

NH-24028/22/2020-H
Government of India
Ministry of Road Transport & Highways
(Highways Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001.

Dated: 27th August, 2021

To

1. The Chairman, NHAI, G-5 7 6, Sector -10, Dwarka, New Delhi-110075
2. DG(RD) & Special Secretary, Ministry of Road Transport & Highways
3. The Managing Director, NHIDCL, PTI Building, New Delhi-110001
4. Principal Secretaries/Secretaries of all States/UTs Public Works Department/ Road Construction Department/ Highways Department (dealing with National Highways and other centrally sponsored schemes)
5. All Engineers-in-Chief and Chief Engineers of Public Works Department/ Road Construction Department/ Highways Department (dealing with National Highways and other centrally sponsored schemes)
6. The Director General Border Roads, Seema Sadak Bhawan, Ring Road, New Delhi-110010
7. All CE-ROs, ROs and ELOs of the Ministry of Road Transport & Highways

Subject: Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment HAM (Annuity) - reg.

- Ref: - 1) NHAI Circular No. 3.3.14 dated 29.09.2017
2) NHAI Circular No. 3.3.17 dated 23.10.2017
3) NHAI Circular No. NHAI/F&A/GST -2017-18/SM dated 05.03.2018
4) NHAI Circular No. 3.3.20/2019 dated 29.07.2019 (SOP)

Sir,

I am directed to refer to aforesaid NHAI circulars and to say that as per the recommendations of 43rd GST Council meeting held on 28.05.2021, Ministry of Finance, Department of Revenue, has clarified vide circular no. 150/06/2021 - GST dated 17.06.2021 (copy enclosed) that "Entry 23A of notification no. 12/2017- CT (R) does not exempt GST on the annuity (deferred payments) paid for construction of roads".

2. Accordingly, in supersession of the above NHAI circulars to the extent of applicability of GST on Annuity payments, the following is hereby clarified regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment HAM (Annuity) :

I. Projects where bid due date was on or before 30.06.2017:

- a. For the projects where the last date of submission of bids was on or before 30.06.2017, GST on Annuity payments will be paid/reimbursed considering Change in law as per the Guidelines mentioned under Standard Operating Procedure (SOP) dated 29.07.2019 with the applicable GST rate and considering Bid Project Cost (BPC) plus Escalation Cost as total cost of project in the excel template.
- b. In case, where the template has already been submitted by the concessionaire and Change in law impact has been calculated, in such a case, GST impact shall be calculated again considering BPC plus escalation cost as total cost of project.
- c. The impact of additional GST shall be computed after adjusting GST Input Tax Credit lying with the concessionaire.

- d. Further, Appendix-I & Annexure-1 Base Data stands omitted and Annexure-II (Regular & Composite scheme) (enclosed) stands modified and issued accordingly along with Annexure-III (enclosed) for calculation of amount recoverable (if any), from the concessionaire in case payment already made under change in law.
- e. GST on interest on annuity payments shall be payable at the applicable GST rate in accordance with the provisions u/s 15(2)(d) of CGST Act.
- f. GST on annuity as per the percentage impact calculated shall be paid / reimbursed at the time when such annuity becomes due.
- II. Projects where bid due date was on or after 01.07.2017 and on or before 13.10.2017:
No GST on annuity under change in law shall be paid / reimbursed since bids were invited inclusive of GST .
- III. Projects where bid due date was on or after 14.10.2017 and on or before 16.06.2021:
- a. Effect of change in law on annuity payment shall be computed at applicable GST rate after adjusting GST Input Tax Credit lying with the concessionaire. No GST shall be paid on 40% construction support.
Annexure-IV for calculation of GST impact is enclosed herewith.
- b. GST on interest on annuity payments shall be payable at the applicable GST rate in accordance with the provisions u/s 15(2)(d) of CGST Act.
- c. GST on annuity as per the percentage impact calculated shall be paid / reimbursed at the time when such annuity becomes due.
- IV. Projects where bid due date are after 16.06.2021:
No GST on annuity under change in law shall be paid / reimbursed since bids were invited exclusive of GST .
- V. GST (TDS) shall be deductible from the Annuity & Interest on Annuity payable on or after 17.06.2021.

