

PRE-BUDGET MEMORANDUM 2020-21 ON INDIRECT TAXES

I. CUSTOMS DUTY:

Sr. No	Section/ Subject	Issue	Suggestion / Recommendation
1.	Applicability of Safeguard Duty in respect of Solar Cells (manufactured from Silicon Wafers) when it is cleared from SEZ to DTA Unit		
	<p>The basic purpose of levying Safeguard Duty is to protect the Domestic Manufacturers which include SEZ Also. The Department of Revenue, Ministry of Finance has imposed safeguard duty on ‘Solar cells whether or not assembled in modules’ for the period and rates specified therein vide Gazzete notification No. 01/2018-Customs(SG) dated 30.07.2018 in respect of imports from China and Malaysia.</p> <p>However, manufacture of Solar Cell by SEZ Units by procuring Silicon Wafer from China, Malaysia and also using domestic materials and clearing to DTA is being subject to safeguard duty due to anomalous interpretation of Sec 30(a) of The SEZ Act 2005. It is implied from Document No D 12/26/2017-SEZ dated 30th November 2018 issued by The Ministry of Commerce that until Section 30 of the SEZ Act is amended, safeguard duty is applicable on clearance from SEZ to DTA, if it is leviable on any imports. This is not the intention of the statue or The Government.</p> <p>To give boost Manufacture of Solar Cells in SEZ and aid the Govt. of India’s aim to promote “Make In India” and “Solar Power” an amendment is sought in Sec 30(a) of The SEZ Act 2005.</p>	<p>An amendment is sought in Sec 30(a) of The SEZ Act 2005 as follows -</p> <p>Any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported;</p> <p>[Provided that no safeguard duties under the Customs Tariff Act, 1975 shall be applicable incase any article is manufactured in SEZ from indigenous raw material or from import of items on which no safeguard duty is applicable]1</p> <p>[]1 - Amendment required</p> <p>Any other amendment which maybe fit in the circumstances</p>	
2	Allowing export incentive on Service Exports (SEIS) on a monthly basis (like MEIS) instead of yearly basis presently in force		
	<p>Export incentive on services (SEIS), is available on a yearly basis today unlike MEIS instead of yearly basis presently in force. This leads to</p>	<p>Export incentive on Service Exports (SEIS) should also be allowed on a monthly basis (like MEIS) instead of yearly basis presently in</p>	

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		<p>liquidity crunch and financial hardship.</p> <p>export incentive on Service Exports (SEIS) should also be allowed on a monthly basis (like MEIS) instead of yearly basis presently in force</p>	<p>force</p>
3	Ambiguity in Chapter 98.01 governing project imports – Irrigation Projects :		
	<p>Chapter 98.01 of Customs Tariff Act, 1975</p>	<p>This Chapter allows import of goods under project import regulation for various projects including Irrigation projects.</p> <p>However, by a separate Notification No.14/2004-Cus. dated 08.01.2004 Government has exempted Water supply project under Heading 98.01 for Agriculture or Industrial use from whole of the basic duty and additional duty.</p>	<p>Since the notification allows exemption of goods for water supply projects (which is nothing but Irrigation Project) for Agriculture and Industrial use, the entry in 9801 covering Irrigation Projects has become redundant and a matter of controversy and dispute.</p> <p>In view of specific exemption by notification for Water supply projects for Agriculture, the entry of Irrigation Project under 9801 is required to be deleted to avoid ambiguity and provide clarity in the regulation.</p>

II. GOODS & SERVICE TAX :

Sr. No	Issue	Suggestion / Recommendation
1.	<p>Exports And Inverted Duty Refunds under GST – Denial of refund of Inverted Duty Claim of Refund on the ground that such turnover is “Export” Turnover and Not “Inverted Duty” Turnover</p> <p>Incase of Exports with payment of Duty, which also falls under “Inverted Duty Structure”, The GST Departments are denying refund of Inverted Duty Claim of Refund on the ground that such turnover is “Export” Turnover and Not “Inverted Duty” Turnover. For Eg. Incase Input Tax Rate is 18% and Output Tax Rate is 12% and the Exporter is exporting on payment of duty, the difference of 6% in tax is denied as inverted duty refunds and remains stuck up forever. On the contrary, the same is allowed incase of Export without payment of duty. The legislature cannot have two rules for the same exports and especially a rule which defies logic.</p>	<p>It is requested to come out with a circular so that all such cases can be solved and pending refunds can be released.</p>
2.	<p>Exports Refunds Denial by WB SGST Officers by Valuation of Exports by on CIF Basis and not on FOB Basis even after Section 15 of The CGST Act is aptly clear on The Valuation Rules under GST.</p> <p>Certain Officers of West Bengal SGST Department are delaying the refunds on Flimsy grounds as to why the Valuation of Exports shall be on CIF Basis and not on FOB Basis even after Section 15 of The CGST Act is aptly clear on The Valuation Rules under GST. It is held that the State of West Bengal has an internal SOP for officers to act as such. It is pertinent to note that the CGST Officers are acting in the reverse way in this regard.</p> <p>It is suggested to come out with a circular clarifying the above. Also, all SOPs of GST Departments across the country should be consistent to each other.</p>	<p>It is suggested to come out with a circular clarifying the above. Also, all SOPs of GST Departments across the country should be consistent to each other.</p>
3.	<p>Claiming of Refund of IGST where the taxpayer has inadvertently availed Higher Rate of Drawback during the transition phase of GST Implementation of July 2017 to September 2017</p> <p>During the transition phase of GST Implementation of July 2017 to September</p>	<p>It is requested to come out with a circular so that all such cases can be solved and pending</p>

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	<p>2017, many tax payers had inadvertently claimed higher rate of drawback by selecting “A” instead of “B” in the Shipping Bill. This was a phase when even Departmental Officers were not clear about the correct procedural requirements. This error has lead to loss of huge amount of Refunds of IGST. The Madras High Court in the case of Ms VSG Exports Pvt. Ltd. in its Order dated 2nd April 2019, has ruled that the Government must give an opportunity to rectify such errors and refund the resultant IGST. However the procedure for the same is still not implemented on ground.</p> <p>This has led to tremendous hardship.</p>	<p>refunds can be released.</p>
4.	<p>Scrapping of Rule 36(4) of CGST Rules 2017 made applicable from 9th October 2019</p>	
	<p>Rule 36(4) states that “Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”</p> <p>This Rule has the effect of putting tremendous burden on the Liquidity of Businesses which are already under stress and needs to be scrapped ab-initio</p>	<p>This Rule has the effect of putting tremendous burden on the Liquidity of Businesses which are already under stress and needs to be scrapped ab-initio</p>
5.	<p>Non-availability of ITC in respect of immovable property for setting up factory building, hotels etc</p>	
	<p>Section 17(5) of The CGST Act 2017 Blocks the ITC in respect of Works contract and Construction.</p> <p>This is a huge burden for all new constructions including Factory Buildings, Hotels, etc. The amount spent for Works contract and Construction Factory Buildings, Hotels and all other construction is for furtherance of business and should in no way be blocked from availing</p>	<p>The amount spent for Works contract and Construction Factory Buildings, Hotels and all other construction is for furtherance of business and should in no way be blocked from availing ITC of.</p> <p>The CGST Act must be amended for allowance of these ITC</p>

