GST NEWSLETTER

1 NATION TAX MARKET

Special Issue: "The GST (Compensation to States) Act 2017"

मल और सेवा कर पारिषद
GOODS AND SERVICES TAX COUNCIL

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Highlights of 41st GST Council Meeting

An exclusive meeting to discuss GST Compensation to States was held by the GST Council under the Chairpersonship of Hon'ble Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman through video conferencing on 27th August, 2020. Shri Anurag Singh Thakur, Hon'ble Union Minister of State for Finance and Chief Minister/Dy Chief Minister/ Ministers in charge of Finance/Revenue from all States/UTs attended this 41st meeting of the GST Council.

A brief background of GST Compensation to state is as below:

Constitutional Amendment for GST Compensation

Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016

"Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years."

Legal Provisions of GST Compensation

In pursuance of 101st Constitutional Amendment, Goods and Services Tax (Compensation to States) Act, 2017 was enacted. The preamble of this Act reads as follows:

An Act to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

Relevant Sections of Goods and Services Tax (Compensation to States) Act, 2017

Section 3-Projected growth rate: The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent. per annum.

Section 4-Base year: For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year

Section 6-Projected revenue for any year: The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration. If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows
Projected Revenue for 2018-19=100 (1+14/100)3

Section 7-Calculation and release of compensation

(1) The compensation under this Act shall be payable to any State during the transition period.

(2) The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor-General of India:

Provided that in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

(3) The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner, namely:

(a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated as per section 6;

(b) the actual revenue collected by a State in any financial year during the transition period shall be

(i) the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act;

(ii) the integrated goods and services tax apportioned to that State; and

(iii) any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes, as certified by the Comptroller and Auditor-General of India;

(c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b).

(4) The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner, namely:

(a) the projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6.

Illustration. If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be 100x(5/6)=Rs.83.33;

(b) the actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be

(i) the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act;

(ii) the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Excise and Customs; and

(iii) any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes;

(c) the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance with clause (a) and the actual revenue collected by a State in the said period as referred to in clause (b), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period.

(5) In case of any difference between the final compensation amount payable to a State calculated in accordance with the provisions of sub-section (3) upon receipt of the audited revenue figures from the Comptroller and Auditor-General of India, and the total provisional compensation amount released to a State in the said financial year in accordance with the provisions of sub-section (4), the same shall be adjusted against release of compensation to the State in the subsequent financial year.

(6) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed.

Section 10-Crediting proceeds of cess to Fund

(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) All amounts payable to the States under section 7 shall be paid out of the Fund.

(3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

(3A) Notwithstanding anything contained in sub-section (3), fifty per cent. of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:

Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two months' period, fifty per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5.

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

Levy and Collection of GST Compensation Cess

The schedule under Section 8(2) of the GST (Compensation to States) Act 2017 prescribes rate at which goods and services tax compensation cess is being collected. Accordingly, a list of goods and rate of GST compensation cess, duly compiled based on amendment from time to time, for ready reference is as below:

