TAX CONNECT'S ANALYSIS OF NOTIFICATIONS TO GIVE EFFECT TO THE RECOMMENDATIONS OF 43RD GST COUNCIL MEETING HELD ON 28TH MAY 2021.

1. RELATING TO REAL ESTATE -

Notification No. 02/2021 - Central Tax (Rate) & Notification No. 03/2021 - Central Tax (Rate)

In the 43rd Meeting of The GST Council, it was recommended to allow credit to landowners in joint development agreements even before the completion certificate is received.

Notifications No. 02/2021 - Central Tax (Rate) & 03/2021 - Central Tax (Rate) Amends Notification No.06/2019- Central Tax (Rate) and Notification No.011/2017 to give effect to the recommendation. They provide that the developer promotor shall be allowed to pay GST relating to such apartments even at any time before the issuance of completion certificate. Consequently, relief is provided to the Landowner promoters who can now utilize credit of GST charged to them by developer promoters in respect of such apartments that are subsequently sold by the landowner promotors and on which GST is paid.

Now-a-days, most of the Development in real estate is done on the basis of Joint Development Agreement (JDA) wherein the Landowner transfers the Right of Development of land to the Developer and gets few constructed flats from the developers in return. Now, lets take an example –

- A JDA is entered into in 2021
- The Landowner enters into an agreement for sale of his flat under construction in 2022.
- The developer completes the construction and gets the completion certificate in 2025.

As per the earlier provisions, the landowner was required to charge and pay the GST to the Government in 2022 when he enters into the agreement for sale. However, the developer was required to charge the GST to the landowner only in 2025, i.e. before the issue of the completion certificate. This created a timing difference and a consequent loss of ITC for the landowner. While the landowner paid the GST in cash in 2022, he received the Credit for the GST only in 2025 when he had no GST payable at all. Therefore, the GST paid by the landowner to the developer became a cost to him and increased the Cost of the flat by upto 5%.

Now this timing difference is sought to be taken care of wherein the landowner and the developer have an option to get into back to back contracts where the developer can also pay the GST to the Government in 2022 only and consequently the landowner will get the Credit for the GST. However, it needs to be noted that the developer would only do this incase the landowner pays it the GST Component immediately and hence there is no cash flow impact on him.

2. Other Changes as in Notification No. 02/2021 - Central Tax (Rate)

GST on MRO (Maintenance, Repair and Operations) services in respect of ships/vessels is reduced to 5% (from 18%). In Sch I, Sl 25(ib) in N No 11/2017 Central tax (Rate) the following entry has been inserted –

(3)	(4)	(5)
"(ib) Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts.	2.5	-"

Other Change for MRO services in respect of ships/vessels –

Notification No. 03/2021 - Integrated Tax

The place of supply of services For Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or parts supplied **to a person for use in the course or furtherance of business** shall be the location of the recipient of service.

Hence incase of foreign recipient of services by a Business, this would result in the services from India being categorized as 'exports'.

3. Notification No. 01/2021 - Central Tax (Rate):

The GST rate on Diethylcarbamazine (DEC) tablets has been reduced to 5% (from 12%) by insertion in Sch 1 (Sl.No 180 read with List 1 Entry 231)

4. NOTIFICATION No. 27/2021 - Central Tax – Changes to Rules relating to Rule 36(4), filing of returns by OTP Mode by Companies & Time for filing IFF for May 2021

Rule 26	Filing of returns by Companies	Till 31st August 2021	Option for filing of returns using EVC instead of DSC by Companies
Rule 36(4)	Application of rule 36(4)	Periods April, May and June, 2021	Cumulative application of rule 36(4) in the return for the period June, 2021
Rule 59(2)	IFF	May 2021	Due date extended till 28th June 2021

5. NOTIFICATION No. 24/2021 - Central Tax – Regarding the Extensions

Exceptions	**Compliance**	**Tax Period**	**Relaxation**
Exceptions to Time Extensions - • Chapter IV of CGST Act related to time and place of supply; • Sub-section (3) of Section 10 related to composition levy; • Sections 25 – Procedure for registration; • Section 27 – Special provisions relating to CTP & NRTP; • Section 31 – Tax Invoice; • Section 37 – Furnishing details of outward supplies; • Section 47 – Levy of late fee;	Time limit for completion of various actions, by any authority or by any person, under the GST Act, which falls during the period from 15 April, 2021 to 29 June, 2021. This would include time limit for completion or	15 April, 2021 to 29 June, 2021	extended upto 30June, 2021, subject to some exceptions. NOTE: *Wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the*