3. This issues with the approval of Competent Authority.

Yours faithfully,



(Rajesh Gupta)
Director

Tele No. 011-23718527

Encl: As above

Copy to:

AS & FA, MoRTH

Copy also to :

- (i) Sr. PPS to Secretary (RT&H)
(ii) Sr. PPS to AS (Highways)

CBIC-190354/36/2021-TRU Section-CBEC

Government of India
Ministry of Finance
Department of Revenue

North Block, New Delhi,
Dated the 17th June, 2021

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal
Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

**Sub-Clarification regarding applicability of GST on the activity of
construction of road where considerations are received in deferred
payment (annuity)-reg.**

Certain representations have been received requesting for a clarification regarding applicability of GST on annuities paid for construction of road where certain portion of consideration is received upfront while remaining payment is made through deferred payment (annuity) spread over years.

2. This issue has been examined by the GST Council in its 43rd meeting held on 28th May, 2021.

2.1 GST is exempt on *service, falling under heading 9967 (service code), by way of access to a road or a bridge on payment of annuity* [entry 23A of notification No. 12/2017-Central Tax]. Heading 9967 covers "*supporting services in transport*" under which code 996742 covers "*operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services*". Entry 23 of said notification exempts "*service by way of access to a road or a bridge on payment of toll*". Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity [heading 9967].

2.2 Services by way of construction of road fall under heading 9954. This heading *inter alia* covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954 (it specifically covers heading 9967 only). Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services (falling under heading 9954), even if deferred payment is made by way of instalments (annuities).

3. Accordingly, as recommended by the GST Council, it is hereby clarified that *Entry 23A of notification No. 12/2017-CT(R)* does not exempt GST on the annuity (deferred payments) paid for construction of roads.

4. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

(Rajeev Ranjan)
Under Secretary, TRU
Email: rajeev.ranjan-as@gov.in
Tel: 011 2309 5558

National Highways Authority of India

Composite - Annexure-II

Project/ Contract details												
Name of the Contractor/ Concessionaire			Contract Agreement Number		Name of the Project							
GST No.			Date		Bill No.			Date:				
			State									
2 Payment Details												
a		b	c	d		e	f	g	h			
Total construction cost (Bid Project Cost)		Price variation upto 30.6.2017	Value of Services rendered upto 30.6.2017 as per original contract	Pre-GST Regime Payments claimed upto 30.6.2017- original contract price		Payments claimed upto 30.6.2017-Price Variation	Bal. payments to be made after 01.07.2017 for services rendered upto 30.06.2017. (c+b-d-e)	Balance Services to be rendered- original contract Price	Remarks			
999.00		0	0	0		0	0	999.00				
3 Project Constituents												
Project Constituents	Percentage	Gross Original Value of the Contract Total		Percentage		Pre-GST	Percentage		Post-GST			
a Gross Value of Contract		999.00				0.00			999.00			
b Less:-Output Vat	5.25%	52.45				0.00			52.45			
c Cost plus Margin		946.55				0.00			946.55			
d Less : Margin of SPV	10%	86.05				0.00			86.05			
e Cost of the Project(a-b)		860.50				0.00			860.50			
f Components of the Projects												
Cost incurred by EPC Contractor (incl margin)												
i Bitumen	14.99%	129.02		0%		0.00	15%		129.02			
ii Steel	7.06%	60.72		0%		0.00	7%		60.72			
iii Cement	4.41%	37.95		0%		0.00	4%		37.95			
iv Aggregates, Sand etc	14.11%	121.43		0%		0.00	14%		121.43			
v Pipes	0.88%	7.59		0%		0.00	1%		7.59			
vi Oth. Materials	0.88%	7.59		0%		0.00	1%		7.59			
vii HSD	10.46%	90.00		0%		0.00	10%		90.00			
viii Labour	12.78%	110.00		0%		0.00	13%		110.00			
ix Plant & Machinery	8.02%	69.02		0%		0.00	8%		69.02			
Cost incurred by SPV												
x Cost on which VAT or ED/ST is leviable	16.16%	139.02		0%		0.00	16%		139.02			
xi Cost on which no VAT or ED/ST is leviable	10%	88.16		0%		0.00	10%		88.16			
	100%	860.50		0%		0.00	100%		860.50			
		0.00										
4 GST Implications (For balance work)												
GST Implications (For balance work)	% Component	Value of Item in Cost	Excise duty %	VAT	Output VAT	Cost incl. Taxes	GST rate	GST Amount	Output GST @ 12%	Total Cost under GST	Excess cost due to GST	Excess Impact due to GST (%)
Cost of the Project(a-b)						860.50						
Cost incurred by EPC Contractor (incl margin)												
i Bitumen	14%	107.79	14.00%	5%	0	129.02						
ii Steel	7%	51.40	12.50%	5%	0	60.72						
iii Cement	4%	29.59	12.50%	14%	0	37.95						
iv Aggregates, Sand etc	15%	115.65	0.00%	5%	0	121.43						
v Pipes	1%	6.43	12.50%	5%	0	7.59						
vi Oth. Materials	1%	6.43	12.50%	5%	0	7.59						
vii HSD	12%	90.00	0.00%	0%	0	90.00						
viii Labour	12%	95.65	15.00%	0%	0	110.00						
ix Plant & Machinery	8%	60.02	15.00%	0%	0	69.02						
Cost incurred by SPV												
x Cost on which VAT or ED/ST is leviable	15%	117.69	12.50%	5%	0	139.02						
xi Cost on which no VAT or ED/ST is leviable	11%	88.16	0.00%	0%	0	88.16						
ix Cost of the Project	100%	768.80				860.50					-41.57	-4.16%
5 Billing Pattern												
a Value of the work done by the Contract		999.00										
Less : factored in Taxes (3 b + net of ix)		144.15										
c Adjusted Value of Work done	5a - 5b	854.85										
d Add GST (on Adjusted value of work done)	12%	102.58										
e Value of Work due to Change in Law	(5c + 5d)	957.43										
f Additional liability of GST due to Change in Law	(5e-5a)	-41.57										
Notes :												
1 The cells in Green are for input												
2 The correct rate of taxes for Excise,CST,VAT are to be entered.												
3 The rates for VAT/Output VAT are as may be applicable for respective states												
4 The issue of closing stocks are not considered due to complexities involved												
5 The Components & Taxes are indicative/notional. It has to be project specific and may change												
Authority Engineer			Contractor			Project Director			NHAI			

