



Bombay Chartered Accountants' Society

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By email

Date: 15th July 2018

Mr. Upender Gupta
Commissioner GST,
Department of Revenue, Government of India
GST Policy Wing, North Block
New Delhi

Respected Sir

Sub: Recommendations on the Proposed Draft Amendments in the GST Act.

We have read with detail the draft of the 46 amendments proposed to be carried out in the GST Act and are happy to note that many of the said amendments are in the right direction. However, we believe that a few amendments (notably, those proposed at Sr. 29 & 30 dealing with the manner of cross-utilisation of credits and at Sr.37 dealing with denial of transition credit for accumulated balances of cess) could be avoided since they conflict with the basic philosophy of free flow of credits. We also would like to highlight that in certain amendments, there are certain further recommendations from our side, which we have tried to incorporate in a tabular format.

The following table refers to the proposed amendments and our recommendations on each such proposed amendment in brief with a detailed reasoning for the recommendation if any.

Sr.	Section	Recommendation in Brief	Detailed Recommendation
CGST ACT			
1.	2(4)	The amendment is fine	
2	2(17)(h)	The amendment is fine.	Sub Clause (c) reads as under

		Also consider deletion of sub clause (c)	<p><i>(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;”</i></p> <p>It may be noted that this sub-clause refers to sub clause (a), which reads as follows:-</p> <p><i>“(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;”</i></p> <p>A combined reading of both, together, goes against the basic concept of ‘business’. This may lead to prolonged litigations and undue harassment of innocent assesses</p>
3	2(35)	The amendment is fine	
4	2(69)	The amendment is fine	
5	2(69)	The amendment is fine Also consider certain further amendments	<p>Through the amendment, it should be further clarified that activity of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall be treated as transactions in money and not be considered as ‘service’.</p> <p>Similarly giving away ‘money’ as gift or donation shall also not be considered as ‘service’ for the purposes of this Act.</p>
6	7	The amendment is fine Consider amendment in sub clause (b)	<p>Clause (b) of sub-section (1) may need amendment as under:</p> <p><i>“(b) import of services for a consideration whether or not in the course or furtherance of business;”</i></p> <p>Alternatively suitable amendments may be carried out in Section 9 to safeguard situations of import of services by individuals and non business entities from the imposition of GST.</p>

7	Sch. I	The amendment is fine	However, do consider the amendment mentioned above
8	Sch, III	The amendment is fine	
9	Sch. III	The amendment is fine Also consider amendment of entry 5	<p>There is a lot of confusion in the real estate sector about taxability of transactions such as transfer of Development Rights, Transferrable Development Rights (TDR), Transfer of Under Construction Flats by one flat buyer to another, etc. Varied opinions are being given on the subject matter that such transactions though are considered as transaction in immovable property and exempt under Service Tax law or VAT law, the same are not exempt under GST law as under the GST law the exemption is provided only to sale of bare land and completed building.</p> <p>Thus, if the builder purchases a TDR for extra FSI for the building, such TDR would have suffered GST. Now if the builder sells the flats after receiving the completion certification, the entire GST paid on inputs including TDR will become a cost as the sale of flats after the building is complete becomes and exempted sales. Thus, indirectly, the builders will increase the cost of the flats to absorb the cost of the lost ITC.</p> <p>Thus, instead of decrease in prices in real estate sector, the prices will go up which is also against the policy of the Government to provide affordable housing to all.</p> <p>It is suggested, under GST also exemption should be granted to the transaction in immovable property and not merely to sale of land and completed building. This will bring in stability in the Real Estate sector and also decrease the cost of flat at the hands of flat purchasers.</p>
10	9(4)	The amendment is fine	

