passed till 31st March 2023 with enhanced pre-deposit of 2.5%, providing clarity on taxability of corporate guarantee provided by directors and group companies which is expected to put an end to ongoing litigation on the matter, giving heads-up to the India Inc. to prepare themselves to comply for ISD mechanism. This will allow sufficient time to companies to undertake necessary IT and compliance changes for a smooth transition. Also, circulars clarifying the determination of place of supply for transportation of goods services, advertisement services, and co-location services will avoid any possible litigation in future.

The analysis of recommendations are as under:

1. Providing mechanism of valuation of corporate guarantee It is recommended to clarify that where a personal guarantee is offered by a director of a company to the bank/financial institutions for sanctioning the loan, the same would not be taxable, if no consideration is payable to the director. However, where a consideration is payable to the director, the same will be taxed at the transaction value

It is further recommended to clarify that where a guarantee is offered by a related party, the same will be taxable at, 1% of the value of the loan/limit or the actual consideration, whichever is higher

Comments:

In the case of extending corporate and personal guarantees for extending loans or limits, there exist a conflict as to whether it constitutes a supply or not. Recently, the Hon'ble Supreme Court held that consideration can be in monetary and/or non-monetary form. Where the assessee has not received any consideration from its group company for providing the corporate guarantee, the same would not be liable to Service Tax as there is no consideration involved. However, the GST Law provides that where a supply is made to the related parties, the same would be treated as a supply even if made without consideration. Given this, the settled position on the taxability of corporate guarantee by the Hon'ble SC may not apply under the GST regime in case of related party transactions.

In view of the above, the GST Council has recommended to undertake necessary amendments in CGST Rules, 2017 (CGST Rules) to provide for the taxability and valuation of corporate guarantee in the below manner:

- (a)** Where a personal guarantee is provided by the director of the company without consideration, the market value of such services is to be considered as zero. Hence, no GST is payable on such guarantee.
- (b)** Where guarantees are provided by related parties, including corporate guarantee provided by the holding company for a subsidiary company, the valuation of such supply shall be higher of: Actual consideration 1% of the amount of such guarantee

offered This would be done by inserting sub-rule 2 in Rule 28 of the CGST Rules, 2017.

It is further recommended that the valuation of corporate guarantees would be done in the above manner irrespective of the ITC eligibility to the recipient.

In view of the above, the recommended position of taxability of guarantees offered by the related parties is summarized below:

S.No	Nature of guarantee	Element of consideration	Valuation under GST	Levy under GST
1.	Personal guarantee	No consideration	Nil	Not liable
	By the director	Consideration involved	Actual consideration	Liable under RCM
	Corporate	No consideration	1% of the guarantee offered	Liable under
	guarantee of related person	Consideration involved	Higher of: 1% of the guarantee offered Consideration involved	forward charge mechanism

2. Providing amnesty scheme for filing appeal against demand orders issued upto 31.03.2023 It is recommended to provide an amnesty scheme for filing of appeal against the demand orders issued upto March 31, 2023. The appeals would be allowed to be filed by January 31, 2024 It is recommended that such appeals would be allowed to be filed upon payment of pre-deposit of 12.5% of the disputed amount and out of this, 2.5% would be required to be deposited through electronic cash ledger

Comments:

The GST law provides that the taxpayer is required to file an appeal against the demand orders under section and section of the CGST Act, 2017 within 3 months of the date of communication of the order. Further, the Appellate Authority can extend such time for a further period of 1 month. The appeal is required to be filed upon making a pre-deposit of 10% of the disputed amount. Further, such pre-deposit can be made from both, Electronic Cash Ledger (ECL) as well Electronic Credit Ledger (ECRL).

However, the Council has recommended to provide an amnesty scheme to allow the filing of appeal against all the demand orders passed till March 31, 2023 by January 31, 2024. This would be allowed upon making an additional pre-deposit of 2.5% from ECL. Hence, the appeal would be filed upon making a pre-deposit of 12.5% out of which 2.5% would be required to be paid from ECL.

In respect of the orders passed after March 31, 2023, the aggrieved person may seek relief to file an appeal at the High Court level upon complying with the conditions prescribed for the orders passed before March 31, 2023. A similar view was taken by Madras HC in the case of amnesty schemes for the application of revocation of GST registrations cancelled or suspended.

