



## Bombay Chartered Accountants' Society

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Date: 30-04-2019

## Representation on certain issues in GST

Sr. No.	Description	Issue and rationale for suggestion	Suggestion
<b>1</b>	<b>Suggested Amendment in Notification No.10/2019- Central Tax dtd.7-03-2019</b>		
<b>1.1</b>	<b>Exclusion of Interest Income for the purpose of computing aggregate turnover for the purpose of this Notification.</b>	<p>Notification No.10/2019- Central Tax dtd.7-03-2019 effectively increases the threshold limit for the purpose of GST Registration from Rs.20 Lakh to Rs.40 Lakh for persons who are engaged in exclusive supply of goods. <b>Hence, if such persons provides any services, then such exemption is not applicable.</b></p> <p>For all the purposes under GST, bank interest earned by such person is regarded as service by way of extending of deposits. Accordingly, as per Central Goods and Services Tax (Removal of Difficulties) Order, 2019, while computing limit for eligibility of composition scheme u/s 10 of the CGST Act, the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.</p> <p>Similarly, as per Notification No.2/2019-CTR dtd.07-03-2019 which provides for a concessional rate of tax for small service providers, Para 2 provides that, in computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of three percent under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.</p>	<p>Our suggestions are as under:</p> <ol style="list-style-type: none"> <li>The word “exclusively” in the notification be deleted.</li> <li>Following Explanation shall be inserted:   <i>“In computing aggregate turnover in the financial year for the purpose of this Notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account”</i></li> </ol>
<b>1.2</b>	<b>The increase in the limit from Rs.20 Lakh to Rs.40 Lakh may be made applicable to “services” also.</b>	<p>Under the Goods and Services tax regime, while deciding a policy, distinction between “goods” and “services” may be minimised and both may be kept on the same footing as far as possible.</p>	<p>We therefore suggest that, the benefit of this Notification be extended to “services” also.</p> <p><b>Alternatively,</b> the benefit of this Notification, should not be denied, merely because dealer in goods</p>

			<p>has nominal service income. In order to give effect to alternative suggestion, following proviso may be inserted.</p> <p><i>“Provided that, this notification shall not be applicable in cases, where the aggregate turnover in a financial year consist of the value on account of supply of services exceeding Rs.4 Lakh.”</i></p>
2.	<b>Threshold Limit of Rs.20 Lakh (or as the case may be Rs.10 Lakh) under Section 22 to exclude Interest Income.</b>	<p>At present in computing aggregate turnover for the purpose of determining threshold for obtaining registration under GST, interest income on account of extending deposits, loans and advances is also included as “supply of exempt services”. Adding such entities in tax net, no doubt will broaden the tax base, but may not result in commensurate increase in the tax revenue as compared to administrative cost in managing such assesses. Further, such assessee may also be unnecessarily burdened with routine compliance and cost thereof.</p> <p>If the interest income is excluded from the determination of aggregate turnover, many small assessee will get relief from registration under GST as the supply of taxable goods and services in their case may be below threshold monetary limit specified in the law.</p>	<p>We suggest that, for the purpose of computing benefit of threshold exemption limit of Rs.20 Lakh or as the case may be Rs.10 Lakh under Section 22 of the CGST Act, the interest income on account of extending deposits, loans and advances may be excluded.</p>
3.	<b>Distribution of IGST credit by Regular Registration as IGST credit to the ISD Registration (having same PAN and State code) u/r 54 (1A) of the CGST Rules.</b>	<p>Rule 54(1A) permits taxable person to issue tax invoice from his regular registration No. to ISD registration No. For this purpose, it’s necessary that, State code of regular registration no. and ISD Registration No should be the same (i.e. both should be registered in the same State). It’s also mandatory that, the nature of tax and value mentioned on such transfer invoice issued u/r 54(1A) should be the same as mentioned in the invoices issued to normal registration by the third party vendor. Hence, when third party vendor, issues an IGST invoice on Regular Registration, the Regular Registration is required to issue IGST invoice, on ISD Registration as per provisions of Rule 54(1A).</p> <p>The return Portal as present does not allow to record invoices issued under Rule 54(1A) by a Normal Registration to an ISD Registration, where the tax to be charged on such invoice is IGST. This is on account of the fact that, both Normal Registration and ISD Registration share the same State Code.</p>	<p>GSTN may be requested to take remedial measures in that regard.</p>

		<p>Hence, some change in the system is required to make it possible.</p> <p>Many Corporates have not been able to disclose invoices issued under Rule 54(1A) in their GSTR-1 filed by Regular Registration, where tax charged is IGST. As a result of this, they are also unable to reflect the distribution of such ITC in GSTR-6 to be filed by ISD Registration</p>	
4	<p><b>Suggestion to increase the weightage of “Judicial Member” in the constitution of National Bench of GST Appellate Tribunal.</b></p>	<p>Section 109 of the Central Goods and Services Tax Act, 2017 empowers Central Government to constitute an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (Regional Benches) and State Bench and Benches thereof ( Area Benches). The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).</p> <p>On 23<sup>rd</sup> January 2019 The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, approved the creation of National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT). Ministry of Finance has subsequently notified the creation of GSTAT in Gazetted Notification No.S.O1359(e) [No. 1/2019, [F. No. A.50050/99/2018-Ad.1C(CESTAT)] dtd.13-03-2019.</p> <p>As per section 109(4)&amp;(9), Regional Benches, State Bench and Areas Benches, shall consists of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).</p> <p>Technical Members will comprise of a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A; and an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation. <b>Technical members are therefrom from “Executive” Branch</b></p>	<p>We therefore suggest that,</p> <p>(i) There is no need for making any departure from the settled principles and practices and consequently, the constitution of all the benches of GSTAT may be modified to include one Technical Member and one Judicial Member.</p> <p>(ii) Alternatively, provision may be made to refer the matter for Larger Bench, where there is difference of opinion between Judicial Member and Technical Members and in such case, the presiding member of Larger Bench should be a Judicial Member having a deciding vote in the said matter.</p>

	<p>Having regard to separation of power into “judiciary” and “executive”, and judicial independence, the judicial propriety requires that, constitution of “Regional Benches”, “State Benches” and “Area Benches” and “National Bench” of GSTAT <b>should not permit technical members to outweigh or outnumber the judicial members.</b></p> <p>Support in favour of including one judicial member in GSTAT, can also be drawn from the various other taxing statutes: Ex: Section 252 of the Income Tax Act provides that, Income Tax Appellate Tribunal must have a judicial member. Section 129 of the Customs Act provide that, Customs, Excise and Service Tax Appellate Tribunal (CESTAT) must comprise of one judicial member. Most of the State VAT statutes also provide for creation of State VAT Appellate Tax Tribunal with one of the members as judicial member.</p>	
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Thanking you,

**We remain,**

**Yours sincerely,**



**CA Sunil Gabhawalla  
President,**



**CA Deepak Shah  
Chairman, Indirect Taxation Committee**