Sl. No.	Chapter/Heading/ Sub-heading/ Tariff item	Goods	Compensation Cess Rate
1	2106 90 20	Pan-masala	60%
2	2202 10 10	Aerated waters	12%
3	2202 10 20	Lemonade	12%
4	2202 10 90	Others	12%
4A	2202 99 90	Caffeinated Beverages	12%
5	2401	Unmanufactured tobacco (without lime tube) bearing a brand name	71%
6	2401	Unmanufactured tobacco (with lime tube) bearing a brand name	65%
7	2401 30 00	Tobacco refuse, bearing a brand name	61%
8	2402 10 10	Cigar and cheroots	21% or Rs. 4170 per thousand, whichever is higher
9	2402 10 20	Cigarillos	21% or Rs. 4170 per thousand, whichever is higher
10	2402 20 10	Cigarettes	containing tobacco other than filter cigarettes, of length not exceeding 65 mm 5% + Rs.2076 per thousand
11	2402 20 20	Cigarettes containing	tobacco other than filter cigarettes, of length exceeding 65 mm but not exceeding 75 mm 5% + Rs.3668 per thousand
12	2402 20 30	Filter cigarettes of length (including the length of the filter, the length of filter being 11 mm or its actual length, whichever is more) not exceeding 65 mm.	5% + Rs.2076 per thousand
13	2402 20 40	Filter cigarettes of length (including the length of the filter, the length of filter being 11 mm's or its actual length, whichever is more) exceeding 65 mm's but not exceeding 70 mm.	5% + Rs.2747 per thousand
14	2402 20 50	Filter cigarettes of length (including the length of the filter, the length of filter being 11 mm or its actual length, whichever is more) exceeding 70 mm but not exceeding 75 mm	5% + Rs.3668 per thousand
15	2402 20 90	Other cigarettes containing tobacco	36% + Rs.4170 per thousand
16	2402 90 10	Cigarettes of tobacco substitutes	Rs.4006 per thousand
17	2402 90 20	Cigarillos of tobacco substitutes	12.5% or Rs. 4,006 per thousand whichever is higher
18	2402 90 90	Other	12.5% or Rs.4,006 per thousand whichever is higher
19	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name	72%
20	2403 11 10	Tobacco used for smoking 'hookah' or chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name	17%
21	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.	11%
22	2403 19 10	Smoking mixtures for pipes and cigarettes	290%
23	2403 19 90	Other smoking tobacco bearing a brand name	49%
24	2403 19 90	Other smoking tobacco not bearing a brand name	11%
25	2403 91 00	“Homogenised” or “reconstituted” tobacco, bearing a brand name	72%
26	2403 99 10	Chewing tobacco (without lime tube)	160%
27	2403 99 10	Chewing tobacco (with lime tube)	142%
28	2403 99 10	Filter khaini	160%
29	2403 99 20	Preparations containing chewing tobacco	72%
30	2403 99 30	Jarda scented tobacco	160%

31	2403 99 40	Snuff	72%
32	2403 99 50	Preparations containing snuff	72%
33	2403 99 60	Tobacco extracts and essence bearing a brand name	72%
34	2403 99 60	Tobacco extracts and essence not bearing a brand name	65%
35	2403 99 70	Cut tobacco	20%
36	2403 99 90	Pan masala containing tobacco 'Gutkha'	204%
37	2403 99 90	All goods, other than pan masala containing tobacco'gutkha', bearing a brand name	96%
38	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name	89%
39	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal.	Rs.400/tonne
40	2702	Lignite, whether or not agglomerated, excluding jet	Rs.400/ tonne
41	2703	Peat (including peat litter), whether or not agglomerated	Rs.400/ tonne
41A	27	Coal rejects supplied by a coal washery, arising out of coal on which compensation cess has been paid and no nput tax credit thereof has not been availed by any person.	NIL
42	8702 10, 8702 20, 8702 30, 8702 90	Motor vehicles for the transport of more than 13persons, including the driver, other than the vehicles of the description mentioned in Sl.No.50 and 51.	15%
42A	87	All old and used motor vehicles Explanation: Nothing contained in this entry shall apply if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT credit as defined in CENVAT Credit Rules, 2004, or the input tax credit of Value Added Tax or any other taxes paid on such vehicles.	NIL
42B	87	Fuel Cell Motor Vehicles	NIL
43	8702 or 8703	Motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles	NIL
44	8703 10 10, 8703 80	Electrically operated vehicles, including three wheeled electric motor vehicles.	NIL
45	8703	Three wheeled vehicles	NIL
46	8703	Following motor vehicles of length not exceeding 4000 mm, namely: - (a) Petrol, Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven vehicles of engine capacity not exceeding 1200 cc; and (b) Diesel driven vehicles of engine capacity not exceeding 1500 cc for persons with orthopedic physical disability, subject to the condition that an officer not below the rank of Deputy Secretary to the Government of India in the Department of Heavy Industries certifies that the said goods shall be used by the persons with orthopedic physical disability in accordance with the guidelines issued by the said Department	NIL
47	8703 40, 8703 50,	Following Vehicles, with both spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion; a) Motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles b) Three wheeled vehicles c) Motor vehicles of engine capacity not exceeding 1200cc and of length not exceeding 4000 mm.	NIL
		d) Motor vehicles other than those mentioned at (a),(b) and (c) above	15%
48	8703 60, 8703 70	Following Vehicles, with both compression -ignition internal combustion piston engine [diesel-or semi diesel) and electric motor as motors for propulsion; a) Motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles b) Three wheeled vehicles c) Motor vehicles of engine capacity not exceeding 1500 cc and of length not exceeding 4000 mm. Motor vehicles other than those mentioned at (a),(b) and (c) above	NIL 15%
49	8703	Hydrogen vehicles based on fuel cell tech and of length not exceeding 4000 mm. Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	NIL
50	8702, 8703 21 or 8703 22	Petrol, Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity not exceeding 1200cc and of length not exceeding 4000 mm.	1%
51	8702, 8703 31	Diesel driven motor vehicles of engine capacity not exceeding 1500 cc and of length not exceeding 4000 mm.	3%
52	8703	Motor vehicles of engine capacity exceeding 1500 CC	17%
52A	8703	Motor vehicles of engine capacity not exceeding 1500 cc other than motor vehicles specified against entry at Sl.No.52B	20%
52B	8703	Motor vehicles of engine capacity exceeding 1500 CC, popularly known as Sports Utility Vehicles (SUVs) includes utility vehicles	22%
53	8711	Motorcycles of engine capacity exceeding 350 cc.	3%
54	8802	Other aircraft (for example, helicopters, aeroplanes),for personal use.	3%
55	8903	Yacht and other vessels for pleasure or sports	3%
56	Any chapter	All goods other than those mentioned at S. Nos. 1 to 55 above	NIL

