Celebrating 50 Golden Jubilee of RRC

Bombay Chartered Accountants' Society

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29th August 2016

To

Shri Arun Jaitley
The Finance Minister
Government of India
134/North Block
New Delhi – 110 001

Respected Sirs,

Sub: **Representation on Model GST Law**

This is with reference to draft Model GST Law released by the Empowered Committee and 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 and suggestions of our members.

May we request your good selves to kindly consider the same appropriately while preparing the final Model GST Law and related business processes on proposed Goods and Services Tax (GST).

Yours sincerely,

For Bombay Chartered Accountants' Society

Chetan Shah

Chetan M Shah
President

Govind G Goyal
Chairman
Indirect Taxation Committee

Copy to:

- Shri Amit Mitra, The Chairman, Empowered Committee of State Finance Ministers
- Shri Satish Chandra, Member Secretary, Empowered Committee of State Finance Ministers, Delhi Secretariat
- Dr. Hasmukh Adhia, The Secretary, Department of Revenue (Ministry of Finance)
- Najib Shah, The Chairman, Central Board of Excise and Customs

Bombay Chartered Accountants' Society

Indirect Taxation Committee

Observations and Suggestions on

DRAFT MODEL GST LAW

Major Areas of Concern, which need to be addressed appropriately

1. The Draft Model GST Law, coupled with Reports on Business Processes under GST, has conveyed a very negative feeling among the trade and industries. The same needs to be addressed immediately (may be through a 2nd revised draft or so).
2. There is wide spread confusion about the uniformity of taxation across the country particularly regarding classification, valuation, exemptions and rates of tax.
3. There is an urgent need to dispel the fear of artificial disallowance of Input Tax Credit (ITC), through monthly matching concepts, etc., and, excessive compliance burden in the proposed GST regime.
4. Sanctity of 'Tax Invoice', issued by a registered dealer, and seamless Input Tax Credit are basic tenet of any successful Vat law. The same should be maintained.
5. It is also necessary to clarify how dual control by Central and States will be exercised over the same assessee in respect of same transaction liable to tax for CGST and SGST, or for IGST.
6. Small manufacturers, vendors and job workers, in small scale industries (SSI) and Cottage Industries, etc., are clueless about their future in the proposed GST regime. It may be noted that such units constitute a significantly large number of business population of India. Their genuine concerns need to be addressed satisfactorily before deciding about introduction of GST in the proposed format.
7. The proposed threshold of Rs. 10 lakh for compulsory registration is too low a limit. It may back fire. Considering various aspects of smooth transition it would be necessary to seriously reconsider the same. (An appropriate limit, in present conditions, may be Rs. 50 lakh of taxable supplies)
8. It would be necessary to design simple and convenient Composition Schemes for various categories of dealers and for certain specific types of businesses (may be on the lines of composition schemes designed in some of the State Vat laws and various other countries who have successfully implemented Vat/GST).
9. Being entirely new system of taxation across the country, it may not be possible for anyone to determine correct RNR at present. There are several factors, particularly in the present scenario of diverse system of indirect taxation by the Centre and States, and, organized as well as unorganized sectors of manufacture, trade and services, etc.

It would be necessary, therefore, that the rates of tax are decided in accordance with the acceptability of such rate/s by the ultimate consumers (who are the real tax payers).

10. The best policy in deciding rates of tax is that the Government should get adequate revenue, trade & industry should not have any burden and the consumers feel happy. To achieve this, it may be necessary to decide in advance (a) the list of exempted goods and services, (b) list of goods and services which deserve a merit rate, (c) list of goods and services which needs to be taxed at very low rate in the beginning (special merit rate) and (d) list of goods and services which can be taxed at fairly high rate. However, it should be ensured that all States apply the same rate on such commonly agreed lists of goods and services.
11. Taking clue from various sources, the general rate of GST @ 15% may be the most appropriate rate, with merit rate (5% to 8%), special merit rate @ 2% and higher rates (25% to 35%).
12. Various definitions, contained in section 2 of draft Model GST Act, need appropriate review and necessary modifications.
13. The terms like ‘supply’ in section 3 and Schedule-1, ‘nature of supply’ in section 2, ‘time of supply’ in section 12 &13, ‘value of supply’ in section 15 and ‘place of supply’ in various sections, need a thorough review.
14. The provisions like RCM, TDS and TCS have made the draft law much more cumbersome. Only those provisions need to be kept, which are necessary. The Reverse Charge Mechanism (RCM) should apply in respect of international transactions only.
15. One needs to look into whether such elaborate provisions of valuation are required in the proposed GST regime where tax is being levied till final stage of consumption. Ultimately tax cannot be levied at a price (value) more than what the consumer has paid to the supplier.
16. Procedural aspects have to be designed in such a manner that all assessees, all over India, are able to comply with the requirements well within time and without facing undue burden of time and money.
17. Appropriate transition provisions need to be spelled out clearly so there is no undue burden on the existing tax payers. Similarly taxation of continuing contracts may need to be clarified appropriately.
18. Interest of those units, presently enjoying exemption under various promotional schemes, needs to be protected.
19. Applicability of IGST on various types of transactions of supply of goods as well as services needs much more clarity.

20. Although, the Government has shown its intention to implement GST with effect from 1st April 2017, there is no harm if it is implemented from a later date. For smooth implementation of such a major reform, it is necessary that the final law is designed after considering all aspects. And sufficient time is given to trade, industry and the Government Departments to gear up for the new regime.

Our observations and suggestions on some of the important provisions are enclosed herewith for your kind consideration.

Bombay Chartered Accountants' Society

Indirect Taxation Committee

Observations and Suggestions on

DRAFT MODEL GST LAW

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Bombay Chartered Accountants' Society

GOODS AND SERVICES TAX

SUMMARY OF IMPORTANT REPRESENTATIONS

1. STRUCTURE OF GST

1.1. Currently, the role of the GST Council under Article 279A is merely "*recommendatory*" in nature. This could result in some States deviating from the model GST law or the substantive provisions therein. Since GST is an indirect tax ecosystem, with each constituent dependent on another for smooth implementation of the law, it is suggested that though the role of GST Council under **Article 279A** is merely "*recommendatory*" in nature, the Centre as well as the States respect all the recommendations made by the GST Council and do not deviate from the same.

1.2. One important reason for the implementation of GST is to bring about uniformity of taxation across the country. It is therefore strongly recommended that the exemptions, rate of tax, classification and all other rules should be uniform for all the States. It may be noted that any deviation by a particular State can result in tax arbitrage, distortion of business processes and increased business compliances. Further it would also complicate the operations of the GST Network and could derail the entire GST Mechanism in the country.

1.3. The Constitution as well as the model GST Laws provide for the notification of the effective date from which GST will be implemented. It is recommended that this effective date should be common for all the States and that GST should be implemented from the first date of any financial year. Further, it is recommended that sufficient time should be provided to the industry and the Department Officers to prepare for GST and therefore, all relevant information should be made available in public domain at earliest opportune time.

