

# GOODS AND SERVICE TAX

## IMPORTANT REPRESENTATIONS OF BCAS

### INCORPORATED IN AMENDED MODEL GST LAW

The draft Model GST Law released by the Empowered Committee was hosted on the website of DOR inviting comments from stake holders and public at large. BCAS had made a detailed representation to the Finance Minister on the Model GST Law.

"We are pleased to inform you that the Government has accepted most of our suggestions and incorporated the same in the Amended model GST law released on 26<sup>th</sup> November 2016".

Reproduced below is the detailed table of recommendations that have been accepted in the Amended Model GST Law.

Particulars	Recommendations from BCAS	How addressed in Amended Model GST Law
<b>SUPPLY</b>	<p><b>Section 3(1) and Schedule I</b> 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.</p> <p>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.</p>	<b>Entry 5 of Schedule I has been deleted and free supplies are now taxed only if made to related parties or to branches</b>
<b>Taxation of Branch Transfers</b>	<p>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.</p>	<b>Partially accepted.</b>  <b>Clearly provided that distinct registrations of the same entity will be considered as distinct persons and branch transfers will be taxed</b>
<b>Taxation of Securities</b>	<p>Under the model GST Law, on a reading of the definition of goods <b>u/s 2(48)</b> and services <b>u/s 2(88)</b>, 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.</p> <p>It is therefore recommended that supplies of immoveable properties and securities should be excluded from GST</p>	<b>The definition of goods has been amended to exclude the term 'securities' from its' scope.</b>

<b>Time of supply</b>	<p>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</p> <p>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</p>	<p><b>Partially Accepted</b></p> <p><b>Time of supply now triggered only on receipt of advance or raising of invoices</b></p>
<b>Value of Taxable Supply</b>	<p>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</p>	<p><b>Substantially accepted.</b></p> <p><b>Inclusions on account of free supplies of goods and services by the client removed.</b></p> <p><b>Similarly, inclusions on account of reimbursement of expenses removed.</b></p>
<b>High Seas Sales</b>	<p>High Seas Sale should be excluded from the purview of IGST since the subsequent transaction is a subject matter of Customs Duty</p>	<p><b>Fully accepted</b></p> <p><b>Amendments in IGST Law may be referred to.</b></p>
<b>Zero Rating</b>	<p>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</p>	<p><b>Partially Accepted</b></p> <p><b>Supplies to SEZ are treated as zero rated</b></p>
<b>Place of Supply Rules</b>	<p>Section 6(4) provides for the source rule in case of services connected with immovable 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</p>	<p><b>Fully Accepted</b></p>
<b>Transition Issues in CENVAT Credit</b>	<p>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</p> <ul style="list-style-type: none"> <li>• Re-credit of service tax under proviso to Rule 4(7) in case of delayed payment to the vendor.</li> <li>• Re-credit of amount revered under Rule 6(3) on finalisation of ratio of exempted turnover to total turnover</li> <li>• Delayed receipt of invoices from the vendors</li> </ul>	<p><b>Substantially accepted.</b></p> <ul style="list-style-type: none"> <li>• Re-credit of service tax under proviso to Rule 4(7) in case of delayed payment to the vendor permitted within 3 months of the transition date.</li> <li>• Credit on account of Delayed receipt of invoices from the vendors permitted for one month from the transition date</li> </ul>
<b>Threshold Exemptions</b>	<p>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 upto Rs. 150 lakhs.</p>	<p><b>Partially accepted</b></p> <p><b>Threshold exemption limit increased to Rs. 20 lakhs</b></p>