

President
Raman H. Jokhakar
Vice President
Chetan M. Shah
Hon. Secretaries
Narayan R. Pasari
Sunil B. Gabhawalla
Hon. Treasurer
Manish P. Sampat

BOMBAY CHARTERED ACCOUNTANTS' SOCIETY



7, Jolly Bhavan 2, Ground Floor, New Marine Lines, Mumbai - 400 020
Tel. : + 91 22 6137 7600 • Fax : + 91 22 6137 7666 • E-mail : bca@bcasonline.org
Website : www.bcasonline.org • BCAS Web TV : www.bcasonline.tv • E-Journal : www.bcaonline.org

22nd February 2016

To

Shri Arun Jaitley
The Finance Minister
Government of India
New Delhi

Respected Sirs,

Sub: Observations and Suggestions on GST Business Processes

This is with reference to various Reports on draft business processes of GST, hosted on the website of DOR inviting comments from stake holders and public at large, we would like to take this opportunity to present before you some of the views of our members.

May we request your good selves to kindly consider the same appropriately while finalizing the actual business processes on proposed Goods and Services Tax (GST).

Yours sincerely

For Bombay Chartered Accountants' Society

Raman H. Jokhakar
President
Bombay Chartered Accountants' Society

Govind G. Goyal
Chairman
Indirect Taxes Committee

Connect with BCAS Global



Harnessing Talent and Providing Quality Service

Bombay Chartered Accountants' Society

Indirect Taxes Committee

Observation and Suggestions on

DRAFT REPORTS ON BUSINESS PROCESSES UNDER GST

[Registration, Payments, Refunds & Returns]

I General Observations:

1. Sincere thanks to the members of all the committees who have devoted their valuable time and energy in preparing these draft reports.
2. Although great job done but, it seems, the committees were having several constraints in preparing these reports. First and foremost is that non-availability of final draft of GST Law, and the second is lack of inter-committees co-ordination in synchronizing the draft proposals. There are several other aspects which could have been considered while preparing the draft reports.
3. Howsoever, we feel that these draft reports may be of great help in finalizing the actual business processes once the law gets finalized.
4. We appreciate the initiative of consulting stakeholders so the business processes can be finalized after considering all aspects which are best suited to all, in the overall framework of law, keeping in mind 'ease of doing business' including 'ease of payment of taxes' and 'ease of compliance & administration' .
5. We are sure that our Government will introduce this much needed reform in the field of indirect taxes by launching the Indian GST Law in such a manner that most other countries will also appreciate. A law which is fair to all whether it is Central Government, State Governments, Trade & Industry as well as the consumers (i.e. the ultimate tax payers).
6. The Government should get adequate revenue, & industry should not have any burden (whether financial or otherwise) and the consumers feel happy.

7. The law and its processes need to be drafted with a mindset which is free from all kind of shackles and undue apprehensions.
8. It should be ensured that Input Tax Credit (ITC) is available to all businesses based upon 'Tax Invoice' issued by a registered supplier. Sanctity of 'Tax Invoice' must be maintained.
9. Undue restrictions and conditions for availing ITC may kill the concept of VAT itself.
10. It should also be kept in mind that the processes so designed will be applicable to a fairly large number of assessees, spread all over India, including a very small person having turnover of just Rs 25 to 50 lacs as well as to those organizations having turnover of Rs. 500 to 1000 crores.

II Specific Suggestions on Draft Reports:

1. **REGISTRATION** (Pages 03 to 09)
2. **REFUNDS** (Pages 10 to 14)
3. **PAYMENTS** (Pages 15 to 16)
4. **RETURNS** (Pages 17 to 23)
5. **OECD Guidelines** (Page 23)

1. REGISTRATION

1.1 Registration of Existing Dealers

Before making automatic allotment of GSTIN to existing dealers (under the State VAT laws) and service providers (under the Service Tax Law), it would be necessary to find out whether all such dealers/persons are really in existence.

Further those holding multiple registration whether within a State or in different States – whether they would like to continue their registration/s in that particular State or all the States, etc.

Existing service providers having multiple offices but centralized registration at one place – whether they will need separate registration for all other States? If yes then what will be the procedure?