Compensation Cess collection & release

Since inception of GST i.e, 1.7.2017, the Compensation Cess collected and released to the States are tabulated below:

(Rs. in crore)

	2017-18	2018-19	2019-20	2020-21	Total
Compensation Cess Collected (Net)	62,612	95,081	95,444	21,355 (till July)	2,74,492
Compensation released	41,146	69,275	1,20,498 (till Nov. 19)	65,546 (till March)	2,96,465
Balance	21,466	25,806	(-25,054)	(-44,191)	(-21,973)

It is estimated that the compensation requirement in the current financial year would be Rs 3 lakh crore, while only Rs 65,000 crore is expected from the cess collection. Total shortfall is estimated at Rs 2.35 lakh crore, of which Rs 97,000 crore is on account of GST shortfall, while the rest is due to the impact of Covid-19 on the economy. The details of calculation of compensation shortfall is shown below:

		Crore
1.	Protected Revenue (Apr-Jan)	6,38,339
2.	2019-20 SGST (Apr-Jan)	4,30,147
3.	2020-21 SGST (Apr-Jan projected) [10% over (2)]	4,73,161
4.	Revenue Gap [(1)-(3)]	1,65,178
5.	Estimated Compensation Cess available in 2020-21[(a)+(b)]	68,700
	(a) Balance as on 31.07.2020	11,438
	(b) Estimated collections till March	57,266
6.	**Estimated Compensation Shortfall [(4)-(5)]**	**96,477**

Source: PIB Press Release, dated 29.08.2020

The 41st GST Council has recommended two options for borrowing by the States in order to compensate shortfall of revenue:

Option 1

I. The shortfall arising out of GST implementation (Rs. 97,000 crores approximately) will be borrowed by States through issue of debt under a Special Window coordinated by the Ministry of Finance.

II. It will be the endeavour to ensure steady flow of resources similar to the flow under GST compensation on a bi-monthly basis.

III. The GOI will endeavour to keep the cost at or close to the G-sec yield, and in the event of the cost being higher, will bear the margin between G-secs and average of State Development Loan yields up to 0.5% (50 basis points) through a subsidy.

IV. A special borrowing permission will be given by the GOI under Article 293 for this amount, over and above any other borrowing ceilings eligible under any other normal or special permission notified by Department of Expenditure.

V. In respect of Union Territories (including National Capital Territory), suitable arrangements to ensure flow of resources under the Special Window to them would be made by the Government of India

VI. The interest on the borrowing under the Special Window will be paid from the Cess as and when it arises until the end of the transition period. After the transition period, principal and interest will also be paid from proceeds of the Cess, by extending the Cess beyond the transition period for such period as may be required. The State will not be required to service the debt or to repay it from any other source.

VII. States will also be given permission to borrow the final instalment of 0.5% (originally intended as a bonus for completing at least three of the four specified reforms) allowed in para 4 of the Department of Expenditure's OM F.No. 40(06)/PF-S/2017-18 dated 17-5-20 (hereinafter referred to as DOE OM) even without meeting the pre-conditions. This will enable borrowing of approximately Rs. 1 lakh crores in aggregate.

VIII. The first instalment of 0.5% unconditional borrowing permission granted vide para 4 of the DOE OM remains unaffected. The reform-linked tranches specified in paras 5 to 8 of that OM also remain unaffected.