2. SUPPLY

2.1. **Section 3(1) and Schedule I** of the model GST Law provides for taxation of supplies whether they are made for a consideration or otherwise. This can result in many difficulties and unforeseen situations of tax liabilities. Essentially, free supplies of not only goods but also services will become taxable. For example, retail chains providing products under free scheme would be required to discharge GST. Similarly, a common citizen downloading free software from the internet and using websites like Google, Facebook, etc. will be exposed to GST. Volunteers and NGOs will also be required to discharge GST on activities carried out by them without any charge.

2.2. It is therefore recommended that supplies should be taxed only if there is a consideration. Supplies made without consideration, especially in the case of services, should not be taxed.

2.3. Further, if the intent is to tax branch transfers, only such branch transfer of goods should be deemed to be supply and the term should be clearly defined to include only goods transferred from a branch in one State to another branch in another State for the purposes of further manufacture or resale.

2.4. The proviso inserted in Schedule I excludes supplies to the job worker following procedure under Section 43A. As per **Section 43A**, there is requirement to obtain permission from the Commissioner for such exempt movement of goods on account of job work. Such requirement for permission would not only increase the process time but would also conflict with the core attribute of GST being system driven.

3. NATURE OF SUPPLY

3.1. Under the model GST Law, on a reading of the definition of 'goods' **u/s 2(48)** and 'services' **u/s 2(88)**, it appears that only supply of money and employment services are excluded from the scope of supply. This results in certain cases where the transaction is essentially of investment and not of consumption (like immoveable properties and securities) becoming liable for GST.

3.2. It is therefore recommended that supplies of immoveable properties and securities should be excluded from GST

4. TIME OF SUPPLY

4.1. **Sections 12 and 13** of the model GST Law provides for complicated provisions requiring discharge of GST at the earliest of 4-5 trigger points. This should be done away with, since the provisions relating to time of supply do not create a tax liability but only state the time of paying the liability.

4.2. It is therefore recommended that the time of supply should be the date of invoice. As an anti- avoidance measure, if required, the law may prescribe a maximum time (currently 30 days under the service tax law) from the date of removal of goods/completion of service for the raising of the invoice.

5. VALUE OF SUPPLY

5.1. The model GST Law provides for inclusion of various amounts in the value of the taxable supply. Since each of the specific inclusions in the value under **Section 15(2)** is an independent supply liable for GST, such inclusions are uncalled for and would result in double taxation. It is therefore recommended that the provisions for such notional inclusions should be done away with and only the consideration should be included in the value of supplies.

6. PLACE OF SUPPLY

6.1. High Seas Sale should be excluded from the purview of IGST since the subsequent transaction is a subject matter of Customs Duty.

6.2. The benefit of 'zero rating' provided under **Section 2(109)** to exports should be extended to deemed exports and supplies to SEZ, EOU and STP.

6.3. It should be clarified that the location of supplier, under **Section 2(65),** would be determined based on the person/establishment entitled to receive the consideration, this would bring parity with the definition of location of recipient of service.

6.4. **Section 6(4)** provides for the source rule in case of services connected with immoveable property.

The said rule should cover only services "directly in relation to immovable property…" and should not cover services connected with vessels since they are moveable in nature

6.5. In case of re-classification issues between IGST vs. CGST/SGST, the respective Governments should internally transfer the funds and not require the assessee to once again pay the tax. Similar relaxation should be provided in case of issues of interpretation of place of supply in case of IGST transactions. **Section 30 of the IGST Act** may be suitably amended.

7. INPUT TAX CREDIT

7.1. Since GST has comprehensive coverage, all credits should be allowed. In fact the FAQ issued by the Government clearly acknowledges that it is a tax on value addition at each stage and there would be no cascading effect. In the light of this core aspect of GST, the restrictions provided under **Section 16(9)** should be done away with.

7.2. Genuine Credit should not be denied merely due to non reflection in the GST Network. The provisions for reversal of credit on account of mis-match under **Section 29** should be done away with.

7.3. Non payment of tax by the vendor should not result in denial of credit to the taxpayer. The condition under **Section 16(11)(c)** should be deleted.

7.4. Input Service Distributor should be permitted to freely transfer the credits to any of its' branches.
Provisions of **Section 17** should be suitably amended.

7.5. The current CENVAT Credit Rules defer the entitlement of credit in certain cases to a future date.

While transition provision has been enacted for the claim of credit of second instalment of capital goods, many other transition provisions are not incorporated. It should therefore be provided that in all cases where the credit would have been allowable under the erstwhile CENVAT Credit Rules, the same should be permitted under the GST Law as well. Some examples are listed below

- Re-credit of service tax under proviso to Rule 4(7) in case of delayed payment to the vendor.
- Re-credit of amount revered under Rule 6(3) on finalisation of ratio of exempted turnover to total turnover
- Delayed receipt of invoices from the vendors
- Staggered Credit in respect of Spectrum Payments

8. RATES AND EXEMPTIONS

8.1. Threshold of Aggregate Turnover of Rs. 10 lakhs is across all States, includes exempted and exported supplies and therefore is fairly low when compared to the excise threshold of Rs. 150 lakhs. This will result in substantial hardship to small entrepreneurs. Further, this will also result in substantial increase in the number of assesses to be administered by the Centre (a rough estimate suggests at least 40 times the current bench strength), resulting in a huge pressure on the officials as well as on the network. It is therefore suggested that the aggregate turnover for exemption should be Rs. 50 lakhs with an optional compounding scheme up to Rs. 150 lakhs/250 lakhs.

8.2. Exemption provided for agriculturist under **Section 9** needs to be extended to cover agricultural produce throughout the supply chain. Further the definition of agriculture under **Section 2(7)** needs to be widely provided and activities like poultry, diary, etc., should be considered as part of agriculture.

8.3. At present, various tax exemptions are provided to units set up in specific areas. The said exemptions should also continue under the GST law since the units were set up in those areas due to the tax benefit provided. The government should provide clarity on the same.

8.4. In view of the comprehensive coverage and the self policing nature of GST, the base for taxation would increase fundamentally. Therefore, the revenue neutral rate suggested by the Arvind Subramaniam Committee is fair and adequate to meet the revenue requirements of the Centre and the States. It is therefore it is generally considered that the standard rate of GST should not be higher than 18%. However, our recommendation would be to keep it at 15% to begin with.

8.5. The rates of GST need to be realigned considering the current rate structures. Many products which are currently exempted or liable for a very low rate of tax should not be directly moved to the RNR but either the exemption should be continued or such products should be kept under the merit rate.

9. REFUND

9.1. **Section 38** allows refund only in two situations i.e. Export and Inverted Duty Structure. However, refund should also be allowed in cases where the credit which is accumulated due to other reasons.

10. PROCEDURAL ASPECTS

10.1. The model GST Law provides for strict timeline for various compliances as under

- Filing of Details of Outward Supplies by 10th
- Filing of Details of Inward Supplies by 15th
- Filing of Return by 20th

10.2. Since transaction level details are to be uploaded onto the GST Network, the above timelines are too short. Considering the diversity of the country, with frequent power cuts and unavailability of internet network in many parts of the country, these timelines cannot be complied with. Further, the volume of data to be uploaded on the GST Network is unprecedented and we do not have any prior benchmark of the same. Therefore, it is suggested that for the first two years, the time lines provided above should be relaxed and based on the stability of the new system, the timelines can be revisited

10.3. There is no justification to subject the taxpayer to two assessments for the same base and similar law. It is suggested that some suitable allocation of the taxpayers be decided such that some taxpayers are assessed by the State Authorities and some taxpayers are assessed by the Centre.