1.2 New Dealers' Registration

The draft report indicates that for all the dealers it will be e-registration wherein the application has to be made to one specified authority. But there will be two different authorities for approval. Both these authorities will have separate powers of approval and/or rejection. Sir, it may create lot of confusion which must be avoided. We suggest that there should be only one authority (appointed jointly by all the States and the Centre) to entertain and approve/reject applications for new registration (whether it is single registration or multiple registrations).

The draft report further indicates that a dealer crossing the prescribed threshold will have to apply for registration within 30 days from the date of liability. That is fine. The existing laws have similar provision. But the draft report further suggests that registration will be granted from the date of application. It seems to be unfair. When the applicant has applied within prescribed time, registration has to be granted from the date of liability (i.e. the date on which turnover exceeds the prescribed threshold).

Further, in case of delayed applications, there should be a provision for condoning the delay in certain given circumstances. In all such cases, it should be ensured that the registration is granted from the date of liability.

There is an indication in the Report that although the registration will be granted within 3/7 days of receipt of online application, the applicant will be required to submit physical copy of documents within 30 days. And if such documents are not submitted in time i.e. within 30/60 days, the registration so granted shall be cancelled.

It may create lot of problems. First of all there should be no necessity for physical submission of documents post registration. Kindly consider that the registering authority is approving application after duly verifying the scanned copy of uploaded documents. Once that is done to the satisfaction of respected authority why there is a need of physical submission thereafter? Whatever is needed that should be taken before granting registration. The registration once granted should not be cancelled for such petty matters (unless it is a case of fraudulent registration).

We feel there is no need of any such temporary registration number which is liable for cancellation within 30/60 days. The registering authority must ensure that the registration numbers are granted only after due verification whether within one day, three days, seven days or more.

The registration granted to any dealer/person should not be cancelled with any ulterior date (under any circumstances).

[The registering authority needs to appreciate that a dealer, holding registration number, is entitled to collect tax from its customers. And a customer holding Tax Invoice (issued by such a vendor) is entitled to claim input tax credit of tax paid to such a vendor (in a B2B transaction). And even if it is sale/service to a consumer then also the interest of purchaser of goods/service recipient needs to be protected. While framing the law on GST it must be kept in mind that the GST is a consumption based tax and the consumer is the ultimate tax payer.]

1.3 Threshold limit for Registration

Although the threshold for compulsory registration is yet to be decided, the Report indicates that irrespective of such a limit, the turnover for the purposes of registration will include taxable supplies as well as exempt supplies. If the present proposal is accepted then it would mean all those persons, having turnover of exclusively exempted supplies, will have to take registration. It will unnecessarily burden the tax administration without augmenting any revenue to the Government.

It is suggested that only the taxable supplies should be considered for the purposes of threshold turnover for registration.

1.4 Threshold limit in case of Inter-state supplies

The Report has proposed that in case of inter-state supply of goods or services, the threshold shall be Zero. That would mean that even a single transaction of interstate supply will trigger liability to get registration. Kindly think of a situation where a service provider, who never had annual turnover exceeding Rs 10 lacs and not likely to cross the prescribed limit of threshold turnover during the year, undertakes a transaction of providing service of just Rs. 1000/- which falls in the category of inter-state supply then, as per the proposed process, he will have to obtain registration for GST. He will have to file regular returns and comply with all the provisions of GST Law. The question is why? What is the objective?

We would like to suggest that such a proposal does not fit in the overall frame work of GST, particularly with reference to IGST. We feel that if this proposal of 'Zero threshold' has come up under the influence of section 6 and 7 of present CST Act, 1956, it needs reconsideration.

It is suggested that there should be only one threshold applicable to all the dealers throughout the country. And only those dealers should be liable for compulsory registration whose turnover of taxable supplies crosses such limit of prescribed threshold.

1.5 Voluntary Registration

The facility of voluntary registration, as available at present, should continue as it is. It should be clarified that in case of application for Voluntary Registration the registration will be granted from the date of application.

