

Recommendations
on
Draft amendments to GST Laws



The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)

Background:

The GST Council has released a set of draft amendments in the CGST Act, IGST Act and GST (Compensation to the States) Act for public comments. It is a welcome step to invite public comments for the proposed amendments in the GST law. The amendments such as amendment in definition of supply, widening of credits on vehicles and restricting reverse charge liability for procurements from unregistered vendors to specified set of persons are welcome. The industry will be disappointed on provisions relating to restriction on transfer of credit balance. The proposed amendments do not include some of the amendments which were already highlighted to the GST Council such as the taxability of services deemed to be provided by the branch offices to foreign offices/ parent entity. It would be relevant to see which provisions are proposed to be given retrospective effect and which come into force prospectively.

Tax Research Dept. of Institute of Cost Accountants of India has done the research on it and came out with these recommendations for your kind consideration.

Recommendation by Govt: Point # 2

(h) ~~services provided by activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and~~

Institute's Recommendation:

It should be re phrased as "Services or activities provided by a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

This will be clearer and indicates that all activities or services provided by a race club or taxable under GST. Else it can lead to another round of confusion that services provided by a race club like serving food or beverages are not taxable as the dictionary meaning of "activities" does not include services.

Recommendation by Govt: Point # 8

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.

Institute's Recommendation:

The addition of the said provision is a welcome move but it should not be restricted to only goods, even supplier of services can also undertake such services, in such cases also the same should be exempted. This is particular in cases like leasing of the containers or ships where the person leasing will be based out of India and the containers are taken on lease in a different country and rented out to a third party and these containers do not even reach the Indian Territory also.

Recommendation by Govt: Point # 10

~~9 (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. 9 (4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of taxable goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.~~

Institute's Recommendation:

There should not be any discrimination based on class of persons, it should be applicable to all the taxpayers, then only the tax base will increase and there will be room for reduction of tax rates.

Recommendation by Govt: Point # 11

10 (1) Notwithstanding anything to the contrary contained in this Act but subject to the revisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh

rupees, may opt to pay, in lieu of the tax payable by him **under sub-section (1) of section 9**, an amount of tax calculated at such rate as may be prescribed, but not exceeding, -- (a) one per cent of the turnover in State or turnover in Union territory in case of a manufacturer, (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one **hundred and fifty lakh crore rupees**, as may be recommended by the Council.

Provided further that a person who opts to pay tax under clause (a), clause (b) or clause (c) may supply services of value not exceeding ten percent of turnover in the preceding financial year in a State or Union territory or five lakh rupees, whichever is higher.

Institute's Recommendation:

The threshold should be increased to a higher amount upto three hundred lakhs so that the Act need not be amended in future also.

There should not be any restriction on the amount of outward supply of services.

There should be a provision for the service providers under composition scheme, this will ensure that more taxpayers are enrolled in the taxation net and it will lead to increase of the Tax GDP Ratio of indirect tax players. Even in the erstwhile service tax provisions also, we had a provision where the service providers who are small, where their turnover is less than Rs 50 lakhs were paying taxes on cash basis and we do not have similar provisions in GST. Instead of having such a provision it would be wise to have services also in the composition scheme.

If we see the same in reality, there will not be much room for them to claim the ITC on their input services as for most of them the cost will be salaries, and they will be having to pay the same in cash and which is collected from the end consumer, which is a burden for them. It would also help the professionals or GST practitioners, free lancers etc.

Recommendation by Govt: Point # 12

12 (2) The time of supply of goods shall be the earlier of the following dates, namely:—

(a) date of issue of invoice by the supplier or the last date on which he is required under ~~sub-section (1) of~~ section 31 to issue the invoice with respect to the supply;

Institute's Recommendation:

Sub-section 3(a) Section 31 also talks about issue of revised tax invoice in cases where the registration number is granted from a date earlier to the date of issue of registration certificate read with Rule 53, Sub-rule 2, then in such cases also the taxable person is required to pay GST.

This will be challenge in cases where the person to whom registration is granted in such cases make outward supplies to B2C customers or B2B in some cases where he is not able to recover from them the taxes, it will be a financial loss for such person.

The provision should exempt such transaction so that it will be beneficial to the taxpayers and more taxpayer friendly.