3. Automatic restoration of provisionally attached property after completion of one year It is recommended to amend Rule 159(2) of CGST Rules, 2017 and Form GST DRC-22 to provide that the order for provisional attachment in Form GST DRC-22 shall not be valid after expiry of one year from the date of the said order Comments:

The GST law provides that upon initiation of specified proceedings under the GST law, where the Commissioner is of the opinion that it is necessary to protect the interest of the revenue, he can provisionally attach the property of the person. It provides that the provisional attachment is valid for a period of 1 year from the date of the order. The order of provisional attachment is issued in Form GST DRC-22. The Form specifies that the debit from a bank account should not be allowed without the prior permission of this department.

Hence, even after the expiry of 1 year, attachment remains intact till the time a formal release intimation is sent by the jurisdictional Commissioner.

This has also been clarified as an advisory GST/INV/Provisional Attachment/ Advisory/2023-24, dated 02-09-2023, which provides that the Commissioner shall issue communication or an intimation to the concerned authority/bank indicating the release/restoration of the relevant property/account.

To remove the requirement of such communication or intimation, it is recommended to amend Rule 159(2) of CGST Rules, 2017 and Form GST DRC-22 to provide that the order for provisional attachment would not be valid after the expiry of one year from the date of provisional attachment order. The said amendment is intended to remove hardship faced by the taxpayer whose property is provisionally attached and removal of provisional attachment order is not passed by the Commissioner on expiry of one year.

4. Allowing receipt in INR in special Vostro account for export of services It is recommended to clarify that export remittances received in the special INR Vostro account would be an eligible mode of receipt of payment to qualify a service as export.

Comments:

The GST law provides that receipt of payment in convertible foreign currency is one of the mandatory conditions to qualify the service as an export. However, the receipt of payment in INR is allowed wherever permitted by the Reserve Bank of India.

RBI issued a circular on July 11, 2022 on international trade settlement in INR wherein it allowed the receipt of payment for export in special Vostro accounts of the correspondent bank of the partner country

In line with the above, the GST Council has recommended that payment in INR in special Vostro account would also qualify as an admissible mode of payment, and consequently, the receipt of export proceeds in such account would qualify as export in terms of the payment condition

7. Providing clarification on PoS in respect of specified categories of services It is recommended to clarify the PoS in respect of the following services:– Supply of goods transportation services, including by mail or courier in case supplier or recipient is outside India– Supply of advertising services– Supply of co-location services Currently, Section and 13 of the IGST Act, does not provide any specific provision to determine



the Place of Supply ('PoS') in respect of aforesaid services. Therefore, it is recommended to provide clarification on PoS provisions for these services. One would need to wait for the clarifications to understand its implications.

Comments:

As a background, the Hon'ble SC in the case of Mohit Minerals has held that in case of CIF contracts, the buyer of the goods would be considered as the recipient of the transportation services. This conclusion was reached upon by a combined reading of Section of the IGST Act and the definition of the recipient under the GST law.

Pursuant to the said decision, the provision of Section 13(9) of the IGST Act has been deleted w.e.f. 01-10-2023 leading to the ambiguity regarding determination of PoS in case of transportation of goods.

The Council, in its 49th Council meeting, clarified that the intention behind the amendment to section 13(9) of the CGST Act was to deem the place of supply of such services to be the location of the recipient. In order to avoid any ambiguity, the council has not proposed to issue a suitable clarification in this regard.

Likewise, for advertisement and co-location services, there remains an ambiguity whether the PoS be determined on the basis of location of immovable property or under the default rule under Section 12 or Section 13 as the case may be. The council has recommended to issue a suitable clarification to avoid any possible litigation.

KEY CHANGES IN ITR 7



CA Romil Agrawal



> In Part A General:-

■ ITR 7 is applicable for persons required to furnish return under section 139(4A) or 139(4B) or 139(4C) or 139(4D) only. From return furnished under section option to select “Others” dropdown is removed. From A.Y.22-23 onwards persons whose exempt is exempt cannot file ITR 7.

■ In ITR 7 Option of Filing ITR in response to notice u/s 153A and 153C is removed from ITR as requirement to file ITR under these sections is omitted.

> In Schedule I:

a) Schedule I is also made applicable to Section 10(21) read with section 35 and correspondingly Scientific research/ social science or statistical research words have been added in no 4 & SL.no 6.

b) New Columns 9 to 13 have been added for having the information relating to violations under sub-section (3) of section 11

> New Schedule D has been inserted for section 11(1) to capture details of deemed income like year of deeming, reason of deeming, deemed income which could not be applied, balance deemed income required to be applied in subsequent financial years.