10.4. There are very wide powers to make rules, prosecution, confiscation, etc. which should be avoided.

All such provisions merely result in harassment of the asssesees and reduce the 'ease of doing business' without any corresponding benefit to the exchequer.

Sr. No.	Current Provision in the Model GST Law		Issues/ Difficulty	Suggestion / Justification
1.	**Section 2(7)-Agriculture** "agriculture with all its grammatical variations and cognate expressions includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising man-made forest of rearing of seedlings or plants"		Definition of 'agriculture' is narrow and does not include pisciculture and forestry.	Activities like breeding of fish (pisciculture), rearing of silk worms, (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, should be included in the definition of agriculture
2.	**Section 2(17)-Business:** Business includes- (a)Any trade, commerce, manufacture, profession, vocation or any other similar activity whether or not it is for a pecuniary benefit; (b) Any transaction in connection with or incidental or ancillary to (a) above; (c) Any transaction in the	(a) (b)	Section 2(17) (a) to (c) will bring non-commercial, non-recurring and casual activities also in the scope of business The scope of section 2(17)(c) is very wide and can have unintended consequences and might bring under its ambit one time / remote transactions of a personal nature inter alia including transactions related to disposal of personal effects	• In section 2(17) (a), the phrase 'whether or not it is for a pecuniary benefit' should be removed • Sub-section 2(17)(c) should be deleted • The scope of Section 2(17) (g) should be clarified

	nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction; (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation	(c)	The scope of Section 2(17)(g) is not clear	
3.	**Section2(20)- Capital Goods** The definition under the Model GST Law has been adopted from the present CENVAT Credit Rules, 2004. The definition has been recently amended vide Notification 13/2016 (C.E (N.T.) to include "wagons of sub heading 860692" and also the defined goods which are used outside the place of business for "pumping of water			Considering the wide scope of GST Act, distinction between Capital goods and inputs and full credit may be removed alternatively definition under the CENVAT credit rules (as amended in 2016) be considered or the treatment accorded in the books of account may be accepted

4.	**Section 2(21) - Casual Taxable Person:** "Casual taxable person" means a person who occasionally undertakes transactions involving supply of goods and/or services in the course of furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has **no fixed place of business.**		The term "fixed place of business" is not defined and in absence of such definition, the definition of 'casual taxable person' remains undefined	The term 'fixed place of business' should be defined and the definition may include fixed establishment within its scope
5.	**Section 2(44) – Export of Service** Section 2(44) (d) – The payment for such service has been received by the supplier of such service in Convertible foreign exchange.		**Netting off of Export Receivables against Payables:** The dispute may arise whether netting off of export receivable against import payable can be regarded as receipt of convertible foreign exchange?	The definition should include deemed receipts to consider netting off as permitted by RBI.
6.	**Section 2(48) goods** "goods'' means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming		The definition is not in consonance with definition of 'goods' as per Constitution.	"Securities" as defined under the SEBI Act should be excluded from definition of goods and services.

	part of the land which are agreed to be severed before supply or under the contract of supply			
7.	**Section2(82)- Related Persons:** Persons shall be deemed to be "related persons'' if only - (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) <u>any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them</u>; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or	(a) (b) (c)	The criteria of 5% voting right is unfair while comparing it with the existing provision relating to Service tax and excise. The provision does not specify the date on which holdings to be determined – it could create uncertainty while determining whether a person is related or not. The term 'same family' used in cl (h) is not defined. In absence of specific definition, it would result into unnecessary litigation	Considering the broad scope and coverage of GST where all transactions of supply and the entire value chain have been brought under the tax net, the concept of related parties may be done away. Alternatively, • The criteria of determination of ownership or control should be increased from 5% to 26% [**Justification**: The criteria for determination of ownership or control @ 5% of outstanding voting stock or shares is too low and is required to be increased to 26% in line with the definition of 'associated enterprise' in u/s.2(13) which refers to the definition in S.92A of Income Tax Act that provides minimum criteria of 26%.] • The controlling criteria should be with reference to the first date of the financial year • The term, 'same family' may be defined in the lines of definition of "relative" under section 56 of the Income Tax Act

	indirectly control a third person; or (h) they are members of the same family; Explanation I. - The term "person" also includes legal persons. Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.			
8.	**Section 2(88)- Services:** "services'' means anything other than goods; Explanation: Services include intangible property and actionable claim but does not include money	(a) (b)	Actionable claim will become service liable to GST. Actionable claim presently are not liable to Excise, Service tax and VAT. 'Service' means anything other than 'goods'. The immoveable property will also become service liable to tax. The immoveable property suffers the burden of Stamp duty as well as property tax. This will result into multiplicity of taxes on immoveable property	• Actionable claim should be excluded from the definition of the service. • The immoveable property should also be excluded from definition of 'service' to avoid multiple taxation.

9.	**Section 3(1)- Supply** Supply includes (a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, (b) importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and (c) a supply specified in Schedule I, made or agreed to be made without a consideration. Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services. (2A) Where a person acting as an agent who, for an agreed	(a) (b)	Currently VAT and Excise duty are not payable on advances. VAT and Excise duty are levied on conclusion of a specific event i.e. either sale of goods or manufacturing of goods. But as per the given provisions, the tax is leviable even when a person has agreed for the supply which is not at par with the current provisions. Supply includes import of services by individual for personal use also. It is pertinent to note that as per current provisions of service tax also the service imported by an individual for personal use are not liable to service tax. Given this kind of provisions, every individual who is importing service will be liable for registration and need to undertake all the compliances. This will result into increase in compliances even at individual level	• The word 'agreed to be made' should be removed from the section; further, the suitable changes are required to be made in the provisions for time of supply. • An exception should be created for the import of service, when it is used for personal use or not used in the furtherance of business. Else this may not be practical considering that even simple transactions like downloading free software / apps from the internet made become taxable. • Sub-section (2A) should be dropped considering that supply between principal and agent is covered and agents are required to registered under Sch III (5)(vi) • In view of section 43B and TCS provisions applicable to E-commerce players, aggregators may be included within the same scope.

	commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply. (3) Subject to sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as— (i) a supply of goods and not as a supply of services; or (ii) a supply of services and not as a supply of goods; or (iii) neither a supply of goods nor a supply of services. (4) Notwithstanding anything contained in sub-section (1), the supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator			

10.	**SCHEDULE I** **Matters To Be Treated As Supply Without Consideration** 1.Permanent transfer/disposal of business assets. 2. Temporary application of business assets to a private or non-business use. 3. Services put to a private or non-business use. 4.Assets retained after deregistration. 5. Supply of goods and / or services by a taxable person to another taxable or non taxable person in the course or furtherance of business. Provided that the supply of goods by a registered taxable person to a job-worker in terms of section 43A shall not be treated as supply of goods.	(a) (b)	The term 'business assets' is not defined under the GST law. In its natural meaning, it includes immovable property held for business purpose. We understand that the intention of GST law is not to tax sale or transfer of immovable property. The intention behind clause 5 seems to be to cover branch transfer under the tax net. If so, then branch transfer of 'goods' should be clearly defined.	• The words business assets should be replaced with Capital goods as defined in section 2(20). • Current clause 5 be substituted to include only 'tax shall be levied on inter-State branch transfer of goods intended for resale or manufacture (on the lines of CST Section 8) other than capital goods'.

