APPROACH TO GST RATES

As per the current indications and newspaper reports, for the purpose of levy of GST, all goods will be categorised as follows:-

(i)	Fully exempt	0%
(ii)	Goods subject to merit rates	12%
(iii)	Goods subjected to standard (revenue neutral) rate	18%
(iv)	Demerit goods	40%
(v)	Bullion, jewellery etc.	1% / 2%

As regards the goods to be placed in the different baskets as above, FICCI recommends the following criterion by which goods can be covered in different rate categories on an objective basis, namely:-

1. Goods fully exempted from the levy of excise duty and VAT by all the states be categorised as exempted goods in the GST regime as well.
2. Goods chargeable to nil rate of excise duty but charged to VAT in most of the States could be suggested for levying a merit rate of GST.
3. All other goods (except jewellery and demerit goods) could be subjected to the standard rate.

As regards the rates to be adopted, these will depend upon the size of the baskets comprising the exempted goods and the merit goods and further the rate applied to merit goods. However, with a view to check inflation, ensure compliance and check the tendency to evade taxes, FICCI suggests that the merit rate should be lower and the standard rate should be reasonable.

It is further recommended that the rate of GST applied to services should be the same as the standard rate. Moreover, the rates for nationwide services such as telecom, banking and ecommerce sectors should be uniform across all states; there should be no attempt to artificially fragment the areas for application of rates (example – the NCR region covering 3 states).

FICCI'S COMMENTS ON THE DRAFT MODEL GST LAW

1. INPUT TAX CREDIT

Section of draft Model GST Law

Definitions of Capital Goods [Section 2(20)], Input [Section 2(54)], Input Services [Section 2(55)] read with restriction on Input Tax Credit [section 16(9)]

Issues

Restrictions have been placed on input tax credit in the following manner:

- Definition of 'capital goods' allows credit to be taken only on the goods falling under specified chapters to the draft law
- Definitions of 'inputs' and 'input services' also provide for exclusions
- Nexus of goods and services received is also required to be established with outward supplies

GST is all about seamless flow of credit. Input Tax Credit provisions in the draft GST Law are restrictive and conditional (such as 'used for making on outward supply in the course or furtherance of business'). This type of provision would again require the one to one correlation regarding use of input/input services with outward supply, which was not the objective of bringing GST Law with "Seamless Credit".

Goods specified in section 2(20) (A) (i) to (viii) are capital goods only if these are used at the place of business for supply of goods.

Words such as "primarily" used for personal consumption in the Section 16(9)(b) will lead to immense litigation. For instance, food provided by employer to employees in factory canteen/mess or in the office premises is a legitimate business expenditure incurred in the course or furtherance of business. Under Factories Act, maintenance of a factory canteen in a plant is mandatory if such plant employs more than the stipulated number of employees. Thus, there is a need to clearly differentiate between expenses incurred for pure personal consumption and the expenses incurred in the course or furtherance of business.

It is understood that Credit of Capital goods commonly used for both taxable and non-taxable supply of goods / services will be available proportionately.

Advances received against supply of goods and/or services are taxable on receipt basis. Levy of taxes on advances is questionable.

In para 2.4 of the Concept note on GST issued by Ministry of Finance, it has been declared that-

> "GST will simplify and harmonise the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. It is also expected that introduction of GST will foster a common or seamless Indian market and contribute significantly to the growth of the economy."

Similarly, in Para 1.14 of the First Discussion Paper on Goods and Services Tax in India released by the Empowered Committee of State Finance Ministers, it was declared-

> "In the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point up to the retailer's level is established which reduces the burden of all cascading effects. This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax."

Disallowance of credit on certain items, lapse of Input Tax Credit after a certain time limit and requirement of one to one correlation will add to the cost of the goods/services as well as increase in litigation due to different interpretations. These provisions go against the basic concept for introduction of GST.

In VAT laws there is no such restriction on availment of credit on capital goods

Suggestion / Recommendation

There is no need for a separate classification for 'Capital Goods', 'Input' or 'Input Services' in the GST laws. Taxes paid on all expenses for business (except for a specified negative list) should be permitted as Input Tax Credit.

For the sake of certainty, a list of Goods and Services may be specified on which taxes paid will not be eligible as Input Tax Credit.

Similarly, a list of Goods and Services may be specified on which taxes paid shall be eligible to be availed as input Tax Credit.

It is reiterated that with a view to minimise disputes scope for interpretation should be eliminated.

In the aforesaid background -

- Input tax credit should be allowed on all services other than those for personal consumption. An illustrative list of expenses (taxable services) incurred in the course and furtherance of business where it would be incorrect to treat them as pure personal expenditure is given below:

  (a) Catering service at factory and office canteen during meal hours

  (b) Hired or owned company car/ vehicle provided to employees for official use

  (c) Hiring of bus or taxi for taking employees to office and back to residence

  (d) Group Life and health insurance of employees

  (e) Group accident insurance of employees

  (f) Transportation and insurance of household goods of employees on their transfer from one place to another

  (g) Insurance, repairs and maintenance of vehicles owned by any manufacturer/ service provider meant purely for business purpose

- Full credit of all Input Taxes should be available without any time limit. It is the taxpayer's right to claim credit of taxes paid on inputs and it should not be subject to any time limits especially when there is no scope for any abuse or misuse.
- Credit should be allowed on all capital items once it is capitalized in books and used for furtherance of business.
- ITC of motor vehicles used by the manufacturer for supply of goods to the place of business must be allowed.
- At present Cenvat Credit of taxes paid on capital goods commonly used for both taxable and non-taxable (manufacture of goods /provisions of services) is available in full. Similar provisions may be retained in the GST laws for credit of taxes paid on capital Goods.
- Advances received if any, should not be liable to GST merely because some amount has been given against future supply of goods or services. Terms of payments should have no bearing on the point of taxation. Moreover, it is possible that advance may have been received for intra-state as well as inter-state supplies of goods and services. It may be difficult to determine at that point of time whether such an advance would be liable to CGST and SGST or IGST. It is also possible that the receipt of goods or services may be beyond the time limit prescribed for availment of ITC. If however, it is specifically provided in the proposed GST law that advance payment of any kind for whatsoever purpose shall be taxable, it should also be provided that credit of tax paid on advances will be eligible immediately on receipt of advances without subject to further condition of supply of goods/services. This will also minimize issues of additional funds requirement.
- In the Model GST law, if goods are received in lots / instalments, credit is available on receipt of last lot / instalment. Credit on goods should be allowed once invoice is received and credit entitlement should not be deferred to receipt of last lot of goods. Alternatively, proportionate amount of credit should be allowed with reference to the approximate value of the lot received.
- Credit is available to registered taxable persons only in the draft GST laws. Pre-registration credit may not be allowed. It is recommended that credit of taxes paid on goods and services received prior to registration period should be permitted.
- In case of delay or default in payment of output GST or in filing of GST returns by the supplier of goods and services, interest on credit availed in respect of such goods and services should not be recovered from the recipient. On-line matching should be linked to utilization of credit and not its availment. Government should not shift its enforcement responsibilities on to the recipients of goods and services.

2. LOCATION OF SERVICE RECIPIENT/SUPPLIER

Section of draft Model GST Law

Definitions of 'location of recipient of service' [Section 2(64)], 'location of supplier of service' [Section 2(65)], 'Recipient' [Section 2(80)], meaning and scope of 'Supply' [Section 3] read with Place of Supply of Services provisions in Chapter IV of the IGST Act

Issue

In case of supply from and receipt at multiple locations, there may be situations where it is not possible to determine the location of the service provider or the service recipient. An example of such a situation can be where a multi-locational audit entity provides audit services to the offices of another entity located at different places under a single contract executed between head offices of the entities. Similar situations can arise in the case of maintenance services, IT services, repair services etc.

In such situations, the Place of Supply provisions are unclear as to which establishment would be regarded as the service provider/receiver, in order to determine whether the supply is an intra or inter-state supply.

Further, in a 'bill to ship to' kind of transaction, definition in Sec 2(80) results in multiple recipients raising interpretational issues

Suggestion / Recommendation

From the definitions of 'location of recipient of service' and 'location of supplier of service' in clauses (64) and (65) respectively of Section 2, it can be inferred that in all such situations it is intended that there should be a single location for the recipient of the service or as the case may be, the supplier of service. It is not intended to designate multiple locations as locations of recipient of services. The expression "the location of the establishment most directly concerned with the receipt of the supply" in clause (64)(iii) will lead to serious interpretational issues. From the taxpayers' point of view, it is necessary that there should be certainty in determining the location of the supplier or the recipient of the service. In this background, it is suggested that the location of the recipient of the service in all situations should be location of the person on whom the invoice is raised. Similarly, location of the supplier of the service in all situations should be location of the person who has issued the invoice.

3. CONCEPT OF RELATED PARTY TRANSACTIONS

Section of draft Model GST Law

Definition of 'related persons' [Section 2(82)(d)]

Issue

As per definition under Section 2(82)(d), if any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares or both of them, then the persons whose shares are held by the common third person would be termed as 'related persons'

For example, LIC holds more than 5% shares in Maruti Suzuki India Limited (MSIL). Also LIC may be holding more than 5% shares in many other companies. As per the definition MSIL and other company in which LIC holds more than 5% share would become related persons. However, both the companies would not be even aware about shareholdings of LIC in each other.