Recommendation by Govt: Point # 13

13 (2) The time of supply of services shall be the earliest of the following dates, namely: —

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2) of~~ section 31 or the date of receipt of payment, whichever is earlier;

(b) the date of provision of service, if the invoice is not issued within the period prescribed under **sub-section (2) of** section 31 or the date of receipt of payment, whichever is earlier;

Institute's Recommendation:

Same as Point # 12

Recommendation by Govt: Point # 15

16 (2).....

(c) Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39: Provided that -----:Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, ~~along with interest thereon~~, in such manner as may be prescribed:

Institute's Recommendation:

Dropping of interest in case of delayed payments is a welcome move to the taxpayers and it saves their working capital.

The other side of the leg has to be addressed. As on date in case if the recipient does not pay the tax, the ITC is being reversed and the same has to be passed on the supplier. If it does not happen, the supplier will be at the loss from both the fronts i.e., from the taxable amount as well as from the tax amount.

Same provisions exist in many countries where the transaction is treated as bad debt, the taxes on the outward supply are reduced from the outward supply in the month when it is treated as bad debt.

Recommendation by Govt: Point # 19

Explanation (iii) to section 22 the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution except the State of Jammu and Kashmir **and Assam**

Institute's Recommendation:

As we are discussing about backward states, the threshold should be more than the regular states, then only the business will be prosper else it will be like a burden on the small taxpayers.

Recommendation by Govt: Point # 24

34(1) Where **a tax invoice has one or more tax invoices have** been issued for supply of any goods or services or both and the taxable value or tax charged in **that tax invoice the said tax invoices** is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient **a one or more credit notes for supplies made in a financial year** containing such particulars as may be prescribed.

(2) ...

(3) Where **a tax invoice has one or more tax invoices have** been issued for supply of any goods or services or both and the taxable value or tax charged in **that tax invoice the said tax invoices** is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient **a one or more debit notes for supplies made in a financial year** containing such particulars as may be prescribed.

Institute's Recommendation:

This is welcome move, this should be take up in after the stabilization of the single return format else it will become complex and the taxpayers have to get used to multiple things at the same stage.

Recommendation by Govt: Point # 25

Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed:

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of accounts are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

Institute's Recommendation:

The intent of the GST audit is different and the CAG is audit is also different, so excluding the taxpayers from GST audit. In fact, it should be applicable to all taxpayers else the intent of the same will be defeated. Today it will be with CAG and tomorrow banks may come up and raise a request that we are audited by RBI so we also should be exempted.

Recommendation by Govt: Point # 25

43A. Procedure for furnishing return and availing input tax credit. - (1) Notwithstanding anything contained in section 37 or section 38, the procedure for furnishing the details of outward supplies by a registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 (hereafter in this section referred to as the 'supplier'), and for verifying, validating, modifying or deleting such supplies by the corresponding registered person (hereafter in this section referred to as the 'recipient') in connection with the furnishing of return under section 39 shall be such as may be prescribed..

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure specified under sub-section (1) and sub-section (2) may include the following:-

(i) the procedure for furnishing the details of a tax invoice by the supplier on the common portal for the purposes of availing input tax credit by the recipient in terms of clause (a) of sub-section (2) of section 16;

(ii) the amount of tax specified in an invoice for which the details have been furnished by the supplier under clause (i) but the return in respect thereof has not been furnished and tax has not been paid shall be deemed to be tax payable by him under the provisions of this Act;

(iii) the procedure and threshold, not exceeding one thousand rupees, for recovery of the amount of tax payable under clause (ii);

(iv) the procedure and circumstances where the recovery of input tax credit can be made, instead of from the supplier, from the recipient who has availed credit on an invoice for which details have been furnished by the supplier under clause (i) but tax has not been paid by the said supplier;

(v) for the purposes of clause (ii) and (iii), the supplier and the recipient shall be jointly and severally liable to pay tax or to reverse the input tax credit availed against such tax, as the case maybe;

(vi) the procedure and threshold for availing input tax credit by the recipient on the basis of invoice for which details have not been furnished by the supplier under clause (i) and recovery thereof; and

(vii) the procedure, safeguards and threshold of tax amounts in the invoices, the details of which can be furnished under clause (i) by a newly registered person or by a registered person who has defaulted in payment of tax liability, exceeding the amount of tax or the period of time specified in the rules.

Institute's Recommendation:

The said provisions are bringing in back the matching indirectly, the recipient is responsible to pay the tax or he has to reverse the input tax credit availed in case if the supplier has not paid. These provisions are in line with the existing provisions except with the dropping of the word "provisional credit".