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	<p>ITC of.</p> <p>This results in “cascading effect of GST” which is against the very foundation of the GST Law.</p>	
6.	<p>Non-availability of ITC in respect of medi-claim expenditure done for the employees</p>	
	<p>Section 17(5) of The CGST Act 2017 Blocks the ITC in respect of medi-claim expenditure for employees.</p> <p>In this era where medical expenses are unimaginable and where there is not much social benefits from the Government for medical contingencies, it is but unjust to disallow ITC on the same.</p> <p>This also results in “cascading effect of GST” which is against the very foundation of the GST Law.</p>	<p>The CGST Act must be amended for allowance of ITC on medical expenditure done for employees.</p>
7.	<p>Allowing IGST credit available to be adjusted against IGST payment towards import consignment</p>	
	<p>At present IGST on Imports are paid in Cash at the time of clearing The Bill of Entry even though the Importer may have an IGST credit in his ITC Register on the GST Portal. This is causing a huge financial hardship on importers.</p> <p>A procedure must be developed for allowing the IGST credit available to be adjusted against IGST payment towards import consignment.</p>	<p>The CGST Act must be amended for allowance of ITC on medical expenditure done for employees.</p>
8	<p>Taxability of EPC contract of setting up Solar Power Generating Systems under Goods and Service Tax</p>	
	<p>According to the target set by the GOI, the country is planning to generate 100 GW (1,00,000 MW) of solar power by 2020. The target also aims to reduce the cost of solar power generation. Since the supply and distribution of electricity is exempt from GST, hence ITC on the Inputs, Input Services and Capital goods are not available to the Power</p>	<p>Hence the levy of GST on these Solar Power Generation System was should be reduced to 6.3% (considering 90% of the contract taxable @5% and 10% of the contract taxable @18%)</p>

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	<p>Companies which are the Consumers of the Solar Power Generation Systems.</p> <p>The levy of GST @18% on these Solar Power Generation System was reduced to 8.9% (considering 70% of the contract taxable @5% and 30% of the contract taxable @18%)</p> <p>However in the instant case the supply of constitutes as follows –</p> <table border="1" data-bbox="159 768 722 1993"> <thead> <tr> <th data-bbox="159 768 466 817">Description</th> <th colspan="2" data-bbox="466 768 722 817">% (approx.)</th> </tr> </thead> <tbody> <tr> <td data-bbox="159 817 466 896">(i) Total supply of goods</td> <td data-bbox="466 817 574 896"></td> <td data-bbox="574 817 722 896"></td> </tr> <tr> <td data-bbox="159 896 466 1209">Solar Module (This item is completely movable from one place to other without damaging in structure even after installation.)</td> <td data-bbox="466 896 574 1209">70%</td> <td data-bbox="574 896 722 1209"></td> </tr> <tr> <td data-bbox="159 1209 466 1915">(b) Other parts/sub-parts such as inverters, cables, structures, switchgear items etc. for fixing and connecting the solar modules to harness its power such as controllers and switches (All these items are movable from one place to another without damaging the structure even after installation and commissioning)</td> <td data-bbox="466 1209 574 1915">20%</td> <td data-bbox="574 1209 722 1915">90%</td> </tr> <tr> <td data-bbox="159 1915 466 1993">(ii) Civil work and other services</td> <td data-bbox="466 1915 574 1993"></td> <td data-bbox="574 1915 722 1993">10%</td> </tr> </tbody> </table>	Description	% (approx.)		(i) Total supply of goods			Solar Module (This item is completely movable from one place to other without damaging in structure even after installation.)	70%		(b) Other parts/sub-parts such as inverters, cables, structures, switchgear items etc. for fixing and connecting the solar modules to harness its power such as controllers and switches (All these items are movable from one place to another without damaging the structure even after installation and commissioning)	20%	90%	(ii) Civil work and other services		10%	
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	Total	100%	
	<p>Hence the levy of GST on these Solar Power Generation System was should be reduced to 6.3% (considering 90% of the contract taxable @5% and 10% of the contract taxable @18%)</p>		
9	<p>Refunds pending with “PAY & ACCOUNTS” Section of the CGST Department – No way to follow up with them</p>		
	<p>A Considerable amount of refunds across the country are blocked at the PAY & ACCOUNTS Section. There is no way to contact them also as entry is restricted in that area.</p> <p>This has given rise to the problem of delay in refunds on the one hand and it also promulgates inethical conduct among these officers on the other as there is no audit trail also of the follow up done with them.</p>		<p>The PAY & ACCOUNTS Section should be given e-mail Ids so that follow up can be done with them.</p> <p>Also they must be made responsible for the delay in refunds done by them.</p>
10.	<p>Domestic manufacturers of scientific Equipments are in difficult situations</p>		
	<p>There are many manufacturing scientific and laboratory equipments which are being supplied to the large number of Research Institutes, Universities, hospitals etc.</p> <p>In view of the custom Notification No 51 dated 23.7. 1996 as amended vide amended notification 43/2017 dated 30.6.2017 all such import of equipments are exempted from the payment of custom duty including Integrated GST. Further note that even consumables will also cover under the above notification.</p> <p>As compared to the above, local industries manufacturing same product including consumables will be subjected to payment of full GST as under:</p> <p>84211910 GST Rate 18% 84798200 GST Rate 18%</p>		<p>The above exemption notification has made the Indian Industry completely unviable unless the similar exemption benefit is extended to the Indian Industry. While we do support the above exemption to the institutes , we request you to provide the similar support to the Indian manufacturing Industry.</p>

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	<p>Plastic consumables (Disposables Single Time Used) are classified under BTN 3926 GST Rate 28%, 3923 GST Rate 18%</p>	
11	Supply of Labour by the Labour Contractor	
	<p>Under the above arrangement, Labour contractor supplies the labour and raises two invoices per month i.e. for (a) actual cost of labour as reimbursement and (b) his commission. In the absence of the clarification, the cost of labour will be subject to charge of GST and would not come under the head of Pure Agent. As a result, both the above costs will come under GST</p>	<p>To qualify as Pure agency, the Contractor has to be provide some other services. This will be a great hardship particularly to those who are using the above services, the output of which is non-taxable.</p>
12	CSR Expenses – application of RCM	
	<p>The Companies are required to spend annually about 2% of its average profits on account of CSR. Normally such expenses are made through authorised NGOs and sometimes directly by the Company.</p>	<p>A clarification is needed about the applicability of GST and RCM on such expenses for the benefits of the taxpayers.</p>
13	Supplies made by SEZ unit to DTA Unit	
	<p>Under the previous VAT laws, Supplies to DTA by SEZ unit were subject to payment of VAT/CST. Also the importer were subjected to payment of Custom duty as applicable under the Custom Act.</p> <p>Under the existing GST laws, SEZ units are outside the purview of the GST legislations although the importers of goods (DTA) from SEZ unit are subject to payment of IGST as it is considered as import under Customs.</p> <p>However, under IGST law, supplies made by SEZ unit to DTA unit are not considered as “ export” in terms of section 2(5) of the IGST Act. As per the said provision export means taking of goods out of India in a place outside India. Hence, if we go with the above provision, supplies made by SEZ unit to DTA Unit will not be considered</p>	<p>We are sure that the above double taxation is not the intention of the Revenue. We find some issues on the above subject in certain SEZs and hence request you to clarify the issue so that double taxation does not arise.</p>