Related party definition has been widened in the proposed GST legislation and it may lead to valuation issues.

Suggestion / Recommendation

Under the GST regime, tax is payable at each and every transaction in the value chain, hence there is no need to scrutinize the transactions for impact of relationships amongst parties. The whole concept of valuation for transaction between related parties needs to be reviewed in this background. Such a concept had relevance in the context of single point tax like excise duty, it ceases to have any impact in a multi-point levy such as GST. The model law should provide for acceptance of the declared values even for transactions amongst related persons unless the transaction is between a supplier and its related consumer (B to C).

The proposal to treat entities as 'related' if 5% or more shares are held by one person in the two entities is outlandish and unrealistic. The same needs to be omitted. If it is decided to retain the related party concept suitable changes may be made to incorporate the related party definition similar to the provision prescribed under Explanation 3 to Section 4 of Central Excise Act, 1944.

4. REVERSE CHARGE

Section of draft Model GST Law

Definition of 'reverse charge' [Section 2(85)] read with section 7(3)

Issue

The concept of reverse charge is an unnecessary burden on the recipient already complying with the taxes applicable to him as a supplier. The reverse charge mechanism under the existing service tax laws has resulted in:

(i) Significant increase in complexity and cost of compliance in case of corporate bodies in terms of identification of status of service provider, payment of tax per applicable ratio for the specific type of service, maintenance of records, submission of returns, Departmental audits etc.

(ii) Undermining of threshold limits and exemptions prescribed under service tax laws. This is due to the fact that in case of payment of tax under the reverse charge mechanism threshold limits are not applicable, leading to situations where the service recipient, being a corporate body, has to pay service tax in respect of specified services provided by non-corporate service providers even if such service providers are below the prescribed threshold limits.

(iii) Scope for dispute and litigation with the Department on interpretation and valuation. For example, whether a particular service is a manpower supply service (to be taxed under reverse charge mechanism) or not would depend on the facts of the case and is open for interpretation.

For a unit manufacturing large number of items, it will be difficult to implement the procedure if the reverse charge will be applicable on goods also.

Further in the existing indirect tax law, due to partial reverse charge, industry has to maintain and track two sets of documents for availment of tax credit:

- for payment made by the service provider
- for the tax paid as a service recipient.

As all the persons and all the transactions would become taxable under GST, there should not be any need of reverse charge and all the persons should pay their taxes on the supply of goods/services. This will ensure tax on each stage of value addition along with seamless availability of the credit paid at the previous stage.

Suggestion / Recommendation

To remove this inequity it is suggested that the reverse charge mechanism should be abolished and taxes paid by the suppliers on their own merits of eligibility to exemption etc.

For the sake of administrative convenience it is suggested that the reverse charge be restricted to services provided in India by parties outside India.

In any case the partial reverse charge should be given up; the tax should be collected in whole either by the service provider or by the service recipient.

And in no case should the concept of reverse charge be extended to supply of goods.

5. WORKS CONTRACT

Section of draft Model GST Law

Definition of Works Contract [Section 2(107)]

Issue

Works contract has been defined in Section 2(107) of the draft law as follows:-

"works contract" means an agreement for carrying out for cash, deferred payment or other valuable consideration, building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any moveable or immovable property.

The aforesaid definition appears incomplete and should also include the condition of transfer of the title to the goods involved in the execution of the said works contract.

Suggestion / Recommendation

Definition of 'works contract' be amended to include transfer of the title to the goods involved in the execution of the said works contract. Definition in the current Service Tax law could be considered for adoption.

6. ACTIONABLE CLAIMS

Section of draft Model GST Law

Definition of 'services' [Section 2(88)]

Issue

Definition of service in the proposed legislation is infinite in as much as it has been defined to mean 'anything other than goods'. Actionable claims have also been covered in its ambit through an explanation, which is not so in the existing service tax provisions.

Sale of debt, factoring, bills discounting, gift vouchers, encashment award money etc. are in the nature of actionable claims. These are more in the nature of money transactions than supply of goods or services. It may be noted that fee for performing such activities is already taxable and would remain taxable under GST regime also.

Suggestion / Recommendation

Actionable claims should be outside of GST purview.

7. MANUFACTURER

Section of draft Model GST Law

Definition of 'manufacturer' [Section 2(66)]

Issue

The taxable event is not the act of manufacture or the act of sale or supply of service but just supply of goods and services. When taxable event is supply there is no question of defining a 'manufacturer' in Section 2 (66) by referencing to the Central Excise Act, 1944. Redundancies in the law should be avoided to minimise scope for inappropriate interpretations.

Suggestion / Recommendation

Definition of 'manufacturer' need not be written in the GST Law.

8. SECURITIES

Section of draft Model GST Law

Definition of 'goods' [Section 2(48)]

Issue

Under present system of taxation, central excise duty, service tax or VAT has not been imposed on securities. However under the aforesaid definition of 'goods' in the GST laws 'securities' have been specifically covered as goods by an inclusive clause.

Bringing securities under GST regime without restructuring of existing taxes like Securities Transaction Tax etc. would bring capital market transactions under undue pressure.

Suggestion / Recommendation

Securities should be specified as neither goods nor services.

It is further recommend that various items of intangible nature such as software loaded on media, electricity etc. be specifically dealt with in the GST laws to avoid potential litigation.

9. SOFTWARE ON TANGIBLE MEDIUM

Section of draft Model GST Law

Definition of 'goods' [Section 2(48)] and 'services' [Section 2(88)]

Issue

Classification of software as to whether the same constituted goods or services has always remained a subject matter of dispute. Consequently, the taxability issue under the current law has also been the subject matter of extensive litigation. Under the proposed GST regime the same should be put down to rest and software be classified to circumvent any avoidable litigation or dispute. The model law provides for the definition of 'goods' and 'services' and it has expressly classified intangibles as a service, but whether software on a medium constitutes intangible or not has not been specified.

Suggestion / Recommendation

It is recommended that the classification of software on CD/DVD/Blu-ray disk or any tangible medium be expressly provided in the GST legislation itself to provide certainty to the industry as regards its taxation

10. ACCOUNTING STANDARDS

Section of draft Model GST Law

Business vertical [Section 2(18)]

Issue

Substitution by Ind AS 108

Suggestion

In view of substitution of IAS by Ind AS it would be better if the draft law refers to Ind AS instead of AS

11. RELEVANCE OF DEFINITION OF COMPOSITE SUPPLY

Section of draft Model GST Law

Definition of 'composite supply' [Section 2(27)]

Issue

The term 'composite supply' has been defined for the first time and may involve supply of bundled goods or services having different classification and / or rates qualifying as one single supply or it could be a contract involving both goods and services but not covered under the definition of works contract.

However, this term does not find place in any of the provisions of the Model GST Law.

Suggestion

The purposes of providing for the definition of 'composite supply' appears to be unclear as no corresponding provision in law has been provided for in relation place of supply, time of supply, value of Supply to impose tax on Composite supplies.

Clarity should be provided on the same.

12. EXHAUSTIVE DEFINITION OF "CONSIDERATION"

Section of draft Model GST Law

Definition of 'consideration' [Section 2(28)]

Issue

"Consideration" is defined in an inclusive manner u/s 2(28)

Suggestion

Consideration should be exhaustively defined so that there is adequate clarity on the scope of the Charging Event.

13. SCOPE OF "FIXED ESTABLISHMENTS"

Section of draft Model GST Law

Definition of 'fixed establishment' [Section 2(46)]

Issue

Fixed establishment means a place other than place of business which has sufficient degree of permanence. Further, location of service provider/ recipient provides that where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment.

The definition of place of business is also very wide and fixed establishment would be premises other than place of business. It would need to be determined what would qualify as fixed establishment (whether customer premises or a project office where work is undertaken would qualify as fixed establishment and registration be required?)

Suggestion

Ambit of fixed establishment should be clearly provided. Attempt should be made to define this expression specifically and narrowly.

14. TAX TREATMENT OF SECURITIES

Section of draft Model GST Law

Definition of 'goods' [Section 2(48)]

Issue

Goods have been defined to include securities. However the tax treatment is unclear for securities and financial instruments and interest.

Suggestion

It is suggested that the securities, interest and financial instruments should be excluded from the levy of GST.

15. SCOPE OF SERVICES

Section of draft Model GST Law

Definition of 'services' [Section 2(88)

Issue

The proposed definition of 'Service' in the draft law gives an impression that everything other than goods, including the following transactions would get covered:-

Sale/ supply of an immovable property

Sale/ transfer of business

Suggestion

This may not be the intention and thus it's important to clarify this in the definition to exclude sale / transfer of business and immovable property.

16. SCOPE OF WORKS CONTRACT

Section of draft Model GST Law

Definition of 'works contract' [Section 2(107)]

Issue

The definition of works contract does not include annual maintenance contracts or maintenance services which involve an element of goods and services both.

Suggestion

The definition of works contract should also include maintenance services since it is included within the scope of works contract under the present service tax laws as well.

17. SUPPLY OF GOODS WITHOUT CONSIDERATION

Section of draft Model GST Law

Meaning and Scope of Supply [Section 3] read with Schedule I

Issue

Supply of goods between persons without a consideration is deemed to be a 'supply' under the proposed GST legislation.