11.	**<u>Schedule II</u>** **Matters To Be Treated As Supply Of Goods Or Services**	(a) (b) (c)	Long term leases (ie for a period of 29 years or more / perpetuity) are considered similar to the sale of immovable property. Given that the long-term lease has already born the incidence of stamp duty it should not be liable to GST. The process of granting Completion certificate prevalent in the city of Mumbai, is not being followed in other cities. This has resulted in huge service tax demands being raised on various builders for want of Completion certificate. Supply of intangibles is considered as service u/s 2(88) of GST model law. Given this, clause 5(c) of Schedule II appears to be a duplication and may create confusion as to taxability of transfer of IPR be it permanent or temporary.	• The long-term lease (on which stamp duty is payable under the State laws) should be excluded from the Supply of Goods or Services. • In clause (b) of the point 5 the word "completion certificate" should be replaced with the words "Completion certificate or Occupancy certificate or any other certificate by whatever name called allowing builder/ developer to hand over possession of the flats/ units to purchasers." • Clause (c) may be deleted.
12.	**<u>Schedule IV</u>** **Activities or transactions i.r.o which the Central Government, a State Government or any local authority shall not be registered as a taxable person** ***Definition 1:***	(a)	The use of the underlined word 'and' in the definition of 'Governmental authority' restricts the meaning of the Governmental authority. The service tax legislation has amended the definition of 'Governmental authority' by substituting word 'and' by 'or'. It seems old definition is adopted for GST legislation.	• Present definition of term 'Governmental authority' as given in clause 2(s) of Notification no. 25/2012-ST dated 20.06.2012 as amended by notification no. 02/2014-ST dated 30.01.2014 should be adopted. • The phrase 'qualification recognized by any law for time being in force' should be clearly defined to obviate chances of litigations.

	Government authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government **and** set up by an Act of Parliament or a State Legislature to carry out any function entrusted to a Municipality under Article 243 W or a panchayat under Article 243 G of the Constitution. ***Definition 3:*** Education services means services by way of- i) Pre-school education and education up to higher secondary school or equivalent ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; or Education as a part of an approved vocational education course.	(b)	The phrase 'qualification recognised by any law for the time being in force' has resulted in disputes in the past, Hence this phrase needs to be defined	

13.	**Section 149: Duty paid goods returned to the place of business on or after the appointed day**		If goods are returned after 6 months, there will be GST levy on such returned goods. It is unfair to tax the returned goods which were already taxed in earlier legislation. This would amount to double taxation	• The restriction of 6 month prior to the appointed date should be deleted. • The tax credit including the excise duty element embedded therein of such returned goods should be allowed, basis CA certificate, without any time limit. GST should be levied only when such returned goods are again sold.
14.	**Section 6(4)(a) - IGST**		Section 6(4)(a) provides that Place of supply of service in relation immovable property is location of immovable property. The term "in relation to" has a very wide connotation. The taxability of transactions such as tax consultancy related to capital gain on immovable property, valuation of immovable property, legal consultancy for suite related to immovable property will also get covered under the criteria of location of immovable property.	In such case words "in relation to immovable property" should be suitably modified as "directly in relation to immovable property…" [**Justification:** This provision is in-line with the current provision of Place of Provision of Services Rules, 2012, thereby eliminating unwarranted interpretations]
15.	**Section 6(4)(b) and Explanation to Section 6(4) - IGST**	(a) (b)	The Word "boat" is used in the explanation, whereas in Section 6(4)(b) the reference is of "house boat". Word "Vessel" does not go with the other items covered in this section like hotel, club, house boat etc. as "Vessel" is movable and not immovable property and difficult to determine place/ value per state.	• Word "boat" should be accompanied with word "house" to be in sync with the Section 6(4) which uses the term "house boat". • Vessel should be removed from Section 6(4)- The same is oddly placed with other things which are immovable in nature.

16.	**Section 6(5) - IGST**		Section 6 (5) covers Services of "personal grooming" based on place of performance. Consider services such as Advices for personal grooming, health services, beauty treatment etc. can be rendered through tele-conferencing, video-conferencing etc., in this scenario it will be difficult to identify the location of where the services are performed.	• The condition related to personal presence of service receiver should be added as per provisions of existing Rule 4(b) of Place of Provision of Service Rules, 2012. [**Justification:** This provision is in-line with the current provision of Place of Provision of Services Rules, 2012, thereby eliminating unwarranted interpretations] • Alternatively, the services related to advisory to be excluded from this section. [**Justification:** Advisory services in respect of such services would also get covered under the criteria of performance base, whereas advisory services should be based on the location of recipient of services]
17.	**Section 8 Composition Levy**	(a) (b) (c)	Only a registered taxable person, whose aggregate turnover in a financial year does not exceed Rs. 50 Lakhs is entitled for the Composition Scheme. Further Scheme is not applicable to taxable persons who are effecting inter-state supplies of goods and services These provisions are restrictive in nature and will defeat the purpose by keeping many taxable persons outside the benefit of the scheme	• Aggregate Turnover limit of Rs. 50 Lacs on Pan India basis is too low, if one considers the present turnover limit in State of Maharashtra, different limits are provided ranging from Rs. 50 Lacs to Rs. 2 Crores. in line with Income Tax Law • Presently, in respect of certain class of services viz. works contract services there is no restriction of turnover to discharge tax liability under composition scheme. Hence, in certain classes of business, benefit of composition should be made available

				regardless of the turnover limit. • The Composition Scheme is not applicable to a taxable person who effects any inter-state supplies of goods. This embargo should be deleted so as to extend benefit of section to maximum number of persons • Uniform provisions as regards threshold limits, if any, may be made across all the States. [**Justification:** i) Small assesses whose turnover is more than Rs. 416,667 per month have to comply by discharging tax liability at scheduled rate and comply with filing of various returns prescribed under law. ii) As per the powers given to the state to decide the limit for qualification of composition scheme, it is possible that each or any of the state can fix such limit which will be different from the state and distort the principle of common market enshrined in the GST law. Hence, such powers should be avoided and GST Council only should decide a common limit for all States and Center]

Sr. No.	Current Provision in the Model GST Law		Issues/ Difficulty	Suggestion / Justification
18.	**GST Valuation Rules 2016 read with Section 15(4)(iv) – Valuation by Rules in certain specified cases.**		GST Valuation Rules 2016 contain provisions relating to matters not covered u/s 15 (4) Ex: Rule 3(3) and Rule 3(5)	Following additional clauses may be added in Section 15 (4) – *(vi) in case supply consists of both taxable and non-taxable supply for a composite price,* *(vii) in case of where goods are transferred without consideration, in the course or furtherance of business from* *(viii) one place of business to another place of same business or* *the principal to an agent or from an agent to the principal whether or not situated in the same State* [**Justification:** Valuation Rules cannot go beyond the scope of delegated powers granted to it under the Statute. Hence, in the absence of the suggested inclusion in Section 15(4) validity of rule may be an issue.]
19.	**Section.15(1) and 15(4)(ii) r. w. Rule.3(4) of GST Valuation Rules, 2016 – Related Persons**		Use of word 'related' in these sections instead of "related persons" defined in section 2 (82)	i)The term used, 'related' should be substituted by the term, 'related persons' in R.3(4) of GST Valuation Rules [**Justification:** to avoid ambiguity same term may be used]