11	10(1) & 10(2)	The amendment is fine	
12	12(2)	The amendment is fine Also consider further amendment	Post October 2017 clause (b) of sub-section (2) of section 12 taxing advances on supply of goods has been made not applicable. However, no corresponding legislative amendment is made. It is recommended that the said subsection be deleted
13	13(2)	The amendment is fine Also consider further amendment	It is recommended that the tax on advances on services be deleted and parity be brought between goods and services.
14	16(2)(b)	The amendment is fine Also consider further amendments	Since services are intangible and instantly consumed, it may be provided that the receipt of service by a service recipient is simultaneous to the time of supply in the hands of the service provider. It is further recommended that the insistence on matching should be done away with and the recipient of supply should not be penalised for the non payment of tax by the supplier
15	16(2) second proviso	The amendment is fine	It is further recommended that exceptions be provided for retention amounts / longer credit periods/ milestone-based payments if a written contract is entered into.
16	17(3)	The amendment is fine	It is further recommended that as a trade facilitation measure, it be provided that the provisions of Section 17(2) and 17(3) will not apply where the value of exempted supply is less than 5% of the aggregate turnover. While this will not result in major revenue loss, it will result in a substantial simplification where the proportion of exempted supplies is minimal
17	17(5)	The amendment is fine	Clarification may be given the Clause (aa) shall not apply in respect of the re-insurance services available by the General Insurance Company.
18	20 Explanation (c)	The amendment is fine	

19	22 Explanation	The amendment is fine Also consider defining the phrase “from where he makes a taxable supply”	The words ‘ <i>from where he makes a taxable supply of goods or services or both</i> ’ need appropriate clarification as different authorities of Central and States are taking different view leading to un-necessary confusion
20	24(x)	The amendment is fine	
21	25(2)	The amendment is fine	
22	29(1)	The amendment is fine	
23	29(2)	The amendment is fine	
24	34(1) & 34(3)	The amendment is fine	
25	35(5)	The amendment is fine	We would like to reiterate that to start with the Government should prescribe a simple annual return and audit report. A separate representation in this regard has already been sent.
26	39(9)	The amendment is fine	This is a welcome measure and should be given retrospective effect. Suitable changes in the systems may also be required to give effect to this amendment
27	43A		We await the detailed guidelines and the procedures for the filing of the returns and would like to provide our further inputs on the publication of draft rules and processes in this regard
28	48	The amendment is fine	
29	49(5)(c) & (d)	The proposed amendment should be dropped.	Tax payers are facing hurdles in cases where disputed credits (Service tax/ Excise credits transitioned to CGST credit ledger) are required to be blocked, and where there is a substantial liability under IGST Act and credit available under CGST and SGST Act. The tax payer will be forced to pay IGST liability in cash despite

			having credit of SGST only because he has been required to block the disputed credit (refer Circular No. 33/07/2018-GST F. No. 267/67/2017-CX.8) Therefore, this proposal should be dropped in toto else it will cause undue hardship.
30	49(5A)	The proposed amendment should be dropped	The current law providing for a manner of utilisation of credit is fairly robust and serves the interest of all the stakeholders. There is no need to provide a room for discretion or alteration in this fundamental concept
31	54 Explanation (2)(e)	The amendment is fine	
32	54(8)(a)	The amendment is fine	
33	54 Explanation 2(c)(i)	The amendment is fine	
34	79(1)	The amendment is fine	
35	107(6)	The amendment is fine	
36	112(8)	The amendment is fine	
37	140(1)	The proposed amendment should be dropped	A retrospective/retroactive amendment to deny the transition of certain credits would result I undue hardships on the tax payers
38	143(1)	The amendment is fine	
IGST ACT			
39	2(6)(iv)	The amendment is fine	
40	2(16)	The amendment is fine	
41	12(8)	The amendment is fine	Please also consider amendment in the definition of export of services to permit the

			realisation in Indian currency so as to enable zero rating for such transactions
42	Proviso to 13(3)(a)	The amendment is fine	
43	17(1)	The amendment is fine	
44	17(2)	The amendment is fine	
GST (Compensation to States) Act			
45	10(3A)	The amendment is fine	
46	7(4)(b)(ii)	The amendment is fine	

In addition to the above proposed amendments, we believe that there are certain pressing issues facing the industry which also require immediate attention and legislative amendment. We shall send you a separate comprehensive representation on all such issues in due course.

In the meantime, we request you to kindly consider our representations made above favourably and oblige. If need be, we would be more than happy to meet you in person to discuss the above recommendations

Thanking You

Yours truly,

CA. Sunil Gabhawalla
President,
Bombay Chartered Accountants' Society

CA. Deepak Shah
Chairman,
Indirect Taxation Committee