Under the present regime, free supplies are not subject to VAT. These may take the form of free samples for medicines, sale promotion schemes such as 'Buy two, get one free', free supply of the sample of a new product with purchase of an established item, etc. The proposal to tax supplies without consideration will discourage companies from providing free samples which would deny the opportunity for any consumer to test the product and also the retailers to demonstrate the product quality. Consequently, the sales promotion expenses of companies will increase under the GST regime.

Taxation policies must respect the trade and business practices adopted by the entrepreneurs. The abovementioned free supplies have been taken into consideration while

formulating the business model and pricing policies. The supplies without consideration need to be viewed as a supplier's business expenses.

Suggestion / Recommendation

Supply of goods without consideration should not be subject to GST. Further input tax credits availed for such supplies should not be denied either.

18. MEANING AND SCOPE OF SUPPLY

Section of draft Model GST Law

Meaning and Scope of Supply [Section 3]

Issue

The term "Supply", the most critical expression in the proposed law is defined in an inclusive manner, without stating what it actually means. The term needs a precise definition to avoid disputes and potential litigation particularly in the context of contentious supplies such as captive consumption, branch transfers, depot transfers, job-work transfers, transfers for repairs, sales returns etc.

Suggestion / Recommendation

The definition of 'supply' should have a 'means clause' followed by deeming clauses to provide what will be deemed to be a supply or shall not be deemed to be a supply.

'Supply' could be defined to mean 'transactions between two persons for a consideration'.

In clause (b) of sub-section (i) of section 3 of the proposed legislation, "importation of service whether or not for consideration and whether or not in the furtherance of business" has been deemed to be supply for the purposes of levy of GST. FICCI is strongly of the view that supplies without consideration should not be covered under GST. In any case, this clause appears to be superfluous since import of services would get charged to tax in view of Explanation 1 in the definition of "Integrated Goods and Services Tax" in clause (c) of section 2(1) of the Integrated Goods and Services Tax Act. Such a service can be subjected to tax on a reverse charge basis by issue of an appropriate Notification under the relevant provision. Clause (b) of Section 3(1) of Model GST Law therefore needs to be deleted.

Since it is being suggested that no tax should be levied where the transaction is without consideration, clause (c) of sub-section (i) of section 3 also needs to be modified. In Schedule I referred to in the said clause (c), the entry at serial no.5 is vague and all pervasive and is likely to have unintended consequences. While inter-state stock transfers definitely need to be covered, other transfers need to be excluded. In its current form, an industry body like FICCI would be required to pay tax if it invites potential members to participate in a seminar free of cost. It is suggested that Schedule I should be deleted and only inter-state stock transfers should be made taxable through a provision in the main body of the Act itself.

As a corollary, it is suggested that in the definition of 'inward supply' in clause (61) of section 2 the phrase "and whether or not for any consideration" should be deleted.

Sub-section (2A) of section 3 providing for the transactions between the principal and the agents to be deemed as a supply is wholly unwarranted. This is an acceptable business transaction and commercially known in India and throughout the world. Taxing these transactions will be in conflict with the global and Indian tax policy. It creates an artificial fiction which is not warranted. Such a measure will kill the industry of intermediaries. It may be noted that the presence of intermediaries always expands the market. Since the revenues are already protected there is no need for treating the transaction between the principal and agents in such cases as deemed supply. Sub-section (2A) of section 3 needs to be omitted

Few other suggestions on the definition of supply

a. Supply of service within the same legal entity from one vertical or division or office to another for use/ consumption in the same legal entity should not be made liable to GST. There cannot be any transaction with self; no taxable transaction can emerge within the same legal entity

b. It would also be important to not impose tax if there is no consideration in a given transaction of supply of service between two legal persons (parties). Thus the present legal position should be allowed to continue.

c. Import of goods without any consideration should be exempt from GST.

d. Supply of goods and services for charitable purpose, gift, donation, etc. should be kept out of GST ambit.

e. There should be no GST on the supply of free goods.

Since inclusive definition of term supply is given, the same should specifically provide that captive consumption of goods by the registered taxable person will not tantamount to supply to avoid litigation or dispute.

Further, following should be outside the scope of supply:-

- Sale of business as a going concern, slump sale, mergers & acquisitions.
- Warranty supplies, when the OEMs are responsible for the manufacturer's warranty, which is fulfilled by the dealer in automobile industry when dealer receives such supplies free of cost to be used under warranty replacements

Following activities should also not be taxable:

- Handing over accidental/damaged goods to insurance companies against insurance claim
- Corporate Guarantee to other/Group/subsidiaries companies

Currently such activities are not taxable. Same provisions should be continued.

19. DUAL CONTROL

Section of draft Model GST Law

Administration - [Section 4 to 6]

Issue

It is understood that there will be two separate authorities for administration of the GST laws (separately for CGST and SGST). There is, therefore, a possibility that assessments, audit scrutiny, enforcement and other related functions would be carried out independently by the Central and State authorities. It also remains unclear whether show cause notices would be issued separately by the Central and State agencies for the same assessment / offence and whether there will be separate adjudication and appellate authorities.

All the perceived advantages of the proposed indirect Tax reform would be lost and the new tax regime will be a nightmare if the taxpayers are required to deal with two sets of assessment/audit/enforcement agencies

Suggestion / Recommendation

Given the federal nature of the Indian Constitution it is acknowledged that in the immediate future it would be difficult to project a single entity on behalf of the tax administrations for the taxpayers to deal with. It should, however, be the ultimate objective to create a single entity representing the Centre and the States which will administer the indirect tax laws in the country. Whether it is to be achieved by merging the revenue services of the Centre and the States or by providing for an all India service for tax administration or by deputing officers on deputation between the Centre and States, could be a subject matter of a separate analysis. It needs no reiteration that a single agency to administer the indirect tax laws would be ideal for ease of doing business and in the interest of a fair tax administration. Till such time a single entity for administration of indirect tax laws is created, it has to be ensured that:-

a) There should be a common application to be filed electronically for obtaining registration for CGST, SGST and IGST for a business entity. Registration permitted by a State for SGST should be deemed to be valid for CGST as well.

b) As already envisaged, there should be common returns for CGST and SGST, again to be filed electronically.

c) State GST officials and the Central GST officials exercising control over a particular business entity should interact freely and cooperate with each other so that they act in a coordinated manner while dealing with the taxpayer. To the extent possible the officers of the two Governments should share office space and infrastructure.

d) If any of the agencies (Centre or State) proposes to revise the assessment of a business entity it should consult the other agency (State or Centre) and a common agreed approach should be decided before sending any communication (show cause notice, query) to the taxpayer.

e) Likewise, a decision on the response received from the taxpayer should be taken by the Central and State GST authorities after mutual consultation. If the state agency has accepted a tax position it should not be questioned and re-opened by the Central authority and conversely the tax position accepted by the Central agency should not be questioned by State agency.

f) A formal legal mechanism should be prescribed to expeditiously resolve differences between the Central and the State GST authorities in dealing with a specific business entity.

g) Adjudication of a matter should be carried out by a unified authority and a single adjudication order should be passed involving CGST and SGST. Likewise, there should be a single appellate authority to decide appeals against the adjudication order.

h) Audit of a business entity should be conducted jointly by the Central and State GST authorities.

To the extent possible, the aforesaid suggestions should be incorporated in the GST laws and not be implemented by the executive instructions.

20. CHARGING SECTION

Section of draft Model GST Law

Levy and collection of CGST and SGST [Section 7(1)]

Issue

As per the charging section 7(1), "There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed."

In the absence of any reference to the rates that the GST Council may propose, the Centre / States may propose whatever rate that they may deem appropriate leaving the taxpayers at the mercy of respective Governments.

Suggestion / Recommendation

The Act must specify that the rate of GST (CGST / SGST / IGST) should be in accordance with the recommendations of the GST Council. Section 7(1) may be reworded as follows:-

"There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate **as recommended by the GST Council** and specified in the Schedule . . . to this Act and collected in such manner as may be prescribed."

21. DEFINITION OF TURNOVER

Section of draft Model GST Law

Composition Levy [Section 8]

Issue

Section 8(1) suggests that in case of composition levy the tax levied would be not less than one per cent of the turnover during the year.

Section 2(104) defines only turnover in the State and does not define turnover which is the expression used in the section. It is also pertinent that the section uses another term aggregate turnover which is defined in section 2(6).

Suggestion

Clarification is sought whether any separate turnover definition should be used for this purpose and if so the relevant definition needs to be incorporated in Section 2.

22. SERVICES PROCURED FOR PERSONAL USE

Section of draft Model GST Law

Taxable Person [Section 9(3)]

Issue

A mechanism is proposed to tax services procured by individuals under reverse charge, even if such services are obtained for personal use. A few of the RCM services that may be used for personal purposes are:

a) Transportation of household effects while on transfer of employment

b) Legal Services availed for personal disputes etc.

As per the current provisions contained under Finance Act, 1994, exemption is granted to an individual importing services from a person located in non-taxable territory for a purpose other than business or commerce without any limit on value of services.

Suggestion

It is suggested that a threshold should be prescribed for this purpose for levying tax.

Services procured for personal use/consumption should be kept outside of the GST levy without any limit on value of services. This is crucial as services such as medical expenses, education fees are often paid by individuals in sizeable amounts.

Appropriate limits may be set in the light of the fact that services used for personal purposes is a B2 C situation while an RCM tax is essentially levied in B2B situation.