20.	**Section 15(4) – (iii) – Rejection of Value**		The use of expression 'reason to doubt' in section 15(4) (iii) is not proper	The provision should be suitably modified to replace the existing expression *"**reason to doubt** the truth and accuracy of the transaction value declared by the supplier*" by *"**reason to believe** that transaction value declared by the supplier is not true or accurate"* [**Justification:** Having regard to the procedure prescribed in GST Valuation Rules, it appears that power to reject is available only when there is reason to 'believe' and not just when there is a 'doubt' which could be in the nature of 'surmise' or 'conjecture']
21.	**Rule.6 of GST Valuation Rules, 2016 – Residuary Method of Valuation.**		The use of expression "*using reasonable means consistent with the principles and general provisions of these rules"* is too vague and should be suitably modified. It may be explained by including suitable illustration in the rule.	There is no clarity as to what would amount to "reasonable means". It should be properly explained by way of illustration or Guidelines to that effect may be issued by a Common Valuation Authority (suggested later)
22.	**Rule 7 of GST Valuation Rules, 2016 - Rejection of Value**		Powers given to Proper Officer to reject the declared value and also to determine the value in accordance with Rules 4, 5 & 6 can be mis-utilised	Although Proper Officer may be allowed to question the correctness of the value based on 'reasonable belief' and for the reasons to be recorded in writing, Determination of value should not be left at the discretion of proper officer but should be referred to **"Common Valuation Authority"** which would be binding on State as well as Central

				Authorities. [**Justification**: Approval by a Common Valuation Authority independent of proper officer, will add value to the proper determination of value and safeguard against discretionary powers which can be misused and lead to corruption.]
23.	**Rule 8 of GST Valuation Rules, 2016 – Pure Agent**		The conditions mentioned in the definition of "pure agent" as regards to reimbursement of expense are repetitive and stringent and hence need improvement	Suggested redrafted Clause 8 (1)(a) *'Notwithstanding anything contained in these rules, the expenditure and costs incurred by the service provider as a pure agent shall be excluded from the value of the taxable service.* *For the purpose of this clause, expenditure and costs shall be deemed to be incurred by service provider as 'pure agent' if following conditions are fulfilled:* *(i) Goods/services or other supplies are procured by the supplier from third party and if used, such use is for and on behalf of receiver of supply.* *(ii) Supplier enters into contractual arrangement with the recipient of service to procure Goods/services or other supplies and pay for the same on receiver's behalf or in any other manner proves to the satisfaction of the proper officer that, Goods/services or other*

				supplies are procured by the supplier from third party on behalf of receiver. *(iii) Supplier neither holds nor intends to hold title to Goods/services or other supplies so procured or use it for his benefit.* *(iv) The receiver is liable to make payment to the third party and the supplier makes the payment to the third party only on behalf of receiver, and such payment is separately indicated in the invoice or any other communication issued by the supplier to the receiver of supply* *(v) Supplier recovers from the recipient only such amount as has been paid by him to the third party."* [**Justification:** The conditions mentioned in the existing provision are repetitive : Ex: R. 8(1) (vii) and Cl (d) of Explanation.; Clause (a) of Explanation and R.8(1)(iv) In order to be 'pure agent', R.8(1)(viii) may not always be applicable. For Ex: a person may just incur some expenditure for another as a favour or matter of convenience, although there may not be any agreement to supply any other goods or service between the parties.

				Contractual Arrangement mentioned in Cl.(a) of the explanation may not always be finally available, in such case, any other proofs for establishing the agency (ex: invoice directly in the name of recipient, although paid by supplier) may also be considered. R.8(1)(v) is difficult to establish by documentary evidence and hence may not be insisted upon as a mandatory condition for pure agent. In many cases issue of invoice is not required or entertained such as in case of DSA of banks, overseas parties who export services, etc. Many at times e-mail or telephonic conversation is regarded as sufficient]
24.	**Section 16(1)/(2)/(2A)/(3) read with Section 27A proviso**		**Manner of Taking Credit** As proposed the ITC shall be allowed only from the date of registration (except in respect of inputs held in stock as inputs, semi-finished or finished stock), even though taxes have been paid on inward supplies prior to such date. Presently, the same facility is available in the current Central Excise and Service Tax	The ITC should be extended even for the period prior to date of registration and suitable amendment should be carried out in section 27A to "effective date of First Purchase" instead of 'effective date of registration'. A suitable mechanism in case of matching the credit should also be provided for.

			Laws, the reason being that such inputs were used for manufacturing output goods and/or providing output services. There is no mechanism to avail input tax credit on the purchase of inputs made during the unregistered period	This section should not be restricted to Inputs only. It should be wide enough to cover Capital goods & Capital Assets and Input services as well. [To provide credit of inputs purchased during unregistered period]
25.	**Section 16 (5) – Credit when used partly for the purpose of any business and partly for other purposes.**		Clarification required – the expression "Other purposes" to be defined elaborately to avoid any ambiguity – For instance, does it cover Corporate Social Responsibilities (CSR) activities or not?	There is a mandatory requirement of CSR activities in case of Companies under the Companies Act 2013. Goods and services utilised in CSR activities are essentially for business purpose and moreover statutory in nature. Resultantly the tax paid on goods & services used therein should be allowed as Input Tax Credit. [**Justification:** To have more clarify on reversal of ITC for other purposes]
26.	**Section 16 (8) – change due to merger etc.**	(a)	**Clarification required–** Whether the Expression 'Transfer' includes Succession of business due to death of the proprietor. Section 16(8) does not make any reference to Transfer of business by Succession of Business due to death. On applying principles of ejusdem generis appears that such a situation may not get covered under the draft provisions	The words 'Change in Constitution' should be replaced by the following words 'Change in Constitution or Ownership including Succession of business in case of death of the person carrying on the business (in case of a proprietorship business). [**Justification:** This will prevent the break in the ITC chain and save the business from undue financial hardship.]