1.6 Multiple Registration within a State for Business Verticals

The Report has proposed to grant multiple registrations to the same entity, within a State, for different business verticals. But, it has also proposed that the input tax credit of one vertical will not be allowed to be set off with other vertical/s. That would mean that the same assessee having credit in one account cannot utilize the same against liability to pay in another account. And considering proposals given in other Reports, it would also mean that while he cannot claim refund of credit in one a/c, it has to be c/f only, he may be subjected to all kinds of recovery proceedings, interest and penalties, etc., for his liability to pay in the other a/c?

In this respect the Report on 'Registration Process' has stated that 'Final view needs to be taken by the GST Law drafting Committee'.

May we suggest that all the Committees may have a joint meeting so all the issues can be sorted out at once.

1.7 Su-motto Cancellation of Registration & GST Compliance Rating

The Report has proposed that the tax authorities can Su-motto cancel registration of any dealer who has failed to file return for a prescribed period. And such a cancellation may be from the date of default?

The Report has also proposed to adopt a system of compliance rating of dealers whereby a dealer can be blacklisted in given circumstances such as non filing or late filing of returns, non-payment or late payment of taxes, non furnishing of certain information in time, etc.

Whether the certificate of such a dealer is Su-motto cancelled or such dealer is put into the 'Black List', its impact would be that all those dealers who have purchased goods from such a dealer cannot claim input tax credit, and, if claimed the same has to be reversed. If that purchasing dealer does not reverse the input tax credit on goods purchased from such a 'black listed' dealer then that purchasing dealer will be 'black listed'. Thus, all those dealers who are genuinely carrying on their business, paying their taxes in time and sincerely complying with all the requirements of Law will be either 'black listed' or their registration will be cancelled. The chain effect of this process would be that for default of just one dealer all other dealers across the country may have to suffer.

1.8 Non-resident dealers

Under the existing VAT Laws of various States there is a concept of non-resident dealer. These dealers are those persons who do not have any particular place of business in that State but they are having their permanent place of business in any other State. Such dealers are granted registration in that State on the basis of documents of permanent place of business in the other State.

In the GST law, it has been proposed to allot GSTIN on the basis of Permanent Account Number (PAN). Thus, once a person is registered for GST in one State, the registering authority will have all required documents/data in its possession. It would, therefore be easier for the registering authority to grant on the spot registration number for any other State if so desired by such a registered person (without asking for any further documents).

It should be ensured that a non-resident dealer will have the same rights and duties as a resident dealer of that State. There should be no differentiation on the basis of resident or non-resident of a particular State. Ultimately the person is a bona fide resident of India whose particulars are duly registered /available with the registering authority.

1.9 Undue Burden on Service Providers

- a) Separate registration of service providers in each State where they conduct business is neither necessary nor would it serve any meaningful purpose. For determination of GST liability all that is required is a state-wise segregation and tracking of sales/supplies and purchases/inputs, which could then all be reported on a single tax return of a taxpayer, filed under a single registration number. This information could then be sent to the relevant States and the Centre for verification and enforcement. Instead, it is proposed that taxpayers have a separate registration number for each State and file a separate tax return for each registration number.

For all practical purposes, each service provider would be cut up into multiple entities, equal to the number of State registrations. It appears that no pooling would be allowed of negative and positive tax balances, credits, payments and refund entitlements under different registration numbers of the same legal entity. Amounts owed under one registration number could be subject to interest and penalty even if the taxpayer is entitled to credits/refunds under another registration number. Such wasteful multiple reporting/filing requirements would not be conducive to improving India's ranking for ease of doing business, in the country.

- b) Under the present Service tax law, the system of centralized registration & set off of ITC, has been working very well particularly in case of large service providers having operations through multiple locations across the country. Substantial portion of service tax is presently being collected through this Mechanism. This is also facilitating Audit & Enforcement by Revenue Authorities.

Under this prevailing scenario, the proposal for all service providers to have State wise registration, is likely to create significant compliance difficulties for tax payers and also make the task of revenue authorities to audit & enforce much more complex without any benefits being derived.

- c) Provisions, relating to State wise registration by tax payers, needs a serious reconsideration. It is further suggested that government should appoint an Expert Committee to provide viable solutions in regard to the issue of multiple registrations and multiple compliances particularly in case of Service Providers.

1.10 No ITC without Registration

- a) As per the Draft Report, it appears that, no ITC would be available during the period for which a tax payer is not registered.