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	<p>within the purview of “Export” and it will be considered as “supply” and accordingly it will be subject to payment of IGST. At the same time the importer i.e. DTA unit will also be liable to pay IGST as applicable under the Custom Act.</p>	
14	Reverse Charge Tax for Exempted unit	
	<p>Tax is payable for RCM under two circumstances u/s 9(3) and 9(4) of the CGST Act as under:</p> <p>9(3) – Applicable in respect of receipt of certain goods and services – This is payable by the recipient <u>irrespective of status as registered or un-registered or exempted.</u></p> <p>9(4) – Applicable for receipt of goods or services purchased/sourced from unregistered dealer by a registered dealer.</p> <p>In view of the above provisions, even the exempted unit (e.g. dealers of agricultural commodities under exemption category) will be liable to take registration and pay tax on receipt of certain services or goods under RCM although their output tax is ZERO. Further since they need to take registration in view of applicability of section 9(3), they would be required to pay RCM even in respect of purchases of goods and services from unregistered dealer under section 9(4) as and when it is made applicable.</p>	<p>This being a hardship and the <u>fully exempted unit</u> may be kept outside the purview of RCM;</p>
15	Inter-state movement of construction equipment and spares from one branch to another: - Valuation under GST (Rule 32 (7) of GST Valuation Rules)	
	<p>In EPC contracts, movement of construction equipment from one project to another is imperative to maintain continuous and uninterrupted flow of work process. These equipments are practically old and used and its movement are on principal to principal basis and there is no consideration or value addition.</p>	<p>To avoid hurdles and disputes over valuation of movement of equipments between distinct persons, it is requested to clarify that as provided under Rule 32 (7) value of inter-state movement of construction equipments and spares from one site to another is treated as NIL.</p>

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	<p>They were not qualifying as “Stock Transfer” even under Pre-GST regime.</p> <p>Spares are mostly charged off to expenses account at the point of purchase itself. Therefore at the time of transfer there will not be any value.</p> <p>Even if such movements constitute as supply and liable to levy of GST wherein the recipient is entitled to a full ITC which means it is Revenue Neutral transaction for the exchequer but the same leads to the following issues in every movement:</p> <ul style="list-style-type: none"> • Valuation to be done for such movement • Additional compliance requirement • Unwarranted delay 	
16	<p>Non-availability of ITC of GST paid on advances - Section 16 (2) of GST Act, 2017:</p> <p>Section 16(2) of the CGST Act mandates four conditions for availing Input tax credit. One of them being actual receipt of services.</p> <p>This results in a scenario wherein tax paid on advances is not eligible for ITC till the time of receipt of invoice or services leading to working capital blockage.</p>	<p>It is requested for appropriate amendment to the section so that issue of receipt voucher is treated as a document for availing ITC</p> <p>This would facilitate taxpayers reducing their working capital requirement</p> <p>As an example, in a ship building industry, it would take nearly 2-3 years to materialize the advance amount leading huge working capital blockage.</p>
17	<p>Exclusion of Interest, Late Fee and Penalty from Transaction Value - Section 15 (1) (d) of GST Act, 2017</p>	
	<p>As per the above proviso, interest, or late free or penalty for delayed payment of any consideration for any supply etc. is to be included in the Transaction Value.</p>	<p>Transaction value is the price actually paid or payable for supply of goods and or services.</p> <p>Interest, late free or penalty may arise due to contractual provisions or due to an issue between seller and buyer.</p> <p>Hence it is incorrect to add interest, or late fee or penalty for delayed payment of any</p>

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		<p>consideration for any supply etc. in the Transaction Value.</p> <p>It is requested to delete the entry in Section 15 (1) of GST Act, 2017.</p>
18	<p>Clarity on ITC credit of GST paid on Cranes, Dumpers. Grader, Tipper, Excavator etc - Section 17 (5) of CGST Act, 2017</p>	
	<p>Equipments like, Grader, Cranes, Dumpers, Tippers etc. are construction equipments but require registration under the Motor Vehicles Act. because they are motor driven and capable of traveling on the road. However, these equipments are solely used for construction work such as earthwork, leveling, movement of goods from one place to another, excavation, etc</p> <p>As per Section 17 (5) of GST Act, Notwithstanding anything contained in sub section (1) of section 16 and sub section (1) of section 18, input tax credit shall not be available in respect of the following, namely:</p> <p>(a) motor vehicles and other conveyances except they are used: (i) for making the following taxable supplies, namely (A) for supply of such vehicles or conveyances; or (b)..... (C)..... (ii) for transportation of goods</p> <p>These equipments are solely used for construction work such as earthwork, leveling, excavation etc. though they are required to be registered under Motor Vehicles Act because they are motor driven for traveling on the road.</p>	<p>To remove unnecessary doubt and unwarranted disputes by the Revenue over availment of ITC on these equipments, it is suggested that after the entry of (ii) for Transportation of goods” the following entry be incorporated: (iii) Construction equipment falling under any Chapter of HSN.</p> <p>For your information, in the questions and answers published by CBEC relating to Mining Sector, for Question 21: (Will GST charged on purchase of all earth moving machinery including JCB, tippers, dumpers by a mining company be allowed as input credit)? CBE&C answer is as under: Answer: The provision of Sec. 17(5) (a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Further, in terms of the provision of Section 2(76) of the CGST Act, 2017 the expression ‘motor vehicle’ shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicle Act, 1988, which does not include the mining equipment, viz., tippers, dumpers. Thus, as per present provisions, the GST charged on purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit. Applying the same analogy, please clarify that ITC is allowed on Construction equipments used by the Companies in Construction Sector for construction work.</p>

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19	Sharing of expenses/Allocation of cost between Group Companies/ Divisions/Sites etc. etc:	
	<p>Allocation of cost/sharing of expenses or sharing of cost incurred on common utilities between Group Companies/ JV/ Divisions/ sites/ etc. are common business practice and involved in mere accounting entries.</p> <p>Journal Vouchers/debit notes representing such sharing of expenses/allocation of cost on principal to principal basis without any consideration or value addition do not satisfy the definition of supply and hence would be attract GST.</p>	<p>Since the provisions in GST are silent and allocation of cost/sharing of expenses or sharing of cost of common utilities between Group Companies/ Divisions/Sites etc. are common business practice and involved in mere accounting entries. And hence it is requested to clarify that in the absence of any consideration or value addition such journal vouchers/debit notes would not attract GST.</p>
20	Benefit of zero rate to the sub-contractors of SEZ - Section 16 of IGST, 2017	
	<p>Under Section 16 of the IGST Act, supply of goods or services or both to a Special Economic Zone Developer or a Unit would be zero rated supply.</p> <p>The provisions are silent as to whether benefit of zero rated supply is available to sub-contractors supplying goods/services to SEZ.</p>	<p>It is suggested for inclusion of adequate provisions in the IGST so that the benefit of zero rated supply shall also be extended to sub-contractors providing supply of goods/services to SEZ Units/ Developers. It is also suggested that:</p> <p>To enable sub-contractor to supply goods/services without payment of GST, the LUT issued in favour of the principal contractor be allowed to be utilized by sub-contractor for the exemption goods/services.</p> <p>In the fact, Rule 10 of SEZ Rules updated upto 2010 states that: , Provided further that exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer, as the case may be, shall also be available to the contractors including subcontractors appointed by such Developer or Co-developer, and all the documents in such cases shall bear the name of the Developer or Co-developer along with the contractor or sub-contractor and these shall be filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the</p>