National Highways Authority of India

Regular - Annexure-II

Project/ Contract details				
Name of the Contractor/ Concessionaire	Contract Agreement Number		Name of the Project	
GST No.	Date	Bill No.		Date:
	State			

2 Payment Details							
a	b	c	d	e	f	g	h
Total construction cost (Bid Project Cost)	Price variation upto 30.6.2017	Value of Services rendered upto 30.6.2017 as per original contract	Pre-GST Regime Payments claimed upto 30.6.2017-original contract price	Payments claimed upto 30.6.2017-Price Variation	Bal. payments to be made after 01.07.2017 for services rendered upto 30.06.2017. (c-b-d-e)	Balance Services to be rendered-original contract Price	Remarks
999.00	0	0	0	0	0	999.00	

3 Project Constituents		Percentage	Gross Original Value of the Contract	Total	Percentage	Pre-GST	Percentage	Post-GST
a	Gross Value of Contract	-	999.00		-	0.00	-	999.00
b	Less : Labour and allied charges (refer Point no 6 in Notes)	25.00%	249.75			0.00		249.75
c	Taxable Value for VAT	(a-b)	749.25			0.00		749.25
d	Less: Output VAT (refer Point no 7 in Notes)							
e	Cost plus Margin	12.50%	83.25			0.00		83.25
f	Less : Margin of SPV	10.00%	915.75			0.00		915.75
g	Cost of the Project(a-b)	-	832.50			0.00	-	832.25
Components of the Projects								
Cost incurred by EPC Contractor (incl margin)								
i	Bitumen	15.50%	129.02			0.00		129.02
ii	Steel	7.29%	60.72		0%	0.00	15%	60.72
iii	Cement	4.56%	37.95		0%	0.00	7%	37.95
iv	Aggregates, Sand etc	10.55%	87.84		0%	0.00	5%	87.84
v	Pipes	0.91%	7.59		0%	0.00	11%	7.59
vi	Oth. Materials	0.91%	7.59		0%	0.00	1%	7.59
vii	HSD	10.81%	90.00		0%	0.00	1%	90.00
viii	Labour	18.02%	150.00		0%	0.00	11%	150.00
ix	Plant & Machinery	7.81%	65.00		0%	0.00	18%	65.00
Cost incurred by SPV								
x	Cost on which VAT or ED/ST is leviable	14.41%	120.00		0%	0.00	0%	120.00
xi	Cost on which no VAT or ED/ST is leviable	9.22%	76.79		0%	0.00	14%	76.79
		100%	832.50			0.00	100%	832.50