• Section 50 – Interest on delayed payment of tax; • Section 69 – Power to arrest; • Section 90 – Liability of partners of firm to pay tax; • Section 122 – Penalty for certain offences; • Section 129 – Detention, seizure and release of goods and conveyance in transit; • Section 39, except sub-section (3), (4) and (5) related to TDS deductors, ISD and NRTPs; • Section 68 related to inspection of goods in movement, in so far as e-way bill is concerned; and • rules made under the provisions specified above.	compliance for the purposes of – (a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called; or (b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called.		*same would apply**

6. NOTIFICATION No. 26/2021 - Central Tax –

Compliance	Tax Period	Relaxation
FORM GST ITC-04	QE March 2021	Due date extended till 30th June 2021

7. NOTIFICATION No. 16/2021 - Central Tax

SEC 112 OF THE FA 2021 HAS BEEN IMPLEMENTED W.E.F. 1ST JUNE 2021 : INTEREST ON NET CASH BASIS W.E.F. 01.07.2017 : RETROSPECTIVE AMENDMENT IN SECTION 50 OF THE CGST ACT

Interest under GST has been a widely litigated matter. When a taxpayer pays GST, he is entitled to get the Credit of ITC and he pays the balance in cash. It was very clear under Section 49 of The CGST Act itself that interest would be charged on the delayed payment on the cash portion only. However, the GST departments across the Country charged interest on even the ITC Credit portion available to the taxpayer and already paid to the Government.

This matter will now be finally settled now by notification of the provisio under Section 50(1) as inserted by the Budget 2021. This will expectedly lay to rest all such litigation on Interest under GST.

8. NOTIFICATION No. 17/2021 - Central Tax

GSTR-1 Due Date for May 2021 is extended till 26th June 2021

9. NOTIFICATION No. 18/2021 - Central Tax & 18/2021 - Central Tax

<u>Relaxation to taxpayers in filing of monthly/Quarterly return in Form GSTR-3B:</u>

Sl. No.	Tax Period	Class of taxpayer (Based on Annual Aggregate Turnover)	Due date of filing	Reduced Rate of Interest					Waiver of late fee till
				First 15 days from due date	Next 15 days	Next 15 days	Next 15 days	From 61st day onwards	
1	March, 2021	> Rs. 5 Cr.	20th April	9%	18%	18%	18%	18%	5th May, 2021
		Up to Rs. 5 Cr	20th April	Nil	9%	9%	9%	18%	20th June, 2021
2	April, 2021	> Rs. 5 Cr.	20th May	9%	18%	18%	18%	18%	4th June, 2021
		Up to Rs. 5 Cr	20th May	Nil	9%	9%	18%	18%	5th July, 2021
3	May, 2021	> Rs. 5 Cr.	20th June	9%	18%	18%	18%	18%	5th July, 2021
		Up to Rs. 5 Cr	20th June	Nil	9%	18%	18%	18%	20th July, 2021

10. **NOTIFICATION No. 20/2021 - Central Tax, 21/2021 - Central Tax & 22/2021 - Central Tax**

Implements GST Amnesty Scheme as follows –

Rationalization of late fee imposed under section 47 of the CGST Act (applicable for prospective tax periods):

<table>
<tr><th>Category</th><th>Late Fee/return</th><th>Return</th></tr>
<tr><td>For NIL returns</td><td>Maximum of Rs. 500/-(CGST+SGST)</td><td rowspan="4">GSTR 3B/GSTR1</td></tr>
<tr><td>For other than NIL returns (Annual Aggregate Turnover in preceding year upto Rs 1.5 crore)</td><td>Maximum of Rs. 2,000/-(CGST+SGST)</td></tr>
<tr><td>For other than NIL returns (Annual Aggregate Turnover in preceding year between Rs 1.5 crore to Rs 5 crore)</td><td>Maximum of Rs. 5,000/-(CGST+SGST)</td></tr>
<tr><td>For other than NIL returns (Annual Aggregate Turnover in preceding year above Rs 5 crores)</td><td>Maximum of Rs. 10,000/-(CGST+SGST)</td></tr>
<tr><td>For NIL returns</td><td>Maximum of Rs. 500/-(CGST+SGST)</td><td>FORM GSTR-4 by composition taxpayers</td></tr>
<tr><td>For other than NIL returns</td><td>Maximum of Rs. 2,000/-(CGST+SGST)</td><td>FORM GSTR-4 by composition taxpayers</td></tr>
<tr><td>For TDS returns</td><td>Rs.50/- per day (CGST+SGST) and to be capped to a maximum of Rs 2000 (CGST+SGST)</td><td>FORM GSTR-7 (TDS Return)</td></tr>
</table>