23. REMISSION OF TAX

Section of draft Model GST Law

Remission of tax on supplies found deficient in quantity [Section 11]

Issue

According to Section 11 of the draft law, remission of tax is available only for deficiency due to natural causes. This should also be extended to include losses due to unavoidable accidents.

Suggestion / Recommendation

GST should not be levied if the supply has not fructified. Specific provision with respect to return of expired goods or goods damaged or goods lost during transit needs to be provided. It is suggested that scope of remission should be widened to include unavoidable accidents also.

Moreover, draft law envisages fixing specific limits by rules beyond which no remission shall be allowed. It is suggested that no such limitations should be prescribed and remissions allowed so long these are bonafide losses.

In case of return of expired goods, or goods destroyed after their return, Input tax credit in such a case should be allowed (and not be reversed) since the expiry of goods is a normal loss to the company (specifically medical devices and pharma products).

24. RETURN OF GOODS

Section of draft Model GST Law

Nil

Issue

Specific provision for return of goods

Suggestion / Recommendation

Clarity is required for treatment of sales return transaction and the cases where subsequent to payment, service contract is being cancelled. Further, when goods are returned these should not be treated as supplies and taxed again.

25. TAXABILITY OF INSURANCE COMPANIES

Section of draft Model GST Law

Levy and Collection of CGST and SGST [Section 7]

Issue

Levy on reverse charge to insurance companies

Rationale

The amount of tax paid under reverse charge is available as input tax credit to the insurance company. Hence the entire activity of making payment and taking credit is revenue neutral to the account of Central Government.

Suggestion / Recommendation

Reverse charge mechanism shall not apply to Insurance companies under new GST law.

26. TIME OF SUPPLY OF GOODS AND SERVICES

Section of draft Model GST Law

Time of supply of goods and services [Section 12(5)], [Section 13]

Issue

As per Section 12(5), time of supply of goods shall be earliest of:

a) date of receipt of goods

b) date on which payment made

c) date of receipt of invoice

d) date of debit in books of accounts

As per Section 13, time of supply of service shall be:

a) date of issue of invoice or date of payment, whichever is earlier, if invoice issued in prescribed time

b) date of completion of provision of service or date of payment, whichever is earlier, if invoice not issued within prescribed period

c) date on which receipt of service is shown in books, if (a) & (b) does not apply

d) In case of continuous supply, where due date is ascertainable from contract, such due date otherwise date on which supplier receives payment or issues invoice, whichever is earlier, where payment linked to completion of event, time of completion of such event

In large organizations, due to involvement of multiple agencies, invoices are sometimes processed after a time lag of as high as 1-2 months and status of receipt of invoices is not known till the time invoices are booked in the system. Keeping time of supply as earlier of the dates mentioned in Section 12(5) or Section 13 will pose serious compliance issues.

Receipt of any advance by the supplier will be considered to be the time of supply of goods in the event the advance is received prior to any of the other provisions of Section 12(2). In such a scenario a tax liability would be created before the actual supply of goods.

Issues that are foreseen in this regard include:

1) In the event the advance is received in FY 1 and the actual physical supply is in FY 2 then, as per GST laws the dealer will have to declare turnover in FY 1 whereas, under Companies Act and Accounting Standards the turnover will have to be recognised in FY 2. This will lead to mismatches, reconciliation complexity and possibility of disputes with the tax authorities.

2) In the event the actual supply does not take place due to any reason the supplier will be entitled to a refund of GST from the Government and, thereafter, return the same to the buyer/recipient. However, in terms of Section 29A the reduction in output tax liability of the supplier has to be matched with the corresponding reduction in claim for input tax credit by the recipient.

However, since the input tax credit can only be claimed on actual receipt of goods (as well as fulfilment of certain other conditions), in the instant case there is no possibility of matching reduction of outward tax liability of supplier with a corresponding reduction in claim for input tax credit. This will lead to blockage of funds of the tax-payer and give rise to avoidable disputes and litigation.

In many cases advances are received for supplies covering both intra-State as well as inter-State transactions. However, the exact break-up between these two types of transactions may not be ascertainable at the time of receipt of advance. Under the circumstances the supplier will not be in a position to determine the quantum of advance against which GST is to be paid and the quantum against which IGST is to be paid. This will result in avoidable

reconciliation complexity and demands for interest for delayed payments of GST/IGST (as the case may be) in case of mismatch between estimated supplies and actual supplies.

Suggestion / Recommendation

There are far too many possible events the earliest of which has been specified in the proposed legislation as the taxable event. It will be difficult to track all the possible events in a large organisation. The list requires to be trimmed and the time of supply needs to be simplified and needs to be linked to clear recordable events.

In the case of services, time of supply should be the date of invoice or date of receipt of payment. It would be difficult for the service provider to ascertain the date on which the recipient will make an entry in its books.

In case of goods, supply of goods should be kept out of the reverse charge mechanism. The time of supply to be considered should be the earlier of 12(2)(a)(i) and 12(2)(a)(ii), i.e., linked to actual movement of goods/transfer of title to goods. The remaining provisions in this regard, namely, Section 12(2)(b), (c) and (d) need to be deleted.

Tax should not be applicable on advances received towards future sale of goods.

27. RETROSPECTIVE TAXATION

Section of draft Model GST Law

Power to grant exemption [Section 10]

Issue

As per Section 10(3), for the purpose of clarifying the scope of applicability of any Notification/order, Central or State Govt. may insert an explanation in such notification or order, as the case may be, at any time within one year of issue of Notification and every such explanation shall have effect as if it had always been part of the first such notification/order, as the case may be.

Above provision may result in retrospective taxation since the addition of an explanation to an exemption notification up to one year of the date of the notification may create a fresh tax liability. Currently, law is more or less settled that beneficial circulars should be applied retrospectively & oppressive circulars to be applied prospectively

Suggestion / Recommendation

Provision should be suitably worded keeping in mind the settled position that beneficial circulars should be applied retrospectively and any new tax liability should be applied prospectively.

28. WARRANTY REPLACEMENTS

Section of draft Model GST Law

Value of taxable supply [Section 15]

Issue

Warranty replacement of goods supplied is also normal course of business for which consideration is either already factored under price of sales or part of annual maintenance

contracts. So not allowing input tax credit on warranty replacements will lead to double taxation.

Suggestion / Recommendation

Specific provision with respect to allowing credit on goods supplied under warranty should be provided.

29. DOUBTFUL TRANSACTION VALUE

Section of draft Model GST Law

Value of taxable supply [Section 15(4)(iii)]

Issue

Rejection of Transaction Value on doubt of the truth or accuracy of transaction value

The concept of "doubt the truth or accuracy" is very subjective. Such a term which can lead to unnecessary harassment of the assessee and give rise to litigations should not be incorporated.

There are multiple issues in giving powers to officers to determine Transaction Value as per GST Valuation Rules in case the officer has doubts on the value declared by the supplier. One of the issues is that this measure does not seem to be required to protect the interests of the revenue. As long as the supply is a business to business supply, it would result in a GST credit accruing to the recipient. From a GST perspective, any potential understatement or overstatement of consideration would simply result in the amount of credit being different from the "correct" value. However, the recipient would be paying GST each month on his output. Therefore, a potentially higher transaction value would simply result in the recipient paying a lesser amount of output GST that month. There would not be any loss of revenue due to a potential undervaluation in a business to business transaction. In addition, in any non-related party transaction, the value at which the transaction takes place is by definition the independent third party value.

An additional point relates to complexity. Obviously, GST is intended to be a transaction tax and as such would apply on every transaction. There are a number of bona fide reasons why there are differences in the transaction value between similar supplies of goods and services. For any authority to review potentially millions of transactions through each year and apply valuation methodologies to arrive at an arm's length value for a transaction would impose a considerable burden on the revenue. From the dealer's perspective, he would have to potentially defend hundreds of transactions across many states in India. Additionally, suppliers of services would find it very difficult to defend any transaction due to the inherently difficult nature of arriving at a valuation methodology for services. In short, the valuation provisions would impose a considerable compliance and litigation burden both on dealers and the revenue. As noted earlier, this burden would largely not result in any net revenue due to the nature of GST.

Suggestion / Recommendation

Reconsider clause (iii) of Section 15(4) and rule 7 of the proposed Valuation Rules where the transaction value can be rejected if there is a reason to doubt the truth or accuracy of the

transaction value declared by the supplier. There is no basis for invoking the provision for business to business supplies. In other cases too, it is a potential tool for harassment of the taxpayers.

30. COMPUTED VALUE METHOD

Section of draft Model GST Law

Value of taxable supply [Section 15 read with Rule 5 of (Determination of the Value of Supply of Goods and Services) Rules, 2016]

Issue

The rule provides for determination of value by including cost of production, cost of provision of services and inclusion of amount towards profit and general expenses of the like kind or class goods supplied by the other supplier. It is very difficult to know the "profit" and "general expenses" of any other supplier of the same class or kind of goods. Thus the said condition is practically very difficult to implement.

Suggestion / Recommendation

Clarity needs to be provided on inclusion of profit and general expenses. This provision will lead to a number of litigations on interpretation on phrases like "usually reflected", "of the same class or kind" etc. To avoid such litigation, the valuation should be as per existing practice of following CAS4 Standards issued by the Institute of Cost Accountants of India for valuation of goods used in captive consumption.