4 GST Implications (For balance work)		% Component	Value of Item in Cost	Excise Duty (In Rs)	Excise duty (In %)	Vat (In Rs)	VAT/CST (In %)	Output VAT	Cost incl. Taxes	GST rate	GST Amount	Output GST @ 12%	Total Cost under GST	Excess cost due to GST	Excess Impact due to GST (%)
Cost of the Project(a-b)									832.50						
Cost incurred by EPC Contractor (incl margin)															
i	Bitumen	14.55%	107.79	15.09	14.00%	6.14	5.00%		129.02						
ii	Steel	6.94%	51.40	6.43	12.50%	2.89	5.00%		60.72						
iii	Cement	4.00%	29.59	3.70	12.50%	4.66	14.00%		37.95						
iv	Aggregates, Sand etc	11.30%	83.66	0.00	0.00%	4.18	5.00%		87.84						
v	Pipes	0.87%	6.43	0.80	12.50%	0.36	5.00%		7.59						
vi	Oth. Materials	0.87%	6.43	0.80	12.50%	0.36	5.00%		7.59						
vii	HSD	12.15%	90.00	0.00	0.00%	0.00	0.00%		90.00						
viii	Labour	17.61%	130.43	19.57	15.00%	0.00	0.00%		150.00						
ix	Plant & Machinery	7.63%	56.52	8.48	15.00%	0.00	0.00%		65.00						
Cost incurred by SPV															
x	Cost on which VAT or ED/ST is leviable	13.72%	101.59	12.70	12.50%	5.71	5.00%		120.00						
xi	Cost on which no VAT or ED/ST is leviable	10.37%	76.79	0.00	0.00%	0.00	0.00%		76.79						
ix Cost of the Project		100.00%	740.62	67.56		24.32			832.50					-49.03	-4.91%

5 Billing Pattern			Notes :	
a	Value of the work done by the Contract	999.00	1 The cells in Green are for input	
b	Less : factored in Taxes (3 b + net of ix)	(4 ix + 3d)	2 The correct rate of taxes for Excise,CST,VAT are to be entered.	
c	Adjusted Value of Work done	5a - 5b	3 The rates for VAT/Output VAT are as may be applicable for respective states	
d	Add GST (on Adjusted value of work done)	12%	4 The issue of closing stocks are not considered due to complexities involved	
e	Value of Work due to Change in Law	(5c + 5d)	5 The Components & Taxes are indicative/notional. It has to be project specific and may change	
f	Additional liability of GST due to Change in Law	(5a - 5e)	6 Labour and allied charges Cell as per the details given below:-	
			a) If it is in percentage (%), enter the percentage (%) in Cell no. C15	
			b) If it is based on absolute value, Justify the Absolute value in a separate sheet and put the value in Cell No. D15 (Calculation sheet to be enclosed)	
			7 Output VAT as per the details given below:-	
			a) If it is in percentage (%), enter the percentage(%) in Cell no. C17	
			b) If it is based on input used, calculate in a separate sheet, put the value in Cell No. D17 (Calculation sheet to be enclosed)	

Authority Engineer

Contractor

Project Director
NHAI

Template for Calculation of Amount Recoverable in case payment is already made under Change in Law on basis of EPC Cost

Annexure-III

Particulars	Amt. Rs. in Crore
Bid Project Cost	1,500.00
Upfront Construction Support	600.00
Annuity Mode	900.00
Cost of the Concessionaire on which Change in law amount already claimed	1,350.00
Already already paid under Change in law	50.00
Final % under Change in Law to be paid	67.50
Differential Amount to be paid	17.50

Amount under change in law to be paid onwards from, if cumulative amount not recovered from the concessionaire