			Section 108 talks about tax liability of the transferee in case of transfer of business and Section 114 talks about tax liability of the transferee in case of transfer of business when person liable to pay dies. Moreover, ITC is not restricted and its transfer is freely allowed under the existing rule 10 of the Cenvat Credit Rules, 2004 if business is transferred by way of succession.	
		(b)	Whether the Expression 'Transfer' includes transfer of a Unit of business from one State to another?	
		(c)	ITC will be allowed to be transferred of the amount existing in the 'Books of Account'. What happens if there is a difference in ITC balance between Books of Account and Electronic Credit Ledger?	
27.	**Section16(9)(a) – Motor Vehicle – ITC**		Motor Vehicles are tangible goods and used at many stages of business operations, they are essential in the value addition process. However the tax paid thereon is expressly disallowed under this provision.	The restriction on Motor Vehicles should be removed. Since tax is made applicable at every stage of value addition the credit of the tax paid on elements that are instrumental in value addition should not be denied. The

				stated objective on any ideal GST is seamless flow of credit which should get translated at the stage of drafting the provisions of the law [**Justification:** Denying the tax paid thereon as ITC, breaks the seamless credit chain ITC]
28.	**Section 16(9)(b) – consumption by employees – ITC**		Though these activities are consumed by the employees, the ultimate benefit is always accruing to the business as a whole i.e. to say that these are contained in the value addition in the goods and services supplied by the business. Denying the tax paid thereon as ITC, breaks the seamless credit chain.	This provision should be altogether removed. Persuasive effect from the section 37(1) of the Income Tax Act can also be taken, wherein these expenses are allowed to be deducted from taxable income as business expenditure [**Justification:** Denying the tax paid thereon as ITC, breaks the seamless credit chain ITC]
29.	**Section 16(9)(c) &(d) – Immovable property – ITC**		This provision denies the set off of ITC when an immovable property comes into existence. There is substantial amount of investment in immovable property in which tax component is also embedded. This immovable property is contributing to the value addition made in the goods and or services. Why should the ITC be denied?	Instead of completely denying the ITC, there should be allowance of ITC in a deferred manner over a period of time on an appropriate parameter. This will also ensure promotion of "Make In India" initiative launched by Government. [**Justification:** Denying the tax paid thereon as ITC, breaks the seamless credit chain ITC]

30.	**Section 16(9)(f) – Private and Personal consumption**		The word 'private' and 'personal' are used simultaneously. Both are synonymous and therefore creating ambiguity	The word 'private' should be removed [**Justification -** To remove ambiguity]
31.	**Section16(11)(a) – condition for availing ITC**		ITC is available on tax paid under Reverse Charge Mechanism under Section 7(3). Tax paid challan is the documentary evidence on which the ITC is allowed under the current service tax laws. This clause mentions about only those documentary evidences which are issued by the Supplier registered under this Act. There is no mention about the document in case of tax paid under RCM by the recipient of goods and services. In absence of such a mention there is a possibility that the ITC of tax paid under RCM may be denied.	Recognise the Tax paid challan in the hands of the recipient under RCM as a valid document for claiming ITC thereon. The above inclusion should be by way of insertion of a separate clause similar to Rule 9(e) of CCR, 2004 [**Justification -** ITC not to be disallowed for non-mentioning of document in Section]
32.	**Section 16(11)(b) – condition for availing ITC**		The following situation is not captured by this limitation clause: If advance is paid for goods and services which are to be received in future, the transaction gets revealed but the claim of ITC gets pushed back till the time goods and services are actually received. However tax has to be paid on advances	The provision should be brought at parity by inserting the words 'intended to receive' succeeding the words 'received' [**Justification -** To mitigate unintended hardship to be suffered while claiming ITC]

			received for the goods and services supplied. This is creating an imbalance in the provision where tax is to be paid on advance received for supply but ITC on purchases will be allowed only on actual receipt of goods or services.	
33.	**Section 16(11)(c) - condition for availing ITC**		As per the proposed provisions ITC shall not be allowed in case where the tax charged in respect of the supply has not been paid to the credit of the appropriate government on a monthly basis may cause undue hardship and litigation	The provisions of the sub-section should be deleted or; At the least the matching of outward and inward supplies and proposed disallowance in terms of this sub-section may be done on an annual basis **[Justification:** This would lead to a disastrous situation with the disallowance possibly occurring for every purchaser in the chain of transaction]
34.	**Section 16(11) Proviso - condition for availing ITC**		If ITC is allowed only on the receipt of the last lot or instalment, there would be an undue financial hardship where full tax is paid at time of receipt of supplier's invoice but ITC will be available on the receipt of last lot or instalment of the goods.	The proviso should be amended to allow the ITC on the receipt of every lot or instalment of goods as the Tax Invoice will be raised on every supply (lot or instalment) of goods **[Justification:** To mitigate unintended hardship to be suffered while claiming ITC]

35.	**Section16(15) – Time Limit for ITC**		The provision seems to create ambiguity. ITC will be allowed only on those invoices received earlier of – date of filing return for the month of September following the Financial year i.e. 20/10 OR – Date of Filing Annual return. i.e. 31/12 In any case September will always be the earlier date which makes the meaning ambiguous. Giving benefit to the assessee the cutoff date should be on or before Date of Filing Annual return.	The first cutoff date of September should be removed and instead the cutoff date should be the earlier of – Due Date of Filing Annual Return i.e. 31/12 or – Date of Annual Return filed **[Justification** - To have more clarity for claiming ITC and to mitigate unintended hardship]
36.	**Section 16(16) – Recovery of Credit**		Whether the recovery is on account of Credit Wrongly Taken or Wrongly Taken and Utilised. As per the wordings used it is on credit wrongly taken only. Thus recovery should be only of the tax amount and not of Interest thereon if it pertains to credit taken wrongly.	A Clarification is required about non recovery of interest, if the credit is taken wrongly and not utilized **[Justification -** Credit taken is just book entry and there is no revenue loss to the Government]
37.	**Section 16(16A)(1) – ITC for inputs send for job-work**		There is an overlap with regards to the period of 180 days which is already dealt in section 16A(3).	Limitation period of 180 days should be removed from this provision [**Justification -** To remove ambiguity]
38.	**Section 2, Section 17 – Input Service Distributor & Manner of distribution of credit by Input service Distributor**		The draft provisions of the GST law envisages that Input Service Distributor will only avail certain services for a company or organization as whole and will be required to distribute the same to all its	• Suggestion would be to allow Input Services Distributor to distribute all input tax credit which may be related to goods and capital goods used commonly for other units for consumptions.

			units located within India. However, there may be cases, whereby the Input Service Distributor would be availing input tax credit on goods which may not be directly related to one particular unit but may be for overall consumptions. Examples of such can be: 1. Advertisement material used for general marketing; 2. Data Servers (being Capital Goods) used by all units; 3. Promotional materials used in general; 4. Printing and Stationery controlled centrally; 5. Communication Devices provided by HO such as Mobiles, or walkie talkies 6. Media Industry having one location office and using materials such as tapes, production of programs, making of movies, for providing services to all over India;	• The distribution of ITC by the ISD should be freely allowed without any restriction in proportion to turnover of each unit of the same person
39.	**Section 17(3)(c) – RE: Input Service Distributor**		There is an error in usage of the words 'supplier' in this provision. How can one distribute credit received from a supplier again to that supplier itself.	The words supplier should be replaced with the word Recipient to bring out the real meaning of the provision [**Justification**: To have more clarity about the provision]