It is a very commonly found feature under the present Central Excise / Service tax law to the effect that, where no excise duty / service tax is paid at the output stage based on legal interpretation or advise as to applicability of exemption or otherwise, obviously no ITC can be availed in such cases on duties / taxes paid on inputs / input services.

However, it is possible that, at a future point of time duty / tax can become payable based on judicial pronouncements. In such cases, it has been a settled position under Central Excise / Service tax to the effect that, subject to documentary evidences, ITC can be claimed as set off against duty / tax payable. It appears that, this may not be possible under the GST Regime.

- b) Suitable provisions need to be made under GST Regime whereby, in appropriate cases, ITC is available for the non – registration period to a tax payer where duty / tax becomes payable at a future point of time upon judicial pronouncements or for any other reason.

1.11 Other Issues:

Registration form should provide optional field to incorporate alternative email id and mobile number:

Registration form designed for GST has space to provide only one email address and one mobile number. (Refer Para 6.5)

It is suggested that field for one more alternative email address and mobile number also to be allowed that will avoid non-receipt of mails or messages if the person looking after GST compliances is on leave, or change of mobile number etc.

Complications due to issuance of registration by both Union and State authorities:

In case of rejection of registration application by Union or State authority (any one) or simultaneous rejection by State and Central authorities, if the assessee wishes to file appeal against the rejection. It is not clear which appellate authority (State or Center) the tax payer should file appeal. (Refer Para 6.8 & 6.9)

We most humbly submit for your kind consideration that GST system will not work if there is deficit of faith. The Union and State Governments should have faith on each other's officials. The work like registration should be entrusted to any one authority either State or Union.

Display of registration certificate at principal place of business:

An outdated requirement to display registration certificate at principal place seems proposed to be incorporated under the GST law (Refer Para 6.11)

In the age of online filing and digital technology these outdated provisions lost its significance, therefore, should be dropped. Instead the GST portal should have facility available to the citizens to check whether any person who is collecting GST is registered or not.

2. **REFUNDS**

2.1 **No automatic refund of excess ITC**

A major drawback of the proposed business processes is the reluctance of the tax authorities to grant prompt and automatic refund of excess ITC. Under the GST, excess ITC may arise to exporters who collect no tax on export turnover, new/start-up businesses which make substantial capital outlays before commencement of production or seasonal businesses for build-up of inventory. Most advanced tax jurisdictions across the world design their GST processes so that input taxes do not compound the funding requirements for new projects or expansions. For example, payment of taxes on imports is deferred by a few days to coincide with the time of filing of tax returns when the tax can be claimed as input credit, resulting in no net tax outflow. Small and Medium-sized Enterprises (SME) are allowed quarterly filing of tax returns, which provides them an interest-free tax float, reducing their working capital requirements.

The proposed business processes under GST appear to be to the contrary. To illustrate:

- it is proposed that no refund be allowed of excess ITC for purchase of inventory and capital goods. Such an amount can only be carried forward to future tax periods.
- even where refunds are to be allowed (for example in case of exports), they would not be automatic, but require explicit approval of each of the respective authorities, who would have up to 90 days to grant the same. [Need for manual approval, once the Credit claims are already verified through automated cross matching, is uncalled for.]
- if the refund is unduly delayed, the taxpayer would be entitled to a meagre interest of six per cent, and that also only when the refund is eventually processed. Contrast this with the interest on overdue taxes, which could be 18 per cent or more. (30% pa in case of delay payment of Service tax beyond 1 year)

The proposed business processes do not provide much comfort & assurance to businesses that their legitimate GST refunds would be granted without hassles and delays. The businesses worst affected by these inefficiencies would be the start-ups, those undertaking major expansions, and in particular the SME Sector which is always short of working capital.

2.2 Unjust Enrichment

- (a) It appears that the complex concept of “unjust enrichment” by tax authorities is likely to be continued under the GST Regime. Practical experience of the said provisions shows that, in most cases, it is used by tax department to deny legitimate refunds to tax payers. Thereby causing undue hardships

It is suggested that, the concept of unjust enrichment should be done away under GST Regime, with appropriate revenue safeguards. Alternatively, detailed guidelines should be provided in GST Legislation itself so as to prevent misuse by tax department to deny legitimate refunds to tax payers.