Annuity 20

S. No.	Payment No.	Payment %	Amount	Amount to be paid under change in law	Cumulative Amount Payable	Cumulative Amount to be paid/recovered on the basis of amount already paid
1	Milestone 1	8	120.00	5.40	5.40	-44.60
2	Milestone 2	8	120.00	5.40	10.80	-39.20
3	Milestone 3	8	120.00	5.40	16.20	-33.80
4	Milestone 4	8	120.00	5.40	21.60	-28.40
5	Milestone 5	8	120.00	5.40	27.00	-23.00
	Total Construction Support		600.00	27.00		
1	Annuity 1	2.10	18.90	0.85	27.85	-22.15
2	Annuity 2	2.17	19.53	0.88	28.73	-21.27
3	Annuity 3	2.24	20.16	0.91	29.64	-20.36
4	Annuity 4	2.31	20.79	0.94	30.57	-19.43
5	Annuity 5	2.38	21.42	0.96	31.54	-18.46
6	Annuity 6	2.45	22.05	0.99	32.53	-17.47
7	Annuity 7	2.52	22.68	1.02	33.55	-16.45
8	Annuity 8	2.60	23.40	1.05	34.60	-15.40
9	Annuity 9	2.68	24.12	1.09	35.69	-14.31
10	Annuity 10	2.76	24.84	1.12	36.81	-13.19
11	Annuity 11	2.84	25.56	1.15	37.96	-12.04
12	Annuity 12	2.93	26.37	1.19	39.14	-10.86
13	Annuity 13	3.02	27.18	1.22	40.37	-9.64
14	Annuity 14	3.11	27.99	1.26	41.62	-8.38
15	Annuity 15	3.20	28.80	1.30	42.92	-7.08
16	Annuity 16	3.30	29.70	1.34	44.26	-5.74
17	Annuity 17	3.40	30.60	1.38	45.63	-4.37
18	Annuity 18	3.50	31.50	1.42	47.05	-2.95
19	Annuity 19	3.61	32.49	1.46	48.51	-1.49
20	Annuity 20	3.72	33.48	1.51	50.02	0.02
21	Annuity 21	3.83	34.47	1.55	51.57	1.57
22	Annuity 22	3.94	35.46	1.60	53.17	3.17
23	Annuity 23	4.06	36.54	1.64	54.81	4.81
24	Annuity 24	4.18	37.62	1.69	56.50	6.50
25	Annuity 25	4.25	38.25	1.72	58.23	8.23
26	Annuity 26	4.25	38.25	1.72	59.95	9.95
27	Annuity 27	4.44	39.96	1.80	61.74	11.74
28	Annuity 28	4.71	42.39	1.91	63.65	13.65
29	Annuity 29	4.75	42.75	1.92	65.58	15.58
30	Annuity 30	4.75	42.75	1.92	67.50	17.50
	Total Annuity Payments		900.00	40.50		
	Total		1,500.00	67.50		

National Highways Authority of India

Annexure-IV

Template for calculation of impact under Change in Law for the period with bid due date between 13.10.2017 to 16.06.2021

S. No.	Particulars		Amount (Rs. In Crores)
A	Bid Project Cost		1,000.00
B	Construction Support not liable under change in law	40% of A	400.00
C	Annuity Payments liable for payment of GST under change in law	A-B	600.00
D	Output GST on annuity payments	12%	72.00
E	Costs of SPV which attracts GST (as per approved financial model)		
i	EPC Contractor Cost		850.00
ii	Breakup of other costs leviable under GST		50.00
iii	(add more rows if required)		-
iv	(add more rows if required)		-
F	Total (Sum of E i, ii, iii....)		900.00
G	Costs of SPV which do not attracts GST (as per approved financial model)		
i	Interest During Construction		50.00
ii	Notional Profit Element		40.00
iii	Breakup of other cost not leviable under GST		10.00
iv	(add more rows if required)		-
H	Total (Sum of G i, ii, iii....)		100.00
	Total Bid Project Cost		1,000.00
I	Input GST on F above at applicable rates	11.67%	105.00
J	Input GST related to 40% of Construction Support	40% of G	42.00
K	Remaining Input GST credit related to Annuity Payments	H-I	63.00
L	Differential GST Payable	D-K	9.00
M	GST Impact %		1.50%