31. VALUATION FOR INTERSTATE STOCK TRANSFER BETWEEN RELATED PARTIES

Section of draft Model GST Law

Value of taxable supply

[Section 15 read with Rule 3(5) of Determination of the Value of Supply of Goods and Services Rules, 2016]

Issues

Rule 3(5) of the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 provides that where goods are transferred from—

(a) one place of business to another place of the same business,

(b) the principal to an agent or from an agent to the principal,

whether or not situated in the same State, the value of such supply shall be the transaction value.

Industry has to provide warranty for initial and/ or extended period of their products to customers located across country. Warehouses are set up in different states so as to cater the requirement within the lead time per contract. Spares/parts are dispatched from central warehouse to various state warehouses. From the above rule, it is clear that in case of stock transfer from a factory to depot situated outside the State the value shall be the transaction value.

"Transaction Value" has been defined under section 15 of the CGST Act which means price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

In case of depot transfer no consideration is there and hence no price is payable. It will result into increase in conflicts on valuation between assessees and Department. Even though it is revenue neutral, it will increase the amount of disputes.

Further, for a controlled Industry like Fertilisers, taxing Stock Transfers at Cost would lead to accumulation of huge unutilised Input Tax Credit

Suggestion / Recommendation

It is submitted that the adoption of Transaction value in such cases will front-end the value of supplies and result in high blockage of funds since the tax will be paid basis the Transaction Value but the actual supply to a recipient of goods will happen only at a future date. Also, since the transactions envisaged under Rule 3(5) do not involve any consideration, the determination of transaction value will be difficult. Accordingly, it is suggested that in case of these types of transactions value may be prescribed to be determined on a notional basis or the valuation methodology per CAS4 issued by the Institute of Cost Accountants of India be adopted instead of Transaction Value.

32. TREATMENT OF SUBSIDIES/OTHER TAXES FOR DETERMINATION OF VALUE

Section of draft Model GST Law

Value of Taxable Supply [Section 15(2)]

Issues

Various State Governments provide incentives to units through different schemes. Some States allow part of the sales tax amount collected to be retained by the manufacturer, some others by way of deferment of collection or otherwise. Section 15(2) of the proposed Model legislation provides that "subsidies provided in any form or manner, linked to the supply" is includable in 'value' for the purpose of the levy. Thus, subsidies received from Government under various Schemes, may be subject to GST levy. No yardstick to ascertain whether such linkage of subsidy to the supplies under assessment is provided.

Subsidies are given to encourage and incentivise business for the purpose of augmenting industrialization. Charging tax on subsidies is against the basic principle of giving subsidies. Further Govt. Subsidies / incentive may not be related to supply.

Further all taxes, duties, fees other than GST are proposed to be included in the transaction value. This provision is unreasonable and would result in cascading.

Suggestion / Recommendation

Government subsidy/incentive should not form part of transaction value. It is recommended that clause (f) of section 15(2) should be omitted.

Similarly clause (d) of the said sub-section (2) of Section 15 also needs to be deleted to avoid cascading.

33. VALUATION OF TRANSACTIONS ARISING OUT OF SHARING OF COSTS

Section of draft Model GST Law

Value of Taxable Supply [Section 15 read with Valuation Rules]

Issues

Many business entities having multiple group companies resort to sharing of costs for rentals or employees during the course of their operations. An employee hired by a company may also be working for another group company and the group company will be partially contributing to the main company towards the cost of the employee. Similarly, a group company may be remitting amounts to another group company the rentals for sharing a part of the premises. There is no specific provision in the draft Model GST law or the Valuation Rules to deal with such arrangements and value of transactions would need to be determined as per rules on the basis of comparable supplies.

The main objective of cost sharing is to optimize cost amongst entities without any intention to engage in business activity of cost shared activities. The specific rule shall give certainty to the tax treatment and due compliances, which can be vouched against number of judgments and pending litigation at various appellate authorities.

Suggestion / Recommendation

A specific valuation rule may be introduced for such cost sharing among group entities which may not qualify as pure agent between contracting entities for determining transaction value as cost allocated on consistent and reasonable basis.

34. TIME LIMITS FOR RETURN OF GOODS

Section of draft Model GST Law

Time of Supply of Goods [Section 12(6)], Exempted goods returned to place of business [Section 148], Duty paid goods returned to place of business [Section 149]

Issues

In terms of Section 12(6) as well as the transitional provisions under Sections 148 and 149 of the proposed legislation, goods can be returned within a maximum time period of 6 months.

In various industries like the ready-made garment industry, the norm is to send goods to Consignment Sales Agents (CSA) and customers on a “sale or return” basis. The norm in such industries is that the CSAs / customers return the goods after the season is over. Consequently, in numerous cases the return of goods happens well after a period of 6 months from date of original removal. Moreover, procedures for enabling such returns appear to be cumbersome.

Suggestion / Recommendation

It is recommended that a clear provision with respect to sales return is provided and the treatment of return of goods beyond the period of 6 months should be indicated. The stock return should be allowed even after 6 months of sales.

In order to cater to bona-fide industry norms the provisions of Section 12(6) should be amended such that in case the time of supply is indeterminate, a period of 12 months from date of removal be considered in place of the existing proposal of 6 months.

35. APPLICABILITY OF TAX ON ADVANCE PAYMENTS TOWARDS SUPPLY OF GOODS

Section of draft Model GST Law

Time of supply of goods [Section 12(2)(c)

Issues

Currently, there is no provision to pay tax on advance received in respect of an agreement to sell. This provision is there only in service tax. However, in the proposed GST regime, the same provision will also apply to goods. There are a lot of problems even in the current regime particularly in those cases where the order is cancelled or amended. These problems instead of getting solved will get compounded in the GST era because even the goods are now proposed to be brought under the ambit of same regime.

In the auto industry, advances are extended for manufacture of tools, dies, moulds, jigs and fixtures which have a gestation times extending to 3-5 years. The proto type will be made, tested and then the actual will be manufactured and trials will be conducted for trial production and mass production. On successfully completing these processes, it will be billed on the principal manufacturer. But if advance is taxed at the time of receipt, then the principal manufacturer may not be able to demonstrate the receipt of the goods at his end and the entire process may also result in cancellation of the order. In such a scenario, the input credit taken need to be reversed with interest also.

Sec.12(2)(d) specifies time of supply of goods as date on which recipient shows receipt of goods in his books of account. The supplier of goods has no control over recipient of goods making entry of receipt of goods in his books. Hence it is practically difficult to ascertain this date.

Suggestion / Recommendation

Tax should not be applicable on advances received towards future sale of goods. It is recommended to tax payments on the basis of supply. Delink the advance payment from supply. Advance payment should be treated in line with deposit.

Advance should not be taxed unless the advance is adjusted against supply of goods.

This will help in easing out the process and handling the transaction smoothly. Compliance complications will also be reduced to a larger extent

36. MANNER OF TAKING INPUT TAX CREDIT – CAPITAL GOODS

Section of draft Model GST Law

Manner of taking input tax credit [Section 16(14)]

Issues

Section 16(14) specifies that in case of supply of capital goods on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit

taken on the said capital goods reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods under sub-section (1) of section 15, whichever is higher.

The aforesaid provision does not deal with capital goods supplied as scrap and the same must be incorporated.

It may be noted that there are several capital goods (such as refractory bricks, batteries, DG sets, AC, power management system, etc.) which have shelf life of 3 - 5 years due to industrial usage, technological obsolescence, etc. Hence, if such goods are cleared after completion of their useful life, then no credit reversal should be required or if the same goods are cleared as scrap, the credit should be required to be reversed only to the extent of duty payable on the transaction value.

However, as per section 16(14) , in case of removal of these goods prior to completion of shelf life, only partial credit is allowed as per the formula prescribed.

Some of the other difficulties in the above provision are:-

(a) There are many items which fall under the category of "Capital Goods" as prescribed in the section 2(20) of GST Act, but the actual life of such material are not more than 1 or 2 years, one example can be refractories materials used by Steel Industry. Such materials need disposal once it attains its useful life. Although, it hardly fetches any realizable value compared to its purchase price but disposal of such items is necessary for an organization as it requires huge storage space and it is not possible to store it within the works premises for a longer period of time. As per the GST Act, if such type of a material is to be disposed of within a period of say one year then a manufacturer will have to pay/reverse substantial amount of input tax credit availed.

(b) As per Rule 3(5A)(b) of existing Cenvat credit Rule, 2004 if the capital goods are sold as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. In the existing indirect tax there is no such requirement to follow the above complex formula for capital goods sold as scrap.

Suggestion / Recommendation

There should be specific provisions prescribed for the payment of tax on the transaction value of scrap if the capital goods are supplied as scrap (normally after completion of useful life).

37. MANNER OF TAKING INPUT TAX CREDIT - JOB WORK

Section of draft Model GST Law

Manner of taking input tax credit in respect of inputs sent for job work [Section 16A(2)]

Issues

A distinct provision needs to be incorporated for dies and moulds given by a manufacturer to another manufacturer for production of goods as per his specifications. Section 16A(2) of the draft law provides the time limit of two years by which the principal has to receive back the capital goods on which he has taken credit and are sent to the job-worker. However, the

dies are given by the principal manufacturer to the other manufacturer for the full term of its useful life. Thus the condition of receiving back of the dies after two years would be practically very difficult to implement.

A similar provision exists in Rule 4(5)(b) of the CENVAT Credit Rules, 2004 and should continue.