- (b) Requirement of CA Certificate for Unjust Enrichment by Dealers

The report suggests that CA certificate be obtained certifying the fact of GST burden has not been passed on.

We would like to recommend that as Indirect Tax laws have already come out of the old ‘Inspector Era’ and moved towards a ‘trust worthy regime’. Most of the responsibilities have now been assigned to the assessee on a self- assessment basis. The practice of self-certification needs to be encouraged along with appropriate penal provision.

2.3 Refund arising out of Appellate Authority’s Order

As per the process recommended, in case of a refund arising out of appellate authority’s order an application with a certificate from a CA to be filed. This will leave some subjective decision making with the tax authorities against whom the appellate order has ruled. (Para 2.0 (D))

We request you to kindly consider that the tax payers pass through the unwarranted litigation costing him enormous time and energy because of an untenable tax positions adopted by tax authority. In such a scenario, the deposited tax amount should be refunded immediately. It can be achieved by releasing a time bound online credit note issued by the appellate authority and making a mention of its reference number on the face of the order. In case a superior authority does not stay this refund, payment should get activated within 90 days.

Courts should also be given access to GSTN for enabling credits for the orders pronounced by them.

2.4 Scrutiny of refund documents by jurisdictional tax authorities

In all cases, the Refund applications are recommended to be filed with the tax authorities and it is supposed to be scrutinized by and granted by the jurisdictional tax authority. This will be quite subjective and leave space for corruption.

It is recommended that the Refund module should be handled by independent agency i.e. GSTN and only post audit role should be given to state government and central government officers. Time limit should also be fixed for the audit and audit trail should be maintained in GSTN itself.

2.5 Carry Forward of Excess payment made

It has been provided that the automatic carry forward would be allowed if the excess payment was made against a return and not against any other liability. (Para 2.0(A)(vi))

It is suggested that this facility should be available to other refund categories as well as an option, except in case of litigation where the decision is pronounced by an appellate authority with credit note reference number.

2.6 Deemed Export of Goods or Services

The Report has recommended that deemed export supplies i.e. supplies to EOUs, SEZs. / ICB Projects, Mega Power Projects would be treated differently than the direct Exports. This would mean that supplier will pay IGST and claim refund leading to working capital block. (Para 2.0 (B) Page 11)

It is suggested that 'deemed export' should also be treated as 'direct export' and suppliers should not be required to make IGST payment for just to claim refund. It may not serve any useful purpose.

2.7 Tax credit of inputs used for manufacturing etc of tax free/non GST supplies

- Non allowance of refunds means the final supplier bear the burden of accumulated GST if the consumer is exempt from GST. One of the biggest consumers may be Governments in like infrastructure projects, power plants etc. In most cases the standard contracts are of all inclusive nature.
- All such contracts will be required to be re-negotiated as varied practices are followed, e.g., in case of highway projects, service tax law gives exemption which is applicable up to the lowest level of works contract service providers. However, most state laws do not grant any such exemption.
- It is desirable that such projects being of immense national importance hence exemption, if granted, it should be zero rated and refund of input tax credit is allowed as in case of exporters, EOU, SEZ, UN supplier etc. This is the practice in most GST /VAT regime followed worldwide.
- In case refund is not to be granted a reasonable window period should be allowed for re-negotiation. In Singapore, Malaysia etc., five years window period is allowed during which it is zero rated and all credits allowed in form of refunds.

2.8 Time Limit for making Application for Refund

Normally time limit for passing assessment orders, in tax laws is kept at two years from the end of Financial Year, we would like to suggest that the time limit for making application for refund be kept at two years from the end of financial year or two years from the date of event occasioning refund, whichever is later.

Further, a provision may be incorporated in the GST law itself, empowering senior level tax refund authority, for condonation of delay in genuine cases.

2.9 Interest on Refunds

There should not be wide disparity of rate of interest (18% - 6% as suggested in Para 14.2). In all fairness, interest payable by the tax payer on the dues and payable by the Government on refunds should be the same. This would bring under control the tendency of not giving refund in time.