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		<p>case may be</p> <p>GST process in a SEZ Unit is attached as Annexure-1.</p>
21	Provisions relating to refund of GST - Section 54 (6) of GST Act, 2017	
	<p>Section 54 read with rules for refund of tax made there under allows 90% as provisional refunds for exports of goods/ services.</p> <p>The provisional refund is subject to various conditions including conditions on pending proceedings etc. which is totally unwarranted.</p>	<p>The assessee exporting goods and or services is claiming legitimate refund of tax suffered on such exports and hence the refund of the same should not be conditional which is very much necessary to encourage exports.</p>
22	Levy of GST on transactions happening outside India: Section 10 (1) (b) of IGST Act, 2017	
	<p>Section 10 (1) (b) of IGST Act mentions that supply of goods on the direction of third party would deemed to be made to said third party even if goods are delivered to any other person at different location except in case of import and export outside India. Due to this provision it appears that if Indian Vendor is billing to Indian Customer against the supply made from one location to another location other than in India as per direction of Indian Customer, GST is leviable on transaction though goods have been moved within non taxable territory. Further it appears this error happened unintentionally by the Govt. during drafting of law. This issue is creating confusion in merchant trading activity about applicability of GST.</p>	<p>Requested for suitable amendments to ensure non-applicability of GST on transactions which take place outside Indian territory.</p>
23	Distribution of input tax credit on central spends under Input Service Distributor (ISD) model	
	<p>The GST law provides that input tax credits accumulated by an ISD should be distributed in the ratio of amongst other distinct person based on 'Turnover'. Further, the term 'Turnover' is defined to include sale and stock transfer between distinct persons. Since, GST is a consumption based tax, it is recommended that an option be provided to the tax payer to distribute ISD credits based on sales or 'turnover'. The tax payer should be allowed to structure his operation in such a way that he</p>	<p>Recommendation: Tax payer should be allowed to distribute ISD credits based on sales or 'turnover'.</p>

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	does not end up with high GST refund in one state and output liability in the others.	
24	Document required for availing input Tax credit(ITC)	
	<p>Rule 36 of the CGST Rules provides that Input Tax Credit can be availed by a registered person on the basis of following documents, namely:</p> <ul style="list-style-type: none"> a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31; b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax; c) a debit note issued by a supplier in accordance with the provisions of section 34; d) a bill of entry; e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub rule (1) of Rule 54. <p>However, following documents are not included in the Rule:</p> <ul style="list-style-type: none"> a) Service tax certificate for transportation of goods by rail (STTG certificate) issued by the India Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate.\ b) A challan evidencing payment of Tax by the recipient under reverse charge. <p>The Rule provides that in case of reverse charge credit will be available on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31.</p> <p>Section 31(3)(f) provides that provides that a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of</p>	<p>In the document mentioned in ITC Rules, Service Tax certificate and Challan for RCM and Unregistered person should be included.</p>

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	<p>receipt of goods or services or both;</p> <p>Section 9(3) provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</p> <p>Section 9(4) provides that the central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</p> <p>In view of the above, in GST regime each registered person has to raise invoice for each transaction under reverse charge and for each transaction with unregistered person and avail cenvat credit on the basis of that invoice.</p> <p>Currently, in case of reverse charge cenvat credit is availed on the basis of single challan. Availment of tax credit on the basis of each invoice raised under reverse charge and from unregistered vendor will create difficulty for the assessee. e.g. in case of GTA a large manufacturing company deals with thousand of transporter who raises lacs of transaction. As per section 31(3)(f), registered person has to raise invoice for each transaction and avail credit on the basis of that invoice. Currently, cenvat credit is availed on the basis of a single challan.</p>	

Sr. No	Issue	Suggestion / Recommendation
25	Export : details of multiple invoices against one shipping bill	
	<p>Under GST law supply for export is zero rated provided certain conditions are fulfilled, like furnishing information such as name and address along with country of the recipient on the invoices.</p> <p>In the case of large manufacturer exporter, a number of GST invoices are raised from the factory/mines based on which goods are first moved to the port which may be situated within the State or outside the State thereafter after custom compliances including filing goods are loaded in to the vessels for dispatch to other country.</p> <p>As per the new format of Shipping Bill (copy enclosed) released in GST regime, details of all GST invoices are required to be mentioned in the shipping bill. Further, while filing the GSTR-1, details of all GST invoices including the respective Shipping Bill no. is also required to be uploaded in to GSTN (Goods and Service Tax Network). However, at the time of filing Shipping Bill in the Customs EDI website, the option of mentioning multiple GST invoice details is not being provided in the case of Export under Bond or LUT.</p> <p>Issues/Concerns: The manufacturer exporters raising multiple GST invoices as explained above are facing difficulties and it is being felt by them, that since all the GST invoices in not being mentioned in shipping bill, a mismatch may happen between the GST invoices uploaded in to GSTN and GST invoices uploaded in EDI website. As a result of such mismatch, there can be an issue in claiming export benefit.</p>	<p>A clarification may please be issued or format of shipping bill may please be revised to take care of such mismatches.</p>
26	Sale of old cars to employee	
	Section 7(1) of the CGST Act defines the term	It is suggested that necessary amendment

Sr. No	Issue	Suggestion / Recommendation
	<p>“Supply” which includes:</p> <ul style="list-style-type: none"> a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; b) import of services for a consideration whether or not in the course or furtherance of business; c) the activities specified in Schedule I, made or agreed to be made without a consideration; and d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. <p>Supply also include supply of goods or services or both in all the forms, made by a person in course and furtherance of business for consideration; activities mentioned under Schedule - I without consideration; and activities mentioned under Schedule – II.</p> <p>Further, as per section 7(2) of the CGST Act, activities and transaction specified in Schedule III shall be treated as neither as a supply of goods nor a supply of service.</p> <p>In terms of Entry 1 of Schedule III, “Services by an employee to the employer in the course of or in relation to his employment” shall be treated neither as a supply of goods nor a supply of service.</p> <p>From the above it is clear that GST will not be leviable on supply of services by an employee to the employer in the course of or in relation to his employment. But, it does not cover within its ambit the supply of goods or services by an employer to the employee.</p>	<p>should be made in the valuation rule so that sale of used car to employee can be made on written down value.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>As per explanation to section 15 of the CGST Act, employer and employee are considered as related person.</p> <p>Entry 2 of Schedule I provides that supply will include “Supply of goods or services or both between related persons or distinct persons as specified in section 25, when made in the course or furtherance of business” even if made without consideration.</p> <p>As per the above provisions, even if a supply is made without consideration by an employer to the employee, such transaction will be covered within the ambit of section 7(1) of the CGST Act and will be leviable to GST.</p> <p>As per section 15(1) of the CGST Act, the value of supply shall be the transaction value (price actually paid or payable) where the supplier and recipient are not related and the price is the sole consideration for the supply.</p> <p>Rule 28 of CGST Rules provides for determination of ‘Value of supply of goods or services or both between distinct or related persons, other than through an agent which is as under:</p> <ol style="list-style-type: none"> a) be the open market value of such supply; b) if open market value is not available, be the value of supply of goods or services of like kind and quality; c) if value is not determinable under clause (a) or (b), be the value as determined by application of rule 30 or rule 31, in that order. <p>So from the above it is clear that in case of related parties, GST is payable on open market value of the goods and services.</p> <p>In a large manufacturing organisation, company</p>	