IX. In modification of para 9 of the DOE OM, States will be able to carry forward unutilised extra borrowing ceilings given under that OM to the next financial year; the instalments under para 4 (0.5 unconditional + another 0.5 as per para VII above) can be carried forward unconditionally; the reform-linked portions can be carried forward if the States meet the reform criteria within the dates already prescribed for this year.

X. The borrowing under the Special Window will not be treated as debt of the State for any norms which may be prescribed by the Finance Commission etc.

XI. The Compensation Cess will be continued after the transition period until such time as all arrears of compensation for the transition period are paid to the States. The first charge on the Compensation Cess each year would be the interest payable; the second charge would be the principal repayment. The remaining arrears of compensation accrued during the transition period would be paid after the interest and principal are paid.

Option 2

I. The entire shortfall of Rs 235,000 crores (including the Covid-impact portion) may be borrowed by States through issue of market debt. The GOI will issue an OM committing to repayment of principal on such debt from Cess proceeds as per para IV below.

II. Appropriate enhanced special borrowing permission will be given by the GOI under Article 293 based on the following methodology, in modification of scheme notified earlier under the DOE OM:

a. Each state's borrowing limits for the year will be based on the following calculation:
Basic eligibility (3 % of GSDP) + Amount allowed for shortfall as per Item I above of Option 2+ up to 1% of GSDP (reform- linked as per paras 5 to 8 of DOE OM)
or Basic eligibility (3% of GSDP) + 1% of GSDP + up to 1% of GSDP (reform-linked as per paras 5 to 8 of DOE OM) whichever is higher.

b. The additional unconditional borrowing limit of 0.5% and the final (bonus) tranche of 0.5% under para 4 of the DOE OM will not be separately available, being subsumed under the calculation above.

c. States will remain eligible for the reform-linked tranches of borrowing under paras 5 to 8 of the DOE OM this year but shall not be eligible to carry them forward. The maximum amount which can be availed under that OM shall stand reduced to 1% of GSDP instead of 2% of GSDP.

III. The interest shall be paid by the States from their resources.

IV. The principal on the amount under Item I above will, after the transition period, be paid from proceeds of the Cess. The States will not be required to repay the principal from any other source.

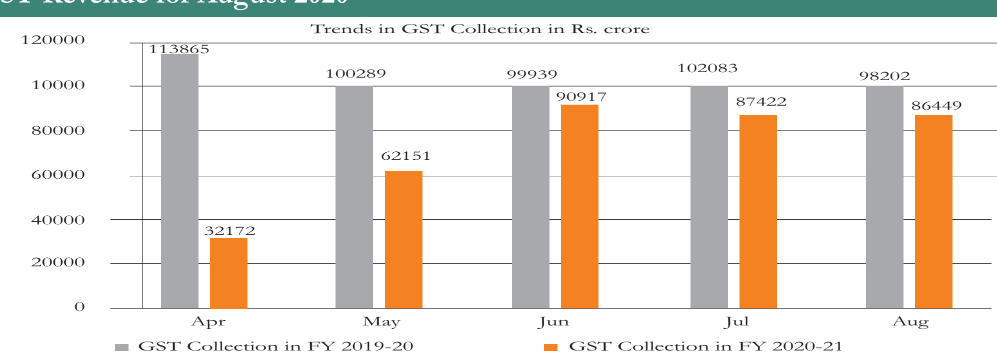
V. To the extent of the shortfall arising due to implementation of GST (i.e. Rs. 97,000 crores approximately in aggregate) the borrowing will not be treated as debt of the State for any norms which may be prescribed by the Finance Commission etc.

VI. The Compensation Cess will be continued after the transition period until such time as all arrears of compensation for the transition period are paid to the states. The first charge on the future Cess would be the principal repayment. The remaining arrears of compensation accrued during the transition period would be paid after the principal is paid.

Source: PIB Press Release, dated 29.08.2020

GST Revenue for August 2020

In the month of August 2020, gross GST revenue was Rs. 86,449 crore, comprising CGST Rs. 15,906 crore, SGST Rs. 21,064 crore, IGST Rs. 42,264 crore (including Rs. 19,179 crore collected on import) and Cess of Rs. 7,215 crore (including Rs. 673 crore collected on import). The total revenue after regular settlement in this month was Rs. 34,122 crore for Central Government and Rs. 35,714 for State Government.



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