> In Schedule J

■ As per proposed changes in Income tax Act, by the Finance Act 2022, Table A1 has been newly inserted to capture the information of corpus donation received

by the trust or institution for places notified u/s 80G(2)(b) and corpus other than Sec 80G(2)(b), opening balance, amount deposited back into corpus, closing balance.

■ Table A2 has been newly inserted to capture the information of Loans & Borrowings opening balance, Amount borrowed during the year, Amount applied from such loan, Loan repayment during the year, closing balance.

■ In Table B “Details of investment/deposits made under section 11(5) as on 31.03.2022 “Date of maturity & Maturity amount“ field have been deleted Information about amount of investment made in section 11(5) modes out of different sources needs to be specified.

> Balance sheet has been newly inserted and it is applicable to all assessee who is filling ITR 7 return. Assessee should enter the sources of Fund and application of fund in the balance sheet (as per applicability.)

> In schedule LA, additional field has been inserted during the current assessment year to capture the information from political party such as Total voluntary contribution received during the year and Voluntary contribution received less than Rs.2000 in cash and other modes and Voluntary contribution received upto Rs.20000 & more than Rs.20000 during the Financial

year. For assessee registered under Section 29A of Representation of People Act, 1951 registration number along with date of registration also needs to be provided

> From Schedule ER removed Depreciation and amortization cost as per changes brought vide Finance Act, 2022 by inserting an Explanation to section 11 and Explanation 3 to clause (23C) of section 10 providing that any sum payable by any fund or institution or trust etc. shall be considered as application of income during the previous year in which such sum is actually paid.

> In Schedule ER, new field inserted in table C to capture information of disallowable expenditure such as : Donation to trust or institution registered u/s 12AA/12AB or approved u/s 10(23C) (iv)/(v)/(vi)/(via) towards corpus Donation to trust or institution registered u/s 12AA/12AB or approved u/s 10(23C)(iv)/(v)/(vi)/(via) other than towards corpus in case of donations out of accumulated income Donation to trust or institution registered u/s 12AA/12AB or approved u/s 10(23C)(iv)/(v)/(vi)/(via) not having same objects Donation to any person other than trust or institution registered u/s 12AA/12AB or approved u/s 10(23C)(iv)/(v)/(vi)/(via) Application outside India for which approval as per proviso to section 11(1)(c) is not obtained Applied for any purpose beyond the objects of the trust or institution

> In schedule ER and Schedule EC, new fields have been inserted as per changes brought vide Finance Act, 2022 by inserting an Explanation to section 11 and Explanation 3 to clause (23C) of section 10 providing that any sum payable by any fund or institution or trust etc. shall be considered as application of income during the previous year in which such sum is actually paid.

> Amount which was not actually paid during the previous year out of F (Schedule ER) / B (Schedule EC) Amount actually paid during the previous year which accrued during any earlier previous year but not claimed as application of income in earlier previous year Total amount to be allowed as application (I=F-G+H) (Schedule ER) / (E=B-C+D)(Schedule EC) > Schedule BP, Schedule CG has been modified as similar to ITR 6



> **In Schedule OS –**

- a) In existing Sl No 2c,2d and Sl No 2e w.r.t “Income by way of interest or dividend from bonds or GDR purchased in foreign currency in case of a non-resident u/s 115AC(1)(a&b) has been bifurcated in “Income by way of interest from bonds purchased in foreign currency in case of a non-resident u/s 115AC(1)(a)” and “Income by way of dividend from GDR purchased in foreign currency in case of a non-resident u/s 115AC(1)(b)””; for the purpose of calculation of Interest under section 234C
- b) Income chargeable at special rates Anonymous donations in certain cases chargeable u/s 115BBC in no 2C and 2D of Schedule OS has been added.
- c) In existing Sl. No. 10 “Information about accrual/receipt of income from Other Sources” new fields have been added w.r.t dividend income chargeable at special rates for the purpose of calculation of interest u/s 234C

> **Part B-TI has been bifurcated into 2 parts i.e. Part B1 and Part B2 respectively.**

- a) Part B1 of Part B-TI is applicable to persons registered under section 12A/12AA/12AB or approved under section 10(23C)(iv)/10(23C)(v)/10(23C)(vi)/10(23C)(via)
- b) Part B2 of Part B-TI is applicable to persons who are claiming exemption under sections 10(21), 10(22B), 10(23A), 10(23AAA), 10(23B), 10(23C)(iiiab), 10(23C)(iiiac), 10(23C)(iiiad), 10(23C)(iiiiae), 10(23D), 10(23DA), 10(23EC), 10(23ED), 10(23EE), 10(23FB), 10(24), 10(29A), 10(46), 10(47), 13A/13B respectively.