Sr. No	Issue	Suggestion / Recommendation
	<p>owned used car is provided to the employee after certain specified period (say 5 years). Car is sold at written down value (WDV).</p> <p>As per above provision, employer and employee are related party and accordingly as per Rule 28 of the valuation rule, GST will be applicable on open market value. Open market value of the used cars is much more than the WDV. Although, in case of sales of such goods to unrelated parties, GST is applicable on the sales price, if no input tax credit has been availed.</p> <p>In case of sale of second hand goods by an individual, CBEC has already notified that transaction will be exempted from payment of GST.</p> <p>Payment of GST at “open market value” will be difficult to determine and will also result in huge increase in the cost in the hands of the employee.</p>	
27	<p>Reverse charge on Goods and Services</p>	
	<p>Section 12 (3) of the CGST Act provides the in case of supplies of Goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—</p> <ol style="list-style-type: none"> the date of the receipt of goods; or the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier: <p>Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.</p>	<p>It is suggested that liability under RCM for goods and services both should arise at the time of payment only.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>Further 13(3) of the CGST Act provides that in case of supplies of services in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—</p> <p>a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or</p> <p>b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</p> <p>Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:</p> <p>Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.</p> <p>In a large manufacturing company, following different process for RCM for Goods and services will create difficulty in implementing the process. In case of Goods, RCM arises at the time of receipt of goods whereas in case of services it is at the time of payment. Liability of Tax should arise in both case at the time of payment only which is currently mentioned in the existing law.</p>	
28	Tax Credit under GST	
	<p>Clause 17(5) of the CGST Act provides that input tax credit shall not be available in respect of the following, namely:—</p> <p>a) motor vehicles and other conveyances except when they are used—</p> <p>(i) for making the following taxable supplies, namely:—</p>	<p>It is suggested that there should not be any restriction in the admissibility of tax credit on any goods and services and further clarification should be provided on the meaning of “furtherance of business” to avoid any dispute in future. Further there should not be any restriction that the goods</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>A. further supply of such vehicles or conveyances ; or</p> <p>B. transportation of passengers; or</p> <p>C. imparting training on driving, flying, navigating such vehicles or conveyances;</p> <p>(ii) for transportation of goods;</p> <p>b) the following supply of goods or services or both:—</p> <p>(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;</p> <p>(ii) membership of a club, health and fitness centre;</p> <p>(iii) rent-a-cab, life insurance and health insurance except where</p> <p>A. the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or</p> <p>B. such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and</p> <p>(iv) travel benefits extended to employees on vacation such as</p>	<p>should be used in factory.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>leave or home travel concession;</p> <p>c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;</p> <p>d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.</p> <p>e) goods or services or both on which tax has been paid under section 10;</p> <p>f) goods or services or both received by a non-resident taxable person except on goods imported by him;</p> <p>g) goods or services or both used for personal consumption;</p> <p>h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free</p> <p>i) samples; and</p> <p>j) any tax paid in accordance with the provisions of sections 74, 129 and 130.</p> <p>Further Section 17(6) provides that the Government may prescribe the manner in which the credit referred to in subsections (1) and (2) may be attributed.</p> <p><i>Explanation.</i>— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—</p> <p>(i) land, building or any other civil structures;</p> <p>(ii) telecommunication towers; and</p> <p><u>(iii) pipelines laid outside the factory premises.</u></p> <p>Essence of the GST is to allow full tax credit and hence there should not be any restrictions as</p>	

Sr. No	Issue	Suggestion / Recommendation
	<p>exist in the present system of indirect tax in India. Any restriction in input tax credit will result into cascading effect of taxes and increased cost of goods and services.</p> <p>As per definition of “input tax” any assessee who is in the business of supply of goods/services will incur expenditure only in “furtherance of business or commerce”. For example a manufacturer is required to have a canteen in its factory for its employees and he engages an outdoor caterer for supplying foods who charges him GST. Such expenditures are also incurred in furtherance of business or commerce only.</p> <p>Further In the CGST Bill Government has also disallowed the Tax credit for pipeline laid outside the factory premises. In a large manufacturing company huge pipeline are commissioned for various purposes i.e. for taking water from river for directly used in the manufacturing purpose etc. In Such cases part of the entire pipeline system is inside factory and part remain outside factory. However it is a part of entire pipeline system which is used for furtherance of business only. Further In GST regime State wise Registration is allowed. So for the purpose of availing tax credit there should not be any restriction of any factory. It will increase the cost of product which is against the basic purpose of GST.</p>	
30	Reversal of Input tax credit	
	<p>Clause 16(2) of the CGST Act provides that No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—</p> <p>(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;</p> <p>(b) he has received the goods or services or</p>	<p>It is suggested that the condition of payment to vendor within 180 days on goods should be removed.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>both.</p> <p>(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and</p> <p>(d) he has furnished the return under section 39:</p> <p>Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:</p> <p>Provided further that where a recipient <u>fails to pay to the supplier of goods or services or both</u>, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon <u>within a period of one hundred and eighty days from the date of issue of invoice by the supplier</u>, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:</p> <p>Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.</p> <p>Further, Rule 37 of the CGST Rule provides that</p> <p>1) A registered person, who has availed of input tax credit on any inward supply of goods services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply and the amount of input tax credit availed of in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice.</p>	