Suggestion / Recommendation

There should be no limit for the principal to bring back dies and moulds on which he has taken credit and are sent to the job-worker or the time limit for return of inputs from job-worker locations be kept at two years under GST laws.

As far as capital goods are concerned, the GST laws should provide that the same may be kept at the job-worker location till the completion of the job-work agreement, irrespective of the period of such agreement.

38. TAX PAYMENT CHALLAN AS A VALID DOCUMENT FOR CLAIMING CREDIT

Section of draft Model GST Law

Manner of taking input tax credit [Section 16(11) (a)]

Issues

In many cases, particularly where tax payment is under the reverse charge mechanism the supplier need not be registered under the GST Act or the IGST Act by virtue of being below the threshold level or by virtue of being an overseas supplier. In such cases the tax-payer will not be in possession of an invoice or tax paying document issued by a supplier registered under the said Acts and, therefore, will be unable to claim input tax credit in terms of the provisions of clause (a) of Section 16(11).

Suggestion / Recommendation

The requirement of an invoice or tax paying document from a supplier registered under the GST Act / IGST Act should be dispensed with in case of tax paid under the reverse charge mechanism. Tax payment challan should be added in list of documents for availing GST credit

39. RECOVERY OF EXCESS CREDIT

Section of draft Model GST Law

Manner of recovery of credit distributed in excess [Section 18(1) and 18(2)]

Issues

As per Section 18, excess credit distributed, if any, is recoverable both from ISD & concerned recipient-supplier to whom the credit was distributed. This apparently is double jeopardy. The credit should be recoverable only from any one source. This will ensure compliances and better governance.

Suggestion / Recommendation

Recovery of excess credit distributed should be made from ISD only

40. CREDIT AGAINST INVOICES RECEIVED AFTER APPOINTED DATE

Section of draft Model GST Law

Transitional Provisions – Chapter XV

Issues

It is observed that separate specific enabling provisions do not exist in GST law allowing availing Credit on invoices received after appointed date with reference to goods / services received before appointed date. Further Credit of such invoices to be taken as CGST or SGST is not clear in existing Transitional provisions.

Suggestion / Recommendation

It is requested that specific enabling provisions may be provided in GST law allowing availment of Credit on invoices received after appointed date with reference to goods / services received before appointed date.

Specific provisions may also be provided to state whether Credit on such invoices will be taken as CGST or SGST.

41. OPTION TO REVERSE PART OF INPUT TAX CREDIT FOR EXEMPT SERVICES

Section of draft Model GST Law

Nil

Issues

Rule 6(3B) of Cenvat Credit Rules, 2004 provides an option to banking and other financial institution including non-banking financial company (NBFC) to reverse fifty per cent of CENVAT credit availed on inputs and input services as deemed credit towards exempted service. The GST Model Law is silent on the same.

The option of fifty percent is introduced in service tax to keep working simple from the perspective of determining credit attributable towards exempt services provided by banking and other financial institution including NBFC's and avoid unwarranted litigation. The deemed reversal will help in avoiding multiple litigations at State level and facilitate smooth implementation of GST.

NBFC's are currently net tax contributors, as output liability of service tax is more than the net credits availed post deemed reversal of credit at fifty percent. Further, with increased GST rate there will be increase in the contribution by NBFC's to Government revenues.

In alternate, adjustment be allowed for negative value addition towards NPA and bad debts while determining credit attributable towards exempt supply.

Suggestion / Recommendation

The reversal option at fifty percent be continued under GST Law for banking and other financial institutions including NBFC's.

42. THRESHOLD LIMITS FOR EXEMPTION AND COMPOUNDING

Section of draft Model GST Law

Taxable Person [Section 9], Composition Levy [Section 8], Registration [Section 19]

Issues

In the proposed legislation, a person shall not be considered as a taxable person unless his aggregate turnover in a financial year exceeds Rs. 10 lakhs (5 lakhs for North Eastern States). Since turnover of all over India is considered for ascertaining the registration & taxability of person, it may result in unnecessary compliance burden on the person in the states wherein hardly any business activities are undertaken.

A sufficiently high threshold level will enable ease of tax administration since the tax will be collected from only those tax-payers who have a sizeable turnover (and thus, tax liability). A high threshold level will also ensure that small and marginal traders do not face any hardship on account of the rigorous record-keeping and compliance requirements anticipated under the GST.

Suggestion / Recommendation

Accordingly, FICCI recommends that a threshold limit for registration under both the CGST and the SGST be set at a gross turnover of Rs. 25 lakhs per annum. The composition Scheme could be made applicable for annual gross turnover between Rs. 25 lakhs and Rs. 1 crore.

43. CENTRALISED REGISTRATION

Section of draft Model GST Law

Registration [Section 19]

Issues

Under the proposed legislation, a service provider operating in various states will have to obtain registration in each state. This will not only increase the burden of obtaining so many registrations but will also increase the compliance burden manifold. On a rough estimate, service provider operating in many states will have to file 4.5 times more returns than being currently filed under service tax and VAT taken together. This is because , 3 returns per month (and an annual return) are proposed to be filed under GST regime for every registration whereas currently much lesser number of returns are required to be filed under centralized service tax registration and VAT taken together. Some of our members feel that government wants the businesses to be busy in filing the returns only rather than doing the business.

Suggestion / Recommendation

Provision of centralized registration should be continued. Also, number of returns to be filed under GST regime should be rationalized

44. RESTRICTIONS ON ISSUE OF CREDIT AND DEBIT NOTES

Section of draft Model GST Law

Credit and Debit Notes [Section 24]

Issues

Sub-sections (1) and (2) of section 24 specify a time limit within which the credit notes or debit notes respectively can be issued for making adjustments in the taxable value or the tax charged vis-a vis the tax invoice issued earlier. Such adjustments can be made up to the 30th September following the end of the financial year in which such supply was made or the date of filing the annual return, whichever is earlier. The prescribed time limit is considered to be short particularly for adjustments in respect of tax invoices issued in the month of March. Apart from rectifying errors, in many cases such instruments have to be issued to reflect re-negotiated prices which can take time.

Proviso to Section 24(1) provides that no credit note shall be issued by the said person if the incidence of tax and interest on such supply has been passed by him to any other person. The intention behind the proviso is fair in as much as it denies the adjustment of tax credit if the quantum of excess credit has already been passed on. It is however, against the basic principle of transactions. If issue of a credit note is a commercial requirement, it should not be denied though the adjustment of tax credit can be declined.

Further, transactional errors can be rectified not necessarily by issue of credit/debit notes alone; some businesses resort to issue of revised invoices to rectify errors/reflect re-negotiated prices. Further adjustments in several invoices by issue of a single credit/debit note are also in vogue.

Suggestion / Recommendation

The time limit for issue of credit/debit notes in sub-sections (1) and (2) of section 24 should uniformly be prescribed as one year from the date of issue of the tax invoice.

The proviso to sub-section (1) of section 24 relating to issuance of credit note should be reworded to deny the adjustment of the tax credit while permitting issue of a credit note for the change in value on commercial considerations.

It is observed that language of section 24 is restrictive and does not cover all eventualities. Provisions of sub-rule (3) of rule 6 of the Service Tax Rules may be considered for adoption to overcome the issues pointed out in this point.

45. ISSUE OF INVOICES BY INSURANCE COMPANIES

Section of draft Model GST Law

Tax Invoice [Section 23]

Issues

Present service tax law provisions provide a benefit of reversal of service tax in a case when service isn't provided. In the proposed GST law this benefit is provided only through issuance of credit note.

Insurance company issues premium paid certificate after receipt of insurance premium amount. Also no document is issued when premium is recognised on accrual basis in books since there is no certainty that customer will pay the premium on due date.

Suggestion / Recommendation

Insurance companies should be exempted from issuing "Tax Invoice, Debit note & Credit note"

46. ISSUE OF INVOICES BY BANKING AND OTHER FINANCIAL INSTITUTIONS

Section of draft Model GST Law

Tax Invoice [Section 23]

Issues

Section 23 of the Model GST Law provides for the issuing of tax invoice or bill. However, draft GST law is silent on the relaxation currently provided under Rule 4A of the Service Tax Rules, 1994 to banking and other financial institution including non-banking financial company (NBFC).

In case of banking and other financial institution including non-banking financial company (NBFC) any document issued whether or not serially numbered or containing addresses issued within forty five days is considered as compliant with the invoice rule.

The objective of relaxing invoicing provisions is to have ease of compliance as individual transaction would be of small value compared to the high cost of issuing invoice at each stage. Considerations on which the exemption was given remain valid even today.

Suggestion / Recommendation

The relaxation provided under Rule 4A of the Service Tax Rules, 1994 to banking and other financial institution including non-banking financial company (NBFC) be continued.

47. FILING OF MULTIPLE RETURNS

Section of draft Model GST Law

Furnishing details of inward supplies [Section 26], Returns [Section 27], [Section 27A]

Issues

A taxable person is required to file monthly outwards supplies return, monthly inward supplies return, monthly integrated return, monthly TDS return (where relevant) and one annual return during a particular financial year

Suggestion / Recommendation

Multiple filing of returns is undesirable. Assessee should be required to submit one composite return covering CGST, SGST and IGST and subjected to one common jurisdiction with uniform assessment.