11. **NOTIFICATION No. 23/2021 - Central Tax -**

Exempts a government department and a local authority also from the persons liable to generate E-Invoice

12. **NOTIFICATION No. 25/2021 - Central Tax -**

Compliance	Tax Period	Relaxation
Furnishing the statement in CMP-08 by composition dealer	*QE March 202*	*NIL interest for first 15 days from the due date. Reduced rate of 9% for further 45 days*

MORE CIRCULARS OR ORDERS OR NOTIFICATIONS ARE AWAITED RELATING TO -

1. **ANNUAL RETURN & RECONCILIATION FORMS -**

The Forms GSTR 9 & GSTR 9C for FY 2020-21 would be notified very soon without the area for CA Certification it seems. Some changes may also be made in the new Forms which need to be analysed by Trade & Industry and implemented. Since this time the GSTR 9 & GSTR 9C needs to be **self-certified** by CFO/Tax Head/Management, the responsibility on the management increases.

It is pertinent to mention that filing the GST Annual Forms is the last opportunity for the taxpayers to rectify any mistakes during the year and the same should be dealt with accordingly. Also any inconsistency in filing Form GSTR 9 & GSTR 9C may result in notices from GST Data Analytics Directorate. **Hence large taxpayers may need to get a voluntary GST Audit done before filing the GSTR 9 & GSTR 9C.**

2. Exemption from IGST been given **upto 31.08.2021** for the following goods, if imported on payment basis, for donating to the government or on recommendation of state authority to any relief agency or even “free of cost” for free distribution:

   i) medical oxygen,

   ii) oxygen concentrators and

   iii) other oxygen storage and transportation equipment,

   iv) certain diagnostic markers test kits and

   v) COVID-19 vaccines, etc.

   vi) Amphotericin B

3. Leviability of IGST on repair value of goods re-imported after repairs to be laid down soon

4. GST rate of 12% to apply on parts of sprinklers/drip irrigation systems falling under tariff heading 8424 (nozzle/laterals) to apply even if these are sold separately.

   Refer to Circular No. 81/55/2018-GST Dated, 31st December, 2018 which clarified that the term “sprinklers”, in the said entry 195B of the Schedule II to notification No. 1/2017- Central Tax (Rate), dated 28.06.207 covers ‘sprinkler irrigation system’. sprinkler system consisting of nozzles, lateral and other components would attract 12% GST rate’

5. **RELIEF TO MILL OWNERS PERFORMING JOB WORK FOR PUBLIC DISTRIBUTION SYSTEM -**

   Supply of service by way of milling of wheat/paddy into flour (fortified with minerals etc. by millers or otherwise)/rice to Government/ local authority etc. for distribution of such flour or rice under PDS is exempt from GST if the value of goods in such composite supply does not exceed 25%. Otherwise, such services would attract GST at the rate of 5% if supplied to any person registered in GST, including a person registered for payment of TDS.

   It is to be noted that massive search operations were conducted by DGGI in West Bengal on Flour Mill Owners challenging the GST Rate to be applied. It is important now to see whether the amendment is prospective or retrospective.

6. Services supplied to an educational institution including anganwadi (which provide pre-school education also), by way of serving of food including mid- day meals under any midday meals scheme, sponsored by Government is exempt from levy of GST irrespective of funding of such supplies from government grants or **corporate donations**.

   Earlier such institutions run by corporate donations were not considered as exempt.

7. Services provided by way of examination including entrance examination, where fee is charged for such examinations, by National Board of Examination (NBE), or similar Central or State Educational Boards, and input services relating thereto are exempt from GST.

8. GST is payable on annuity payments received as deferred payment for construction of road. Benefit of the exemption is for such annuities which are paid for the service by way of access to a road or a bridge.

9. Services supplied to a Government Entity by way of construction of a rope-way attract GST at the rate of 18%.

10. Services supplied by Govt. to its undertaking/PSU by way of guaranteeing loans taken by such entity from banks and financial institutions is exempt from GST.

11. The CGST Act and Rules would be amended so as to remove the GSTR-2 & GSTR-3 related provisions so that GSTR 3B and GSTR 1 would be the return filing system only.

Thanking You!

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LET'S DISCUSS FURTHER!

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