In recent times businesses across the country have found themselves inundated with Show Cause Notices from GST authorities. This sudden surge in notifications can be attributed to the enforcement of Section 73(10) of the Central Goods & Service Tax Act 2017

Understanding the Significance of CGST Act Section 73(10)

Section 73(10) of the Central Goods & Services Tax Act, 2017 (CGST Act) imposes a critical obligation on proper officers. It requires them to issue an order within three years from the due date for furnishing annual returns of the financial year. This applies when taxes were not paid, were short-paid, or when there were discrepancies in Input Tax Credit (ITC) utilization, or an erroneous refund was granted.

Moreover, the GST law mandates proper officers to issue a Show Cause Notice (SCN) at least three months before the three-year time limit stipulated for the order's issuance. This regulatory provision ensures due process, offering taxpayers an opportunity to respond before a final order is issued. In essence, Section 73(10) plays a crucial role in establishing compliance frameworks and timelines within the GST landscape.

Extended Timelines and Emerging Pressures

The recent notification by the Central Board of Indirect Taxes and Customs (CBIC) has extended the time limit for issuing orders under Section 73(10) for the financial years 2017-18, 2018-19, and 2019-20. While the deadline for FY 2017-18 is now December 31, 2023, this extension has initiated a looming challenge for both tax authorities and businesses

The heightened urgency to adhere to these timelines is indicative of an impending and potentially prolonged battle. The compressed turnaround time for responding to Show Cause Notices (SCNs) and the rush to pass orders before the deadline are ominous signs pointing towards possible future litigation. Furthermore, the time limit for issuing SCNs for subsequent financial years (2018-19 and 2019-20) ending on December 31, 2023, and March 31, 2024, respectively, forewarns of an imminent surge in notices.

Measures for Businesses in Response to Regulatory Developments

A Barrage of GST Notices – Time to batten down the hatches



In response to these developments, businesses are strongly encouraged to reassess their strategies and proactively address potential issues. Learning's from past notices serve as valuable indicators, suggesting that recurring issues may resurface in subsequent periods.

An imperative step for businesses is to conduct a thorough review of statutory filings against financial statements, identifying gaps, and reassessing tax positions adopted since the inception of GST.

Common Challenges Leading to Notices

Common problems leading to notices encompass ITC mismatches, disparities in outward liability reporting and GST payments, blocked credit availment, non-payment under the 'Reverse Charge

Mechanism,' and failure to reverse common ITC used in exempt supply.

Challenges: Post-GST Implementation

The post-GST implementation period witnessed myriad challenges arising from legal interpretation, compliance issues, and technical glitches. Despite government interventions to address these concerns, stakeholders often neglected to revisit their initial tax positions.

Consequently, businesses now face the prospect of unexpected financial burdens in the form of additional taxes, interest, and penalties.

Conclusion

To proactively mitigate potential risks, businesses are advised to take a step back, examining historical GST positions, reviewing contracts and agreements, initiating vendor compliance verification, maintaining comprehensive records, and providing training to tax teams.

As the GST landscape evolves into an era of heightened litigation, businesses are urged to adopt a meticulously crafted approach to navigate these challenges. The present moment presents an opportune time for strategic planning and proactive measures to be implemented before the next wave of notices hits.

DURGA POOJA & GARBA NIGHT



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CA. Amitesh Jain, CA. Yash Khandelwal

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**Felicitation of
Gold Winning
Dressage Squad
at the Asian
Games 2023**



SUDIPTI HAJELA



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MSME SUBSIDY SCHEME**



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INDORE BRANCH OF CIRC OF ICAI
19-B, CA. Street, Scheme No. 78, Part-II,
Indore (M.P.) Tel. : 0731-2570052-53, 4298198
Mail : indore@icai.org. www.indore-icai.org