48. MODIFICATIONS IN THE OUTWARD SUPPLIES DATA FURNISHED BY THE SUPPLIER

Section of draft Model GST Law

Furnishing details of inward supplies [Section 26(1)]

Issues

As per Section 26(1) of the draft law, the buyer has been given the option to modify or if required even delete the details as uploaded by the supplier. Also the buyer can add details of the inward supplies if the supplier has not done so.

It is inconceivable that law can permit the recipient to modify the information furnished by the supplier without his concurrence.

Suggestion / Recommendation

It is suggested that the data uploaded by the supplier should not be allowed to be altered or added at the end of the buyer. All the modifications and additions should be communicated to the supplier by the buyer and the same should be carried out by the supplier. Also no modifications to the existing data uploaded in the system should be allowed by overwriting the data and any modifications should be done through debit/credit notes.

49. MISMATCH BETWEEN THE DETAILS OF OUTWARD AND INWARD SUPPLIES

Section of draft Model GST Law

Matching, Reversal and Reclaim of input tax credit [Section 29]

Issues

Manner of resolving the mismatch between the details of outward and inward supplies uploaded on GST Network (GSTN) is unfair to the recipients. Shifting the onus on the buyer to check whether the seller has paid goods and service tax (GST) is the most onerous provisions in the draft Model GST Law. The draft provides that a buyer shall not be entitled to claim an input tax credit (ITC) unless the tax charged in respect of such supply has been paid by the seller. In simple terms, ITC is the amount of tax paid by the buyer on purchases made by him for which the buyer is entitled to claim a credit against the sales subsequently carried out by him. It will be impossible for a buyer to ascertain whether the payment has actually been made by the seller.

The draft law prescribes for a GST compliance rating score, which would be given to all taxpayers (including sellers). The parameters of such rating are yet to be defined. The rating would be available in public domain, so to this extent a buyer could avoid dealing those having a poor rating. However, the rating has little or no value, as it doesn't absolve the buyer from ascertaining that the payment has been made by the supplier.

If the mismatch between the details of outward and inward supplies uploaded on the GSTN is not rectified by the vendor in the month of communication of the same to the recipient, the recipient will be liable to pay the differential GST along with interest in the subsequent month

As per the provisions of the proposed law, ITC itself would become a cumbersome process altogether considering the fact that there would be a large number of small suppliers who may not be such techno friendly to file the return accurately etc. and because of their non-compliance, buyer would have to suffer.

These kind of provisions would completely erode the business of small dealers because nobody would like to deal with small scale businesses due to the inherent fear of non-compliance by them and in turn this would lead to more dependency on large players and therefore, could create a situation of monopoly in the market.

Large tax payers will have voluminous data in the return. Quantum of mismatch may also be high.

Suggestion / Recommendation

As a principle, once non-compliance is detected, it is the responsibility of the Tax Administration to proceed against non-compliant entities. This responsibility should not be fastened on the recipients. The proposed law needs to be modified to ensure that responsibility of non-compliance of the distributor/stockist is not placed on the recipients.

Machinery provisions for allowing the ITC should also be simplified. One should not be denied ITC simply because the other person has not complied. Recipient of goods and supply should be eligible to take credit on the strength of supplier's valid invoices. If there is any default, all consequences / onus should be on supplier not on recipient of goods and services.

Further, it is recommended that online matching of inward & outward supplies based on return filled by the registered taxable person should be done on quarterly basis. A time period of minimum three months should be allowed for the rectification of mismatches.

50. MATCHING OF SUPPLIES TO UNREGISTERD DEALERS/COMPOSITION DEALERS

Section of draft Model GST Law

Matching, reversal and reclaim of reduction in output tax liability [Section 29A]

Issues

Registered person may issue credit notes to the unregistered person or dealer (URD) under composition scheme. Since URD/ composition dealer are not required to either upload any return or upload invoice wise details, the online matching will not be possible for such credit notes and tax benefit of credit note will be lost.

Suggestion / Recommendation

Law should have provision to allow for the reduction in the output tax liability of supplier to the extent of credit notes issued to URD or dealers under Composition scheme.

51. REVISION OF ANNUAL RETURNS

Section of draft Model GST Law

Returns [Chapter VIII]

Issues

No rectification can be made after filing of the annual return

Suggestion / Recommendation

Specific provisions need to be inserted to permit filing of revised returns within 6 months of filing the original returns.

52. DATE OF DEBIT TO BE THE DATE OF PAYMENT OF TAX

Section of draft Model GST Law

Payment of tax, interest, penalty and other amounts [Section 35(1)]

Issues

Explanation to Section 35(1) provides that the date of credit to the account of appropriate Government in the authorized bank shall be the date of deposit. It would be very difficult to ascertain for the assessee whether or not the amount paid by him has been credited to the account of the Government. Many a times there is a difference between the transaction date and the value date which is not known to the taxpayer. With a view to provide certainty the aforesaid provision should be modified.

Suggestion / Recommendation

The date of the debit in the assessee's bank account should be treated as the date of deposit of tax.

53. RECONCILIATION OF ANNUAL RETURN WITH THE ANNUAL FINANCIAL STATEMENT

Section of draft Model GST Law

Annual Return [Section 42(4)]

Issues

Every taxable person who is required to get his accounts audited under sub-section (4) of section 42 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

Reconciliation of Annual Return with the audited Annual Financial Statement is not possible since the annual GST Return will be drawn up for the operations of a Business in the particular State whilst the Annual Financial Statement is drawn up for the entire entity, i.e., Business – spanning all operations within and outside the country.

Suggestion / Recommendation

In view of the practical difficulties in preparing a reconciliation between the State specific Annual GST Return and the audited annual financial statement of a Business the requirement of reconciliation between these two statements, as prescribed under Section 30(2) of the GST Act, should be withdrawn. Instead, it is suggested that the statute could prescribe that the tax-payer should furnish a Chartered Accountant's Certificate reconciling the Annual GST Return with the audited Books of Accounts that are maintained for the State.

In respect of tax-payers who are required to get their Sales Turnover, etc. audited by a Chartered Accountant as per provisions of Section 44AB of the Income Tax Act, 1961 the requirement of yet another audited statement, as prescribed under Section 40(4) of the GST Act, should be dispensed with.

54. TAX DEDUCTED AT SOURCE

Section of draft Model GST Law

Tax Deduction at source [Section 37]

Issues

Section 37 of the Draft GST Law empowers the Central or the State Government to mandate any authority listed in the section or any such person or category of persons as may be notified, to deduct TDS from the payment to be made to the supplier, on the transactions above ten lakhs.

Principle of Tax Deduction at Source is anathema in Indirect Taxes – this is a new concept being forced on the taxpayers; this is unheard of in any other country in the world except in the context of direct taxes. Reverse Charge mechanism is accepted though in rare circumstances but logic of TDS is unacceptable. Given the robust GST Network backbone and the strict matching of transactions being contemplated in the model GST law, there is no further scope to burden the taxpayers with TDS.

Suggestion / Recommendation

There is absolutely no merit in introduction of TDS for GST; the proposal should be dumped.

55. INTEREST ON EXCESS CLAIM OF INPUT TAX CREDIT

Section of draft Model GST Law

Interest on delayed payment of tax [Section 36 (3)]

Issues

It is understood that interest will be demanded in case Credit is wrongly taken (even if the same is not utilized) by the taxable person.

Suggestion / Recommendation

It is requested that provisions may be amended that interest will not be payable in case Credit was taken but not utilized by taxable person. This will be in line with existing provisions in CENVAT Credit Rules.

56. MANNER OF UTILIZATION OF INPUT TAX CREDIT

Section of draft Model GST Law

Payment of tax, Interest, Penalty and other amounts [Section 35(5)]

Issues

Sub-Section (5) of Section 35 prescribes the manner in which the Input tax credit on account of IGST, CGST and SGST will be utilized and the order of their utilization. The provisions are

silent on whether CGST credit of one State would be allowed against output CGST of another State. Similarly, whether IGST credit of one State would be allowed against output IGST of another State is not clear.

Suggestion / Recommendation

It is recommended that IGST and CGST credits should be allowed to be taken as a common credit pool across various locations so that they could be set off against output GST liabilities of any location. For example, the CGST component in respect of inputs received from the state X should be allowed to be utilized for paying tax on supplies to a state Y etc.

57. DRAWBACK OF GST ON INPUTS USED IN EXPORT GOODS

Section of draft Model GST Law

Refund of tax [Section 38],[Section 132]

Issues

There may be a need to provide refund of Goods and Services Tax paid on inputs used in the manufacture of export of goods in certain instances through the mechanism of drawback.

Suggestion / Recommendation

Enabling provisions may be incorporated in the proposed legislation to grant drawback of taxes paid on inputs used in the manufacture of goods on the lines of the 'all industry rates' of drawback or 'brand rate of drawback'.

58. MECHANISM OF GRANTING EXPORT REFUNDS

Section of draft Model GST Law

Refund of tax [Section 38]

Issues

As per the model law it appears that the benefit of refund of input taxes in cases of export would continue. However, we foresee that the company needs to track input taxes state-wise. It is not clear whether multiple refund claims will need to be filed before the Central Authority and the State Authority of each state or a single refund for CGST and SGST needs be filed in case of export supplies.

Suggestion / Recommendation

We would request that the draft law be modified to address the said issue in the final legislation. Perhaps a general solution to the issue could be evolved after consultation with the exporting community. Also, a one-time window for all pending refund claims under the present legislation will be much appreciated.