40.	**Section 18(2) - Manner of Recovery of credit distributed in excess**	(a) (b)	If ISD makes a mistake in distributing the credit amongst its own units then the recovery of excess credit distributed should not be recovered from the supplier because it is an internal affair of the same organisation. Recovery if any should be made from that State in which the utilisation of credit, if any happened.	If mistake is made by the distributor: - The distributor should be given the power to rectify the mistake upto the due date of Annual return - No interest should be charged to distributor (interest to be paid in the State of utilisation) [**Justification -** To mitigate the hardship and there is no revenue loss to the government]
41.	**Transitional Provisions- Cenvat Credit- General Point-1**	(a)	The transitional provisions pertaining to Cenvat credit provides for transfer of Cenvat credit from earlier period return to the GST return. However, there may be certain cases where Cenvat credit/ set-off is available on happening of specific event after appointed day or available in staggered manner and accordingly situation may arise that credits/ set-off in such cases may not be reflected in last period's return. Few of such instances are as under: <u>Cenvat Credit (Service Tax & Excise)-</u> As per 2nd proviso to Rule 4(7) of Cenvat Credit Rules, 2004, Cenvat credit is disallowed if payment for invoice is not made within 3 months to the service	Accordingly, the GST law should be suitably modified so as to include such scenarios and enabling provision should be made so as to avail such credit/ set-off in GST era. [**Justification**: To avoid loss of ITC during transitional phase]

			provider. However, credit is again admissible when the payment for invoice is made. As per Rule 6(3), Cenvat credit is to be reduced proportionately based on preceding year's ratio. However, subsequently (before June 30 of F.Y.), credit as per actual figures has to be determined and adjustments regarding excess/ short reversal has to be given effect to on or before 30th June. In respect of Cenvat credit on capital goods, 50% of the amount is to be claimed in next year Invoices of March month received in April or May and accordingly credit not claimed in March month In case of service tax paid on Natural resources, Cenvat credit is available in staggered manner. <u>Set-off (Maharashtra Value Added Tax)-</u> Rule 52B of MVAT Rules provides for availment of set-off on certain goods (such as mobile phones, cellular handsets, etc) to be available in staggered manner i.e. set-off is available as and when the goods are sold locally or inter-state. A situation may	

			arise in case of purchases of mobile phones in the month of January, whose set-off would be available in month of April, May, etc. when actual Sale takes place. Set-off in case of purchases from PSI (Packaged Scheme of Incentive) & Backward Area dealers is available on staggered basis i.e. as and when sales take place.	
42.	**Transitional Provisions- Cenvat Credit- General Points-2**	(b)	The transitional provisions pertaining to Cenvat credit provides for transfer of Cenvat credit from earlier period return to the GST return. However, it appears that there is no specific provision for transfer of excess Cenvat credit lying with the Input Service Distributor.	Accordingly, the GST law should be suitably modified so as to provide for transfer of credit from existing Input Service Distributor. [**Justification:** To avoid loss of ITC during transitional phase]
43.	**Transitional Provisions- Cenvat Credit- General Points-3**	(c)	Chapter XXV of the Model GST law provides transitional provisions for various activities and situations. However, no transitional provision has been provided in the Model GST law regarding eligibility of Cenvat Credit to importers and dealers who pass on the Cenvat credit under the existing Central Excise Act, 1944 and Rules made there under. Such persons are required to	There should be a specific provision in the Transitional Provisions which allows the Cenvat Credit on the stock held on the day immediately preceding the appointed day by the importers, First Stage Dealers and Second Stage Dealers [**Justification:** To avoid loss of ITC during transitional phase]

			pay GST on all their supplies made on or after the appointed day. In the absence of specific provision allowing the Cenvat credit on goods held in stock as on the day immediately preceding the appointed day, it would result in double taxation and impact is very severe and will be an injustice to such persons.	
44.	**Section 143(1) (CGST + SGST)**		Section 143(1) provides for carry forward of Cenvat credit pertaining to earlier law. Vide the proviso, it has been specified that the amount should be admissible as Cenvat credit under earlier law as well as under the proposed GST Act. It would be pertinent to note that Cenvat credit pertaining to earlier law should be governed by the earlier law and its eligibility should not be determined based on the provisions of the proposed GST law. It would be unfair to apply the provisions of proposed GST Act to the Cenvat credit of prior period as the same is indefeasible.	Accordingly, it is suggested that the words 'and is also admissible as input tax credit under this Act' from the proviso to Section 143(1) be removed.
45.	**Section 144 (1) (CGST + SGST)**		Same issues as reproduced in proviso to Section 143(1). - The eligibility of Cenvat credit on capital goods should not be determined based on the provisions of the proposed GST law	Same suggestion as reproduced in proviso to Section 143(1)- The words 'and is also admissible as input tax credit under this Act' from the proviso to Section 143(1) be removed.

46.	**Section 144(1) & (2)- SGST-**		Section 144(1) & (2) of model SGST Law provides for transition of Cenvat credit on capital goods. However, it is worth noting that under Maharashtra Value Added Tax, 2002, capital goods is not defined. What is defined is 'capital assets'	Accordingly, it is suggested that the terminology in respective SGST Laws should be modified so as to align the terminologies used under the relevant State VAT law. For e.g.- In Maharashtra SGST Act, terminology preferred may be 'capital assets'.
47.	**Section 145(1) (CGST + SGST)**		Same issues as reproduced in proviso to Section 143(1). - The eligibility of Cenvat credit on capital goods should not be determined based on the provisions of the proposed GST law	The sub clause (iii) of Section 145 should be removed in toto.
48.	**Section 146 (1) (CGST + SGST)**		Draft GST provisions do not provide for situations falling under Service tax law especially for Construction / Works Contract Provisions. Currently, Service tax is payable on Construction Services at abated value i.e. 30 percent value of such services under Notification No. 26/2012 dated 20 June, 2012. Further, Service tax (Determination of Value) Rules, 2006 provides for valuation of works contract / construction services, in cases where value cannot be determined, allows service tax to be paid on 40 percent in case of original works contract and on 70 percent in case of works contract other than original works contract.	The proposed provision in the model GST law should provide or clarify for the following: 1. Whether Abatement Scheme or Standard Rate under which Service tax is paid in case of construction contracts or works contract – will the same be treated as composition scheme. 2. Input Tax Credit on the inputs used in supply of long-term works contract activities such as lift installation, building construction contracts, EPC Contracts. 3. Input Tax Credit on the capital goods for supply in the course of long-term works contract activities. 4. Input Tax Credit on the input services for supply in the course of long-term works

			However, whether the same would be considered or treated as composition scheme is not clear. Further, in such case, how to compute input tax credit. Same issues as reproduced in Section 145(iii) - The eligibility of credit of prior period should not be determined based on the provisions of the proposed GST law	contract activities. Same suggestion as reproduced in Section 145(iii)- The sub clause (iv) of Section 146 be removed in toto.
49.	**Section 146(1),(2) & (3)- SGST-**		Section 146(1),(2) & (3) of model SGST Law provides for transition of credit of duties in case of composition tax payer. Different composition schemes are prescribed in different States.	Accordingly, it is suggested that the every SGST Law should be appropriately modified so as to cover relevant composition scheme under respective State VAT laws
50.	**Section 162 Credit distribution of service tax by ISD**		This provision does not cover a situation where the ISD has a ITC balance as on the appointed date but has not yet distributed it. If this situation is not covered and considered then this available balance may lapse causing financial hardship.	The set off of such ITC balance as available on the appointed date should be considered and made eligible for ITC even after the appointed date.
51.	**Clause 123 & 124 Challan correction mechanism mentioned in the GST Payments Process report of the Joint Committee**	(a) (b)	In terms of the payments process provided in the report no rectification mechanism is provided in case of payments under incorrect Error in GSTIN Process of correction in Incorrect major head reported by Banks is provided but no	• Presently the State Governments provide for a mechanism for this type of mistakes [**Justification:** If huge amount of Tax is paid by the tax payer through oversight under an incorrect GSTIN huge amounts may be lost forever