2.10 Following situations where refund may arise (need to be addressed)

- Refund of GST paid “under protest” due to wrong demand raised.
- Refund as per judicial order
- Refund due to retrospective amendment
- Refund to the buyer who has suffered burden of tax which is not required to be collected from him
- Refund arising due to change in the quantum of Input tax Credit (ITC)
- Refund arising due to reduction in the Turnover due to assessment
- Refund arising to legal heir/executor
- Any other Contingencies

3. PAYMENTS

3.1 Challan Period

Although the suggested challan form, for payment of taxes, seems to be quite satisfactory, we feel it need to have a column for 'challan period'. At present payment of VAT/CST in all States is with reference to a period. Not mentioning a challan period may be a cause of concern for various purposes.

A reference to other Reports on GST business processes also reveal that mentioning of period in a challan may be necessary. It is suggested, therefore, to consider all relevant aspects before designing the final format of payment challan.

3.2 Correction Mechanism

The Report has suggested that no correction mechanism is required. But, kindly consider the situations where;

- (a) Tax is deposited in a different GSTIN – the situation is likely to arise in all those cases where electronic payment is routed through the account of someone else than the tax payer himself, and, also in cases of group companies where one person is in charge for making electronic payment of taxes of all companies/units in the Group having different GSTIN.
- (b) Amount is mentioned in a different tax head than the required one – this situation may arise in any such challan having multiple fields for different types of taxes.

In all such situations, it is necessary to provide for a suitable correction mechanism so as to give appropriate credit to the tax payers.

3.3 Period of bar from OCT Payment Facility

The Report has been proposed that Tax payers whose cheques are bounced will be barred from using the OTC mode of payment. (Refer Para 52)

Specification regarding the duration of such penalty needs to be provided in the report.

3.4 Period of bar from NEFT / RTGS facility

The Report has proposed that Tax payers using NEFT/RTGS mode of payment beyond the validity period of CPIN more than two times will be barred from using this mode of payment. (Refer Para 53)

Specification regarding the duration of such penalty needs to be provided in the report.

3.5 Restricted use of DEPB/SEIS Scrip

The has also proposed that Payments made by Book Adjustment in case of Government Departments or Payments made by Debit to Export Scrip will not be allowed(Refer Para 9).

Currently DEPB/SEIS scrips are adjusted against various duty payments. It appears that now applying the above proposed provision, they can only be utilized against non GST payments such as customs duty. This may restrict the benefit conferred to license holders. Therefore, Report should also address the status of license holders under GST under transitional provisions.

4. RETURNS

4.1 **Some Key observations on proposed Business Process for GST Returns:**

- Filing of monthly returns and providing invoice level details for B2B supplies would mean that compliances for trade, industry and the service sector would increase substantially. This would require handling voluminous data and strong IT systems for all level of organizations whether big or small. The proposed return process appears quite complicated which will require dedicated trend personals and will substantially increase cost of compliance.
- The return filing formalities are proposed to be increased, both in terms of periodicity and number of forms. For example, a service taxpayer, covered by the Service tax law, is currently required to file only two half yearly return. Similarly most of the dealers, covered by various State VAT laws, require to file two six monthly returns. Only a few needs to file quarterly or monthly returns. For all the dealers/ assesseees, and particularly for services tax payers, the burden will increase manifold in terms of periodicity of returns, number of return formats, multiple compliances for separate registrations and levels of details that are required to be filled in. As per the proposal, different forms will have to be filed on a monthly basis -forms have to be filed for details of outward supplies, inward supplies on different dates and a monthly consolidated form. In addition, an annual return will also need to be filed.
- GST Regime will not permit any revision of GST returns, which may create some challenges for taxpayers. Currently, both Service tax and VAT laws permit revision of the tax returns that have been filed.
- Filing of returns will be required by all registered taxpayers even if there has been no business activity during the period covered by the return.

Suggestion:

In order to advance the cause of “ease of doing business”, provisions of filing monthly returns, need to be restricted only to very large tax payers whose annual turnover exceeds a specified amount (say Rs. 100 Crores), or based upon the liability to pay tax (net payment) say more than Rupees one crore per annum.