Sr. No	Issue	Suggestion / Recommendation
	<p>2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.</p> <p>3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.</p> <p>It will have significant impact on the large industries. In case of execution of the major engineering, procurement and construction (EPC) type of the contract certain portion of the payment is made to the vendor only after satisfactory completion of the project which may take even more than two years.</p> <p>In the existing tax regime, there is no condition of payment to supplier for availment of cenvat credit in case of goods. Further, in GST regime tax credit will be allowed to the recipient when the supplier will paid the tax to the Government. So when credit is being allowed on the basis of matching concept then reversal on the basis of payment to vendor should not be a condition. It will create difficulty for the assessee.</p>	
31	<p>Maintenance of Accounts and Records</p>	
	<p>Section 35(1) of CGST Act, 2017 prescribes that every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—</p> <p>(a) production or manufacture of goods;</p> <p>(b) inward and outward supply of goods or services or both;</p> <p>(c) stock of goods;</p> <p>(d) input tax credit availed;</p> <p>(e) output tax payable and paid; and</p> <p>(f) such other particulars as may be prescribed:</p> <p>Provided that where more than one place of</p>	<p>It is suggested that the provision should be amended so as to maintain accounts with respect to 5 items mentioned in section 35(1) of CGST Act 2017, at principal place of business only and not at all the place of business. This will promote ease of operation.</p> <p>Secondly regarding profit and loss accounts, it is suggested that requirement of furnishing state-wise gross and net profits as per profit and loss accounts in annual return GSTR-9 should be removed.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:</p> <p>In GST, each taxable person has to take state-wise registration and each place of business of the taxable person in the state has to be added as place of business. Hence, there will be a single registration in each state including all place of business situated within the state.</p> <p>In a large manufacturing organisation, there are multiple places of business in one state which includes job workers, storage points, factory, mines, depots etc. In such cases, it is not possible to maintain accounts at each place of business. Since there will be one registration in each state, there is no requirement to maintain the accounts at each place of business. Maintaining accounts at each place of business will require huge changes in the system of accounting which will ultimately impact the operation of the companies.</p> <p>Further as per rule 80 of the CGST rules, Every registered person shall furnish an annual return in Form GSTR-9 in which details regarding profit as per profit and loss account, gross profit, profit after tax and net profit is required to be furnished. In a large industry, profit and loss accounts are being maintained for the company as a whole. It will not be possible to maintain profit and loss accounts and derive gross profit and net profit for each state.</p> <p>Further Rule 56(12) of the CGST Rules prescribes that every registered person manufacturing goods shall maintain monthly production accounts, showing the quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.</p>	<p>Regarding Rule 56(12), requirement of maintenance of production accounts for raw material and services, finished goods should be removed since GST is applicable on supply and not on manufacture unlike excise.</p> <p>It will promote digitalization of the economy of the country.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>In a large manufacturing organisation, there are many types of raw materials or services which are used directly or indirectly in the manufacture of a product. Hence keeping accountal of quantitative data of each raw material or service used in the manufacture will be a difficult task for the organisation. Secondly, GST is supposed to bring so much of transparency through upload of inwards, outward details, matching concept etc, then it seems no requirement for maintenance of so much of accounts and records relating to raw material, finished goods, services etc at such detailed level.</p>	
32	<p>Accounts and Records: Digitization of invoices</p>	
	<p>As per Rule 16(2) of the CGST Act, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—</p> <p>(a) <u>he is in possession of a tax invoice or debit note issued by a supplier</u> registered under this Act, or such other tax paying documents as may be prescribed;</p> <p>It appears from the condition mentioned in the above section that the tax invoices, debit note, credit note should be kept physically for availment of credit.</p> <p>However, Rule 56(15) prescribes that the records under the GST rules may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature. But the rules does not clarify whether the invoices, debit notes, credit notes, vouchers etc can be kept in electronic form or not.</p> <p>Large business organisation with presence in multiple locations is rapidly adopting the concept of “ shared service” . A shared service centre works as a central office engaged in performing the activities related to payments to</p>	<p>A clarification may be issued regarding maintenance of records in electronic form and all types of documents should be allowed to be kept in electronic form (may be scan copy of the invoices etc).</p> <p>It will promote digitalisation of the economy of the country.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>vendors , sales invoicing , tax payments , salary processing etc with an objective of standardizing the processes , improving efficiency and quality of services. In this model, transactions are processed on the basis of the scanned copies of the invoices and hard copy is stored in one place which can be different from the registered premises.</p> <p>Therefore, it is important the “input tax credit “of GST should be allowed on the basis of the scanned copies of the invoices. Further, CBEC has already introduced the concept of matching of the invoices which will ensure the genuiness of the tax credit availed by the purchaser and in case hard copies of the invoices are required to be checked on sample basis the tax payer should be allowed to produce the same within a reasonable period of time say 15 days.</p>	
33	Interstate supplies to Job Work:	
	<p>Section 143 of the GST Act provides for special procedure for removal of goods. As per the Act, the principal may under intimation and subject to conditions as may be prescribed , send any inputs and / or capital goods , without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and likewise.</p> <p>Provided that the “principal” shall not supply the goods from the place of business of a job worker in terms of clause (b) unless the said “principal” declares the place of business of the job-worker as his additional place of business except in a case-</p> <p>(i) where the job worker is registered under section 23 ; or</p> <p>(ii) Where the “principal” is engaged in the supply of such goods as may be notified by the Commissioner in this behalf.</p> <p>Due to complex business scenario and other</p>	<p>It is suggested that the provision should clearly define the supplies to the job worker situated outside the State without payment of tax.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>financial constraints job work has become one of the major activity for any big manufacturing Company. The job workers are situated within the State as well as outside the State, due to the different business requirements.</p> <p>As per the provision, it is very clear that the supply of goods from the place of principal to the job workers can be done without payment of GST .However, it is not clear from the law whether supplies to the jobworker situated outside the State can also be done without payment of GST.</p>	
34	<p>Reverse Charge on CIF contract</p>	
	<p>Section 5(3) of the IGST ACT provides that The Government may, on the recommendations of the Council, <u>by notification, specify categories of supply of goods or services or both</u>, the tax on which shall be paid on reverse charge basis <u>by the recipient of such goods or services or both</u> and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</p> <p>Section 2(93) of the CGST Act defines “recipient” of supply of goods or services or both, means—</p> <ol style="list-style-type: none"> a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration; b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, 	<p>It is suggested that the necessary amendment in the ACT should be made so that Government through notification can define recipient of service through notification.</p>

Sr. No	Issue	Suggestion / Recommendation				
	<p>and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;</p> <p>Section 2(98) of the CGST Act defines “reverse charge” as the liability to pay tax by the <u>recipient of supply of goods or services or both</u> instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under <u>sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;</u></p> <p>From the above it is clear that Tax under Reverse charge liability is required to be paid only by the recipient. Further, recipient has been defined under section 2(93) of the CGST Act as a person who pays the consideration to supplier of goods or service.</p> <p>CBEC has specified the category of services falling under reverse charge vide Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017. In the notification, CBEC has also defined the recipient.</p> <p>In the case of import of goods under CIF contract, CBEC vide Sl. No 10 of Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 provides that Importer will be considered as recipient of service.</p> <table border="1" data-bbox="156 1720 805 1993"> <thead> <tr> <th data-bbox="156 1720 470 1803">Category of Supply of Services</th> <th data-bbox="470 1720 805 1803">Supplier of service</th> </tr> </thead> <tbody> <tr> <td data-bbox="156 1803 470 1993">Services supplied by a person located in non- taxable territory by way of transportation of</td> <td data-bbox="470 1803 805 1993">A person located in non-taxable territory</td> </tr> </tbody> </table>	Category of Supply of Services	Supplier of service	Services supplied by a person located in non- taxable territory by way of transportation of	A person located in non-taxable territory	
Category of Supply of Services	Supplier of service					
Services supplied by a person located in non- taxable territory by way of transportation of	A person located in non-taxable territory					

Sr. No	Issue	Suggestion / Recommendation
	<p>goods by a vessel from a place outside India up to the customs station of clearance in India.</p>	
	<p>In case of CIF contract, there are three parties involved :</p> <ul style="list-style-type: none"> a) Vessel Owner who is providing service for transportation of goods from outside India to Indian Port to Seller of Goods. b) Seller of Goods who is selling the goods to an importer in India. c) Importer who is buying goods from Seller of goods. <p>Vessel Owner (service provider) is providing service of transportation of goods in a vessel to the Seller of Goods (service recipient). Both the service provider and the service recipient are located outside India. As per section 2(93) of CGST ACT, recipient i.e. the person who makes payment to the service provider is the seller of goods but as per Sl. No 10 of the notification no 10/2017, importer is the recipient.</p> <p>Section 5(3) of IGST act provides that Government can only notify the specify categories of supply of goods or services or both which will fall under reverse charge. Recipient cannot be notified through as notification as it has already defined under section 2(93) of the CGST ACT.</p> <p>So as per section 2(93) of CGST ACT, recipient is the seller of goods who is located outside India. Accordingly no GST should be payable under reverse charge in case of CIF contract.</p>	
35	Goods and Service Tax on PDA Charges	
	<p>CIF contract comprises of cost of the imported material, insurance and ocean freight. In the case of CIF import, the obligation to arrange for</p>	<p>We suggest the following mechanism: It is suggested that GST should not be levied</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>transportation rests with the Exporter who enters into a chartered party agreement with the shipping line for agreed amount of ocean freight. The service provider (the shipping line) and the service recipient (exporter) both are located in non-taxable territory.</p> <p>Further, Ocean freight interalia includes the following charges called PDA Charges:</p> <ul style="list-style-type: none"> ▪ Pilotage & Towage ▪ Berth Hire ▪ Shifting & Anchorage fees ▪ Port Dues ▪ Cold Movement ▪ Fresh Water Supply <p>Out of the aforesaid, charges for pilotage & towage, berth hire, shifting and anchorage constitutes “Port Disbursement A/c Charges (‘PDA’)” and forms major component of ocean freight. Port issues a tax invoice for PDA charges in the form of “Marine Dues Bill” along with Goods & service tax @ 18%. The Goods & service tax is charged by Ports for rendering “Port Services”. The invoice issued by the Port for Port DA charges reflects the name of the Vessel carrying the cargo and the name of the steamer agent. Suppose ocean freight amount is Rs. 100 including PDA charges of Rs 20. Port Authorities charges GST on Rs. 20 as the service is provided in Indian Territory by the Port. <u>GST on PDA charges is noncreditable as the vessel owner is a foreign party and does not have an output GST liability and hence is not in a position to claim input tax credit.</u></p> <p>Section 5(3) of the IGST Act provides that</p> <p>“The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient</p>	<p>on the PDA charges as it results into double payment of tax which result in escalating the cost of CIF import into India.</p> <p style="text-align: center;">OR,</p> <p>An appropriate mechanism should be devised to enable the importer to avail the Tax Credit of GST on PDA charges in the case of CIF import into India. Deeming fiction may be created with respect to Port services (particularly those services against which PDA charges are paid by steamer agent to Port) rendered by Port to foreign shipping line through the agency of steamer agent in order to enable the importer to avail credit of GST paid by Steamer agent on PDA charges.</p>