The proposed changes are putting the onus on the recipient also for the payment of the tax as the words used are jointly and severally liable to pay tax, it means the receipt has to forgo the credit as well as pay the tax to the government again.

The said provisions are again bringing back the complexity of the taking action on each record on account of usage of the words "verifying, validating, modifying or deleting", which is again similar to the suspended GSTR - 2 which had provision for "accepting, rejecting or pending".

We should go by the Malaysian model for GST Return filing, where the taxpayer has to file a simple return like our existing GSTR -B known as GSTR - 3 and another audit file in text format which consists of Accounting Ledger, Purchase Day Book and Sales Day Book. With

the data provided in the day books which has the registration number and the tax invoice details, the matching was done at the at the backend and if any differences are there, the same was intimated to the taxpayers accordingly. This method will be simple and matching is also taken care.

Recommendation by Govt: Point # 29

49 (5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of --

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilized towards payment of State tax and the amount remaining, if any, may be utilized towards payment of integrated tax **only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax;**

(d) the Union territory tax shall first be utilized towards payment of Union territory tax and the amount remaining, if any, may be utilized towards payment of integrated tax **only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax;**

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax;

(f) the State tax or Union territory tax shall not be utilized towards payment of central tax:

Provided that input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax under clause (b), clause (c) or clause (d) only after the input tax credit available on account of integrated tax has been first utilised fully towards such payment

Institute's Recommendation:

The proposed changes will create more hardships to the taxpayers as there can be cases where the taxpayer has taken credit and the same is under adjudication process and he has not utilized the amount, in such cases if he has a verdict not in favor he can reverse the amount, but in this case, the same has to be utilized and as the amount is utilized the taxpayer has to pay penalty. This will cause lot of hardships the taxpayer.

In the erstwhile tax regime also, we had cases here the disputed amount was kept in the closing balance and as and when required was reversed.

In case if the taxpayer does not claim the credit, then there is another challenge under GST is input tax credit has to be taken in stipulated time.

Even in the current GST returns filing also, this provision is there, it should be removed and it will be providing tax friendly regime.

Institute's Other Recommendations

1) CRO Services

Clinical Research Organizations undertake clinical trials on behalf of the clients overseas. The drug is supplied by the overseas customer and the trials are carried out in India on humans.

As per the current provisions of the place of supply it has to be treated as domestic sales only as the service is rendered in India even though the customer is outside India and remittance is in foreign currency.

This is causing the cost effectiveness to be lost as the tax is not borne by the overseas customer and resulting in the loss of valuable forex to the nation.

2) Medical Education Services – Training

Medical education provided by colleges is not taxable under GST as it leads to degree but if the coaching centers or any other agencies if they are providing tuition services GST is applicable. The teaching by such organizations has seen a sea change recently especially in case of medical services, where they are being explained and taught in digital media. In such cases also they are taxed at 18% where as they hardly have any inputs and it is a burden on the student community as well as on the parents.

Such services should be taxed but the rate of tax should be reduced to 5% as it will be more affordable and also will be part of Digital India as the content is copied and supplied in pen drives.

3) Promotion of POS Machines

As GST is transaction-based reporting and especially in case of small traders it become very complex process for them to maintain accounts and file returns accordingly. In such cases as part of the Digital India, the Point of Sales Machines should be given on subsidy to the small traders from where they can file the returns, maintain accounting and also receive payments. This should be promoted similar to the Digital MSME Scheme or the cost of POS machines should also be included in the same.

4) Real Estate

The GST rate for Cement is 28% and it is mostly used in the real estate and the infra projects. Most of the cases it is not eligible to input tax, in such cases the taxes have to be added to the cost of the project, this increase the public spending and lesser resources for the productive spending. To reduce this imbalance, the rate of cement should be reduced to 18% which would be beneficial to all the stakeholders and the government as a whole.

There is a deeming provision for land in the value of the residential or commercial property as 1/3rd but in reality in most of the areas the cost of the land is more than 1/3rd and in GST as per Schedule III land is exempted from GST. The provision of 1/3rd has to be increased or the abatement has to be increased accordingly basis on the land value determined for the stamp duty, this approach will be logical and more realistic.

In the real estate sector, there is a burden of stamp duty along with the GST, this is burden to the consumers, it should be merged with the GST, this will enable the prices to be reduced and give a flip to the real estate sector and thereby increase the GDP.