			provision is made for correction when error is committed by the tax payer	• A similar correction mechanism should also be provided for correction of major heads by Tax payers [**Justification:** In case of mistake in major head undue hardship would be caused to the tax payer for paying the same amount under the correct major head]
52.	**Section 37: Tax Deduction at source**	(a) (b) (c) (d)	Sec 37(1) provides for Tax deduction at source ('TDS') if total value of supply **under a contract** exceeds Rs 10 Lakhs The provisions are not clear in terms of its applicability. Whether they would be applicable only to works contracts or all contracts? The provisions relate the threshold to value of a contract and not to value payable in a financial year The provisions do not visualize situations of enhancements in existing contract values where post enhancement the value crosses the threshold of Rs 10 Lakhs	• It is suggested that the provisions should be re-drafted so that one can comprehend its applicability • It is suggested that the provisions of this section be brought in line with the existing provisions under certain VAT laws where the threshold is recognised per financial year per contractor • Even under the Income Tax Laws the threshold limits are recognised per financial year and not in terms of value of contract [**Justification:** This will make the provision more clear and practicable with the **object of ease of doing business]**

53.	**Chapter XIB- Electronic Commerce – Section 43C**		The provisions relating to tax collection at source are provided in the Section 43C. However, provision regarding 'issuance of certificate for payment of taxes so collected at source' appears to be missing. Accordingly, it would be difficult for the Supplier to claim credit of tax collected by the electronic commerce operators	It is suggested that enabling provision regarding issuance of tax collection certificate may be incorporated in the Act and the Forms to be notified by way of Rules. [**Justification:** Credit will be claimed on the basis of TCS Certificate]
54.	**Section 43C (8), (11)**		These provisions relate to discrepancies. The sub-section does not use the word 'tax' on value of supply but uses the word value of supply Accordingly one may conclude that in case of discrepancy, entire value of supply shall be added to the output tax liability of the said supplier	Therefore, in order to avoid an unwarranted interpretation, the words 'tax on value of such supply' should be inserted prior to the words "shall be added to the output liability…." [**Justification:** To have clarity and to avoid unintended hardship]
55.	**Section 45(1)** The proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return in such manner as may be prescribed		Process needs to be clear whether this will be merely verification of arithmetical errors, discrepancies found in cross checking of sales / purchase/ Debit notes / credit notes/ input tax credit related claims/ details of tax deposited, etc	45(1) The proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return *having regard to transactions of sales, purchase, debit notes, credit notes, goods return claim, price adjustments, input tax credit claimed, details of tax deposited, etc., reported in the return under scrutiny* in such manner as may be prescribed. [**Justification:** This will bring about clarity on the purpose of this section and prevent

				duplicity of process vis-à-vis section 49/ 51 of the Model GST Law]
56.	**Section 45(2)** The proper officer shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny in such manner as may be prescribed and seek his explanation	(a) (b)	No limitation period has been provided for the purpose of initiating scrutiny process. Manner of communication by the proper officer	45(2) The proper officer shall *within one year from the date of filing of the return*, inform the taxable person *by way of a notice* of the discrepancies *specified in sub-section (1)* noticed, if any, after such scrutiny in such manner as may be prescribed and seek his explanation thereto. [**Justification:** Providing a suitable limitation period for informing the tax payer will bring about certainty for the tax payers as well as the tax authority. Both parties need to be aware that scrutiny assessment process will remain available upto certain period only. Also the manner in which the communication is sent will ensure that principle of natural justice is built in and assist in reducing disputes.]
57.	**Section 45(4)** In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be		Process to be followed upon receipt of explanation, whether found satisfactory or not	The current provisions provide the course of action for situations limited to where the explanation is found to be satisfactory. The provisions should provide that the explanation furnished will be considered and if not found satisfactory then the proper officer will pass a

	permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure within a reasonable period, the proper officer may initiate appropriate action including those under section 49, 50 or section 60, or proceed to determine the tax and other dues under sub-section (6) of section 51 A or under subsection (6) of section 51 B.			speaking order giving his basis and the reasons why the explanation is not acceptable before initiating action under section 49, 50 or 60 [**Justification:** Principles of natural justice need to be built in to ensure that rejections are not arbitrary and process is fair. Passing a reasoned order will also assist in the subsequent process – to determine whether or not there was any deliberate intention to evade tax, the appellate authorities will be in a position to determine whether due process was followed, etc]
58.	**Section 46. Assessment of non-filers of returns**		The limitation provided in the current draft suggest that the time limit U/s 51B(7) will also apply	• If the assessee has already been served a notice and the department has gathered information then the time limit under 51A(7) should be the upper limit • There should be provision for extending the time limit of 15 days in case of mitigating circumstances. • In case coercive recovery proceedings have been initiated the same should also been deemed to be dropped automatically. If amounts are already appropriated then amounts in excess of the liability reported in the return should be refunded forthwith

59.	**Section 47. Assessment of unregistered persons**		Principles of natural justice need to be built in to the provisions	The proper officer should issue a proper notice to the taxable person asking why the assessment should not be carried out on a best judgement basis. The fact that the taxable person has given reasons but they are not acceptable/ not reasons may be recorded in the best judgement order [**Justification:** Principles of natural justice need to be built in to ensure that rejections are not arbitrary and process is fair. Passing a reasoned order will also assist in the subsequent process – to determine whether or not there was any deliberate intention to evade tax, the appellate authorities will be in a position to determine whether due process was followed, etc]
60.	**Section 50. Special audit**		Special audit is envisaged at any stage of scrutiny, enquiry, investigation or any other proceedings before any officer Assistant / Deputy Commissioner	• The words any other proceedings may be dropped. • Special audit may be resorted only when there is an enquiry or investigation.
61.	**Section 51 Determination of tax not paid or short paid or erroneously refunded**		Additional Points are suggested	• The language in sub-section (2) needs to be amended to ensure that the grounds and circumstances in the prior notice are the same • In case the tax along with interest is paid *all* proceedings related to the adjudication – including penalty should be deemed to be concluded.

62.	**Section 51C (4) proviso**		Additional Points are suggested	Provisions related to grant of adjournment should be more lenient and further time should be given to ensure that the process is not mechanical and that adequate opportunity is given to the assessee.
63.	**Section 51C (10)**		Scope is very broad. In its current form, same issue raised in any matter under litigation before any authority any where in the country will have to be considered for deciding the limitation period	Sub-section (10) should be dropped in toto [**Justification:** There should be certainty and finality. The provisions in the current form go against the principles of jurisprudence]
64.	**Section 54**		Recovery of tax without adjudication would result in excessive powers	Recovery of tax including attachment of bank accounts, etc should be permitted only after the adjudication process is completed.
65.	**Section 58**		Provisional attachment without adjudication would result in excessive powers	Provisional attachment of bank accounts, etc should be permitted only after the adjudication process is completed

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

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 assesse 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 immerse 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/ assessees, 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 17th	Adjustments tobe 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 31st	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.