Sr. No	Issue	Suggestion / Recommendation		
	<p>of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”</p> <p>Sl. No 10 of the Notification No.10/2017 integrated tax (rate) dated 28.6.2017 provides that importer will pay Goods and Service Tax (GST) under reverse charge in case of CIF contract.</p> <table border="1" data-bbox="172 786 805 1104"> <tr> <td data-bbox="178 795 799 869">Category of Supply of Services</td> </tr> <tr> <td data-bbox="178 878 799 1095">Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India</td> </tr> </table> <p>Further, corrigendum to Notification no 8/2017- Integrated Tax (Rate), dated the 28th June, 2017 provides that GST will be payable @ 10% of the CIF value of imported goods.</p> <p>From the above it is clear that in case of import of goods, GST is payable under reverse charge by the recipient for transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and tax credit of GST paid under reverse charge is available to importer.</p> <p>As mentioned above, in case of ocean freight the “Importer” has a liability to pay IGST under reverse charge. Ocean freight charges which is ultimately borne by the importer also includes the element of IGST paid by vessel owner on PDA charges and to this extent there is a double taxation of GST on PDA charges.</p> <p>We would like to bring to the attention of your</p>	Category of Supply of Services	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	
Category of Supply of Services				
Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India				

Sr. No	Issue	Suggestion / Recommendation
	<p>goodself the definition of “input service” as defined in section 2(60) of the CGST Act which is as under:</p> <p><u>“input service” means any service used or intended to be used by a supplier in the course or furtherance of business;</u></p> <p><u>In the instant case, there is no doubt that the expenditure of IGST on PDA charges is an expenditure in furtherance of business but importer is but importer is unable to get input tax credit of the same only due to the reason that direct payment has not been made by importer. .</u></p> <p><u>In view of the above, the IGST paid on the PDA charges is becoming a cost in the system which is unfair and against the basic spirit of Goods and Service Tax to provide seamless flow of input tax credit.</u></p>	
36	Matching of Tax credit	
	<p>42(1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—</p> <ol style="list-style-type: none"> a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “supplier”) in his valid return for the same tax period or any preceding tax period; b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and c) for duplication of claims of input tax credit. 	<p>It is suggested that the matching concept should be removed and full tax credit should be allowed to the purchaser if he has received the goods/service and is having a valid tax invoice.</p>

Sr. No	Issue	Suggestion / Recommendation
	<p>(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.</p> <p>(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.</p> <p>(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.</p> <p>(5) the amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated <u>shall be added to the output tax liability of the recipient</u>, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.</p> <p>From the above it is clear that in case of any mismatch, output liability of the recipient will be increased and tax along with interest will be payable.</p> <p>CBEC vide notification no 18/2017 dated 8th Aug has extended the date of filling of GSTR-1 for the month of July 17 to 5th Sept 17 which was further extended to 10th Sept. GSTN site was crashed during details of invoice wise upload by</p>	

Sr. No	Issue	Suggestion / Recommendation
	<p>the tax payers due to which it was decided in the GST council meeting that a major change in the GSTN is required and date of GSTR-1 was extended by almost 1 month i.e. 10th Oct, 2017.</p> <p>Further, on 12th Sept, 2017, Union Finance Minister constituted a Group of Ministers (GoM) under the convenorship of the Deputy Chief Minister of Bihar, Shri Sushil Kumar Modi, in order to monitor and resolve the IT challenges faced in the implementation of GST.</p> <p>Due to issue in GSTN server tax payers are unable to upload the details. Further, if the details will not be uploaded correctly then the recipient will not be able to avail tax credit.</p> <p>Tax credit to the purchaser should not be denied, as in such a situations the purchaser has no fault. Further, in the erstwhile Cenvat Credit Rules, 2004 or in the State VAT Rules also there is no provision which debar the tax credit to the purchaser on account of error at the end of the supplier/vendor.</p>	
37	Export promotion capital goods scheme and its implication in GST regime.	
	<p>There are various exemption/benefit schemes available under foreign trade policy which are provided to industries with the objective to strengthen India's presence in the global business scenario and to promote export led growth of the Country. One of such scheme is Export promotion capital goods (EPCG) scheme under which capital goods are allowed to be imported in India at concessional customs duty (presently 0%) subject to fulfilment of export obligations. The provisions governing the EPCG scheme are contained in Foreign Trade Policy (FTP).</p> <p>Currently, Export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme needs to be fulfilled in 6</p>	<p>It is suggested that suitable provision should be made in the GST Act/Rules to deal with such situations. The provision should also allow input tax credit of the taxes/ duties (CVD, Cess on CVD and SAD) or IGST paid on such cases. There is an immediate need for this clarification as it has created a state of confusion in the minds of the tax payers .Provision should allow the input tax credit of taxes/duties paid otherwise it will result in huge increase in the cost in the hands of importer which is unfair.</p>

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	<p>years. There may be a situation where the manufacturer who has imported the capital goods but may not be able to fulfil the export obligation. In such a situation, he has to pay the amount of “duty saved”. The “duty saved” normally includes Basic customs duty(BCD), Cess on Customs duty, Countervailing duty(CVD), Cess on countervailing duty, Special Additional duty(SAD) out of which CVD, Cess on CVD and SAD is cenvatable and the same can be utilised against payment of excise duty.</p> <p>There can be a scenario in which a manufacturer decides to pay the “duty saved” in GST regime due to non-fulfilment of export obligation. There is no specific provision in the GST Act/Rules to deal with this situation . It is not clear whether the same duty (CVD, Cess on CVD and SAD) as mentioned above will be payable or IGST will be payable. Secondly, Act/Rules is also salient as to whether the input tax credit of such tax/ duties paid in GST regime in case of non-fulfilment of export obligations will be available or not.</p>	
38	Export Obligation under EPCG Benefits	
	<p>As per the Annual supplement to Foreign Trade policy dated 18th April 2013, Export obligation discharge by the export of alternate products as well as export of group companies has been withdrawn under EPCG Scheme.</p>	<p>It is suggested to restore the old provision to facilitate the exports.</p>
39	Reduction of Multiple GST Rates:	
	<p>When the GST was conceived it was supposed to be a single uniform rate across all product categories, but the shape that the GST has taken is far removed from the actual concept of ONE COUNTRY-ONE TAX. What instead we have got is a Multi-Ties Tax Structure with 8 different tax rates - i.e. @0%, @1%, @2%, @3%, @5%, @12%, @18% and @28%</p>	<p>which should be eliminated/clubbed into maximum Two Types like the GST Rate prevails in most of the developed foreign countries</p>
40	Anti-profiteering measures/Lack of Clarity:	