4.2 Services to Government bodies, PSUs etc. to be treated as B2B supply

a) **Issue:**

Para 2.0 (9) of the report on registration processes under GST suggests that supplies to Govt. bodies and PSUs will be treated as B2B whereas contrary to that the report on Returns in Para 1.9 suggests it will be treated as B2C supply. Many of the Government of India contracts under which services are required to be provided at various locations spread across the country however the contract value remains one and to be invoiced to the head office of said Government organization. If such services are treated as B2C supply then value of services provided in each State need to be identified which will be difficult and subjective hence will lead to litigation and tax demands from various States on same transaction. (Refer Para 1.9)

b) **Recommendation:**

In the line with UN agencies, to bring parity and equality amongst all States supplies to all State Government/Central Government departments and PSUs which are not providing taxable output service should be treated as B2B supply and further made eligible for full refund of SGST/CGST/IGST paid by them on procurement of such services.

4.3 Input Credits on supplies received from a supplier who is Non/short payer:

a) **Issue:**

The report suggests that any tax payer is allowed to file return without payment of tax or with part payment of tax however said return will be treated as invalid return and thereby input credit to the purchasers of said tax payer will be denied (Refer Para 2.1)

b) **Recommendation:**

GST tax system should be based on equity and justice. Treating return invalid of short payer or non-payer is punishment without fault to the honest purchaser who has in good faith purchased goods and services against a Tax Invoice and paid taxes to the supplier. It is function and duty of the tax administrators to chase such short payers/non-payers. Instead of chasing the non-payer the Report suggest the returns will be declared as invalid and thereby the honest tax payers is deprived of the credit. Hence it is

recommended that once returns are filed by the supplier who has reflected supply to the purchaser, irrespective whether the taxes are fully paid or otherwise the returns filed should be treated as valid returns and input credits to the clients of said supplier should be available without any restriction.

4.4 **Complex compliance process, lengthy returns, stiff timelines.**

a) **Issue:**

According to the report any normal tax payer (excluding composition dealers) requires to file 5 forms every month, and in addition one annual return and annexure/s. One glance through the below given table shows huge compliance requirements for every tax payers. These compliances are to be carried out for every State and each month.

Date of the Month	Activity	Relevant Return Form
By 10th of every month	Preparation and filing of output return and TDS return	GSTR-1, GSTR-7
on 11th of every month	Auto population of details in dealer's ledger maintained on GSTN based on GSTR-1 & 7	GSTN Website
From 12th to 15	Addition/Deletion of invoices in GSTR-1	GSTN Website
On 15th	preparation and filing of inward supply return & ISD return	GSTR-2, GSTR-6
16th and 17 th	Adjustments to be carried out	GSTR-1, GSTR-7, GSTR-2, GSTR-6
On 17th	filing of inward supply return	GSTR-2
On 20th	preparation and filing of monthly return	GSTR-3
	Payment of Taxes in banks	Challans
1st to 9th and 21st to 31 st	Chasing all vendors to upload details on GSTN to avail input credits for purchases made.	

➤ There is contradiction in Para 2.1 and Para 3.2.3 of the report on date of filing for GSTR-2

It seems while drafting the return processes the main objectives of implementation of GST such as removal of complexity, ease of doing business, reduction in compliance cost etc. seems to have been completely ignored. The organizations operating in multiple States will

be required to do all the above compliances separately for each of the State this will put huge compliance cost on the tax payers. The service organization currently complying by obtaining single registration at one place in India or centralized registration will be worst hit as they will be required to put additional resources.

b) **Recommendation:**

It is recommended that the policy makers should bring international best practices in this regard and accordingly completely review and revamp the proposed return process. The returns should be short & simple returns and provide adequate time to comply.

4.5 **Domestic Reverse Charge, Partial Reverse Charge and Tax deduction at Source**

a) **Issue:**

According to the Report the tax payer is required to report taxes payable under reverse charge basis on transactions with unregistered suppliers and certain categories of registered suppliers. There is indication that the partial reverse charge on domestic transactions will also continue to be charged. Further, the tax deduction at source for certain type of supply will be made mandatory. These provisions make the tax system so complex to comply as well as to administer. It is against International best practices adopted by the countries who have successfully implemented VAT (GST) system. It must be pertinent to note that as part of indirect tax reform when VAT was implemented by the States they have removed provisions related to purchase tax. In certain States, VAT laws are having tax deduction at source provisions, but the same are limited to works contracts transactions. And the Central Excise and Service Tax law does not require any TDS.