Sr. No	Issue	Suggestion / Recommendation
	<p>The government has set up an authority to see if any reduction in tax rates after the introduction of GST is passed on to the consumer by companies or not. The industry and businesses are not taking this idea kindly and they see it as a backdoor entry of inspector raj. Prices should be market determined and no government authority has the business of deciding prices for goods and services. GST's anti-profiteering clause requires companies to pass on the benefit of lower taxes to consumers but little clarity over anti-profiteering clause has led to confusion over setting of selling prices for goods. The law doesn't clarify how the costs incurred on account of transition from GST to non-GST era are to be factored in. It also doesn't specify how loss-making units pass on the benefits. Many feel the possible savings in one category will offset increases elsewhere and there is no mechanism yet to compute that. Many companies are producing two sets of price tags for the same product to avoid confusion. But comparison of profit or loss for pre- and post-GST period would be difficult for companies. More clarity will emerge only when the National Anti-Profiteering Authority determines the methodology and procedure for taking up cases. Under this law, businesses can be closed down by government if it finds that companies are not passing on the benefits of lower tax slabs to the consumers. Industry and traders are concerned about tax terrorism and arbitrary reasoning of profit and loss in a pre- and post-GST era. Such anti-profiteering laws were introduced in Malaysia and proved to be a disaster.</p>	<p>A clarification is needed in this regard</p>
41	Taxation of free supplies between related parties:	
	<p>The GST law proposes to tax any free supplies between two related parties. The problem arises especially in case of related parties located in different states. Such transactions between related parties in different states mean</p>	<p>There is no centralized registration system under GST and therefore, this would create compliance issue for companies.</p>

Sr. No	Issue	Suggestion / Recommendation
	each party would have to generate invoice, maintain documents, etc.	
42	Anti-competition and Protectionism by State governments:	
	Section 22(1) of the CGST Act allows a registration waiver for small traders having a turnover of less than 20 lacs per year. So, small traders who earn below this threshold don't need to register for GST. However, two sections later, 24(1) immediately denies this 20 lacs threshold exemption for those small traders who perform inter-state trade. Now, this clause creates some undesirable effects on our economy.	where each state indirectly subsidizes small traders in its own state for a GST waiver up to this threshold, but traders from other states are denied this benefit.
43	Quarterly Returns:	
	Return filling be made quarterly, <i>(for traders having turn-over up to 10 crores a year)</i> .	GST payment monthly, There is no loss or delay of revenue receipt to the Government but to ease the statutory compliance.
44	Provision for Revised Return:	
	Rectification of Return is needed for earlier periods	There should be a provision for rectification of return by way of filing Revised Return
45	Penalties & Prosecution	
	All provisions of penalty/prosecution must be set aside for at least one year.	As the tax payers are not familiar with the Provisions of GST act so it is recomanded that set aside all the penal provision of this act.
46	HSN Code Confusions:	
	Though HSN codes are meant to be harmonized, we find that they have many anomalies. Similar items are having different codes and rate of taxes. At times, with just change of description or measurement. It makes it very difficult for traders to understand or follow.	Usage of HSN Code for the traders may create confusion. So clarity is needed on this Matter.
47	Clubbing of CGST & SGST in GST Invoice:	
	Since the equal bifurcation of GST (between SGST & CGST) is prerecorded	we believe GSTN is capable to auto bifurcate and allot the amount separately, in totality, without needing traders to do so, invoice

Sr. No	Issue	Suggestion / Recommendation
		wise.
48	ITC in Relation to Expenses	
	Sec 17(5) of the CGST Act, 2017 ('Act') restricts credit in respect of Motor Vehicles except in few cases.	Expenses incurred in relation to motor vehicle, eg repair & maintenance, insurance etc. should be allowed as credit
49	GTA SERVICE	
	Security agency carrying currency for RBI should be regarded as a GTA?	Goods u/s 2(52) of the Act “goods” as every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
50	Bad Debt	
	In case of Bad debt the amount of GST shall be borne by the assessee from his own pocket.	Indirect tax is a tax which charge from the customer, in case if assessee has to pay it from his own pocket then Relief from payment of GST should be allowed in cases of Bad Debt.
51	Pure Agent	
	<p>a) Can a travel agent booking only a hotel for a client, act in capacity of a pure agent while booking the hotel. In other words, is it important for the supplier of service to provide a service other than that for which it acts as a pure agent?</p> <p>b) Is it mandatory for the bill to be in the name of the service recipient and not in name of supplier acting as a pure agent?</p> <p>c) A travel agent (Mr. B) is booking a hotel for a client through a supplier of hotels (say Mr. A). Mr. B fulfills all the conditions of being a pure agent to its client. Mr. A in turn books the hotel directly through the hotel (say Taj Hotel). Can in such a case, Mr. B be called a pure agent of its customer considering the fact that the hotel service it procures is not directly through the hotel but through a vendor?</p>	Clarity is required on the matters

Sr. No	Issue	Suggestion / Recommendation
52	Travel Agent	
	<p>a) Can a air travel agent change the valuation method in the middle of the year?</p> <p>b) Does the valuation prescribed under Rule 32(3) of the CGST Rules, 2017 ('Rules') cover both the commission earned by an air travel agent from the airlines and also the service charge it charges it customers?</p> <p>A travel agent in India getting a booking done by another travel agent abroad in respect of a hotel located abroad. Will reverse charge apply on the travel agent of India u/s 13(4) of the IGST Act?</p>	<p>Clarification is required on the matter.</p>
53	FINANCIAL INSTITUTION	
	<p>In case of banks and NBFCs, it is impractical to do a one-to-one correlation between the supplies used for earning the exempt income (interest income) and taxable income (service fee, operating lease rental, etc.). Thus, NBFCs would be obligated to pay an amount equal to 50% of the credit availed. Hence, the taxes paid on procurement (CGST+SGST or IGST) will be available for setoff only to the extent of 50%. As a result, GST credit attributable to goods procured for leasing business would be reduced to an extent of 50% instead of 100% as available presently under the State VAT laws. This will push up the cost of procurement of assets for leasing significantly. It will have an adverse impact on the leasing business and especially affect the MSME and agriculture sectors which heavily depend on procurement of equipment through lease. Further, since leasing of assets to infrastructure players happens to be the core business of NBFCs, if the credits on procurement of infrastructure assets are restricted only to the extent of 50%, the same will push up the cost of supplies for NBFCs too.</p>	<p>The term “inputs and capital goods” should be excluded from Section 17(4) of the CGST Act, 2017</p> <p style="text-align: center;">OR</p> <p>A specific proviso should be added under Section 17(4) as under:</p> <p>“Provided further that the restriction of fifty per cent shall not apply to the tax paid on goods and services procured for leasing”</p> <p>50% credit reversal should be restricted only on input services to keep the provisions at par with the current regime.</p> <p style="text-align: center;">OR</p> <p>100% credit should be granted on goods and services purchased for leasing</p>