The suggestion for TDS, in GST, is a regressive kind of provision which will remove simplicity and effectiveness of the tax system. It will put excessive compliance burden and hardly of any augmentation to the revenue. (Refer Para 2.1 and all return forms)

b) **Recommendation:**

With extensive adaptation of technology and use of IT platform there is hardly any necessity of provision like tax deduction or reverse charge. Therefore, it is recommended to keep the GST system simple. Tax need to be applied only on providers of goods /service and required to be paid only by the provider (only exception to be made for imports from outside the country). It will reduce substantial implementation, compliance, administration and litigation cost for the tax payers and tax administration also.

4.6 **HSN accounting Codes and past year data**

a) **Issue:**

According to the report all tax payers having turnover above Rs. 5 crore will be required to fill in details of HSN code for goods supplied and accounting codes for the services provided/received. Further the assessee will be required to fill in details of turnover of the previous year for each of the code. Currently, except importers and manufacturers all other tax payers are not required to use HSN codes and keeping data according to codes. It will be difficult for most of the tax payers to comply with these requirements. Further differences in codes applied by supplier and purchaser due to interpretation are bound to be there which will eventually lead to litigation with tax authorities.

b) **Recommendation:**

Under GST system it is expected that the rates of taxes would be very limited therefore classification of goods and services in every return according HSN code/accounting code wise is uncalled for. If it is required just for statistical purpose then it should be made applicable to annual returns. However, if there is any mismatch in the codes used by buyer and seller that should not be treated as incorrect submission leading to rejection of returns or credits. Further, the suggested requirement to provide past year's data should be dropped.

4.7 Treatment to VAT/Service Tax paid on credit/debit notes issued/received under GST period

a) **Issue:**

GSTR-1 and GSTR-2 provides for reflecting impact of the debit or credit notes issued/received during the tax period. The Report mainly dealing with the debit notes/credit notes carrying GST however there is no clarity on reporting for the debit or credit notes for goods/services provided prior to GST implementation and carrying VAT/Service Tax.

b) **Recommendation:**

The debit/credit notes for the past period carrying VAT/Service Tax should be allowed to be adjusted against the SGST and CGST liability under the GST period.

4.8 Payment of interest and penalties by using input credits

a) **Issue:**

According to the report under the GSTN the effect of interest/penalties/fee will be given as debit to the cash register of the dealer maintained on the GSTN. In other words it means the payment of interest/penalties/fees will be required to be made in cash and not allowed to be debited through input credits register.

b) **Recommendation**

If any tax payer is carrying input credit balance there is no logic to ask him to pay the interest and penalties in cash and seek refund of the excess credit. GST law should provide appropriate provisions to use such excess credits of SGST/CGST towards payment of interest and penalties levied by respective State and Union authorities.

4.9 Revised Return

a) **Issue:**

According to the report there is no provision to file revised return.

b) **Recommendation**

Sometime tax payer fails to compute taxes correctly. There can be various reasons for such errors however when he realizes the mistake there should be

opportunity to him to correct the mistake committed. The report suggests any amendment to the past periods can be carried out in the current returns therefore the revision of past return is not required. It need to be clarified that any reporting for correction in subsequent returns should be construed as sufficient disclosure and should not be treated as an offence to levy penalties accordingly, appropriate provisions to be incorporated under the GST regulations.

5. **SUGGESTION**

OECD Guidelines

Recently, OECD has published 'International VAT/GST Guidelines'. It has suggested that VAT/GST systems should be based on following principles.

- Tax should be neutral to the business.
- Compliance should be kept as simple as possible
- Clarity and certainty are provided for both i.e. businesses and tax administration
- Cost of compliance to the business and administration to the tax agency should be minimal and
- Robust barriers to be placed to minimize evasion and avoidance of tax

It is recommended that, while drafting the GST Legislations and Rules & Procedures there under, the OECD guidelines should be considered, to the extent relevant & applicable.