59. WITHHOLDING OF REFUNDS PENDING APPEAL BY THE TAX ADMINISTRATION

Section of draft Model GST Law

Refund of tax [Section 38(9)]

Issue

Sub-section (9) of section 38 enables the Revenue officers to withhold a refund for specified reasons; one reason being that the grant of refund is likely to adversely affect the revenue. Given that a refund would always "adversely affect the revenue" it is unlikely that taxpayers would easily get the refunds due to them. The proposed law would sanctify the informal practice of denying the refunds currently followed by the Tax Administrations.

Government has all powers to recover its dues including powers to attach property/bank accounts, etc. Hence this method of suo-moto adjustment is an unfair practice. This should not be carried forward to new modern reformed tax system of GST.

Suggestion / Recommendation

Government should not withhold any refund just on the ground that issue is subject matter of "appeal" unless there is a formal valid "stay" obtained from a competent authority. Sub-section (9) needs to be omitted from the GST legislation.

60. A SINGLE AUTHORITY FOR GRANTING REFUNDS

Section of draft Model GST Law

Refund of Tax [Section 38]

Issue

The law inter-alia provides for a provision where the manner and form in which refund is to be applied would be provided for. It appears that separate refund applications are to be made for CGST/ SGST / IGST to CGST/ SGST/ IGST officers respectively.

Suggestion

GST should provide for automatic refund within 15 days of filing of return to ensure that working capital of the business isn't blocked. It would be cumbersome for a taxable person to apply for refund of different types of GST (CSGT/ SGST/ IGST) with different authorities.

While providing for the refund mechanism, the law should provide for only one authority to which the application should be made.

61. PENDING REFUND CLAIMS

Section of draft Model GST Law

Pending refund claims to be disposed of under earlier law [Section 154]

Issue

Section 154 provides that any refund claim filed by taxable person before appointed day shall be disposed of in accordance with earlier law provided that where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

Rule of law must be upheld; a taxpayer's money should not be appropriated by the State in an arbitrary manner. Here assessee must have the option to challenge such rejection at the appellate forum.

Suggestion / Recommendation

Assessee must be given the opportunity of filing an appeal against the order rejecting an application for refund.

62. REFUND/REBATE OF EXPORT DUTY – TRANSITIONAL PROVISIONS

Section of draft Model GST Law

Transitional Provisions [Chapter XXV]

Issue

There is no procedure prescribed in the model GST law for export duty refund on the goods cleared for exports on payment of excise duty under erstwhile law and exports recognized on or after the appointed day.

Suggestion / Recommendation

Refund to be made available in case of goods cleared before the appointed date and exported on or after the appointed day.

63. AVOIDANCE OF MULTIPLE AUDITS

Section of draft Model GST Law

Accounts and Other Records [Section 42 (4)]

Issue

It is understood that every taxable person whose turnover exceeds prescribed limit will require getting records Audited from CA / CWA to comply with the provisions of sub-section (4) of section 42 of the Model GST Law. It may be pointed out that specified businesses are also required to get their accounts audited under the provisions of the Income Tax Act 1962. To the extent possible, multiple audits need to be avoided.

Suggestion / Recommendation

Exemption from compulsory audit under section 42 may be granted to a taxable person who is required to get their accounts audited under Income tax Act and thus submits Tax Audit Reports. If necessary, the format of the income tax audit report may be amended to include additional particulars, if any, required for the purposes of the aforesaid sub-section(4).

Thus, multiple audits may be avoided.

64. INTIMATION INSTEAD OF PERMISSION FOR SENDING GOODS FOR JOB WORK

Section of draft Model GST Law

Job Work [Section 43A] read with Section 3

Issue

Section 43A requires the taxpayer to take permission from the Commissioner to send taxable goods without payment of tax to a job worker and after completion of job work, allow bringing back such goods to any of his place of business. In the case of many businesses such movements take place between the businesses and several job workers

(carpet and steel industry). Obtaining permission for such movement would be placing a heavy burden on the taxpayers.

Such permissions are not required to be taken under the present law and the same should be continued in the GST regime

Suggestion / Recommendation

It is recommended that instead of seeking permission for such movement, intimation to the designated officer should be sufficient.

65. COLLECTION OF TAX AT SOURCE BY E-COMMERCE COMPANIES

Section of draft Model GST Law

Sections 43B and 43C

Issue

Section 43C of the draft Model GST Law requires every electronic commerce operator to collect an amount out of the amount payable to a supplier representing consideration towards the supply of goods or service at such rates as may be notified and deposit the said amount to the credit of the appropriate government in the prescribed manner (a sort of Tax Collected at Source – TCS provision).

The entire draft of GST law is sector/industry agnostic and same law is prescribed for all industries uniformly except for e-commerce sector. Model GST law prescribes stringent and more onerous compliance requirements for e-commerce players.

TCS provision is discriminatory in nature, as the obligation of tax collection at source is cast in respect of supplies made through e-commerce market place model only, while the retailers supplying goods and services from a brick and mortar structure or e-commerce operators selling their own inventory are not saddled with such encumbrances.

Registration: As is evident from section 19 read with Schedule III para 5 (viii) and (ix), any supplier who supplies goods / services through an e-commerce operator is required to obtain registration under the GST Act irrespective of the threshold prescribed in para 1 to Schedule III. In this regard, it is pertinent to note that the e-commerce marketplace caters to thousands of small and medium enterprises ('SME') and several of which may be way below the prescribed threshold for obtaining registration. Such a requirement of seeking registration is discriminatory and unreasonable.

Excess input tax credit: As the amount of TCS paid is credited to the account of the seller, this could lead to refund situation and blockage of working capital for thousands of sellers who conduct business on very low margins. The refund of GST credits is only provided in situations of export or inverted tax structure and therefore the sellers could be saddled with additional costs in the form of non-refundable tax credits and which itself is against the very spirit of GST.

In the current Model GST Law, there are no provisions relating to refund of the credit accumulated on account of TCS.

Matching of data: The ecommerce operators are required to file monthly information returns; the seller-wise data contained therein shall automatically be populated in the sellers' returns. In case of any discrepancy or mistake arising out of this exercise, the supplier shall rectify the discrepancy in his return for the month in which the discrepancy is communicated to him [as per section 43C (7)]. However, there is no provision for rectification of statements furnished by an ecommerce operator. Hence, if discrepancy is at the Operator's end and cannot be rectified by the Operator, then the seller would be stuck with the additional liability and even for a transaction he may not have conducted.

As a consequence of the above, the proposed section will cause undue hardship not just for the ecommerce operator but also for thousands of small and medium sellers.

Additionally, this shall also lead to discrimination between other suppliers and suppliers selling through e-commerce operator vis-à-vis applicability of the GST Act merely basis mode of supply, which shall discourage suppliers to transact through ecommerce.

Impact on the SME sellers of ecommerce

- Massive impact on cash flow making it difficult to operate competitively for SMEs
- As the amount of TCS paid is to be credited to the account of the seller, this could lead to a situation of excess input GST credits available which may not be utilizable by the seller.
- Also, a lot of product/ services in which SMEs deal with could be exempt from GST. Even in such scenarios, the operators would be required to deduct TCS from payments made to seller. In such a case also, the sellers (SMEs) would have excess input GST credit
- The refund of GST credits is only provided in situations of export or inverted tax structure and therefore the seller could be left with excess credits that may be unutilized.

Suggestion / Recommendation

While we appreciate the intent of introducing this proposed levy in order to check any tax leakage, it can equally be achieved by information being sought by the e-commerce operators to be submitted in the context of the suppliers effecting supplies through such operator as per section 43C (10) of the Model Law. Therefore, there is no requirement for introduction of the concept of TCS.

In the larger interest of encouraging the business in India and in alignment with the Government's policy of 'ease of doing business', it is recommended that TCS provision is dropped from the final GST Law.

Further provision of registration under the GST laws should be identical for all businesses including any supplier who supplies goods / services through an e-commerce operator

66. DUAL COMPLIANCE BY AN E-COMMERCE OPERATOR IN THE CAPACITY OF AN AGENT

Section of draft Model GST Law

Sections 43B and 43C

Issue

Notwithstanding the request made in the above point, the TCS provision is a blanket provision treating all e-commerce operators alike, only exception is the e-commerce operator supplying goods/services on its own behalf.

It is pertinent here to mention that as per meaning of "supply", the transaction between principal and agent shall be deemed to be supply.

A conjoint reading of above two provisions with reference to online tour operators (OTA) raises two dilemmas:

1. It is not clear that whether the deeming fiction of supply between principal and agent would lead to a situation where the OTAs while rendering services to ultimate customer would also be deemed to be rendering services on their own behalf. Hence the OTAs would get the benefit of exception provided under TCS provisions to e-commerce operators supplying goods/services on their own behalf;
2. If the OTAs are not covered by the above exception, they would land up doing double compliances. Firstly, as a deemed supplier they would be required to raise invoices, file returns, etc. and secondly, on the same transactions while making payments to their principal they would be required to collect TCS and issue TCS certificates.

Suggestion / Recommendation

OTAs/agents should be clearly excluded from the compliance requirements applicable to e-commerce operators.

67. RETURN OF THE PRODUCTS PURCHASED THROUGH E-COMMERCE COMPANIES

Section of draft Model GST Law

No provision

Issue

The proposed Model GST law has not addressed the issue concerning the return of the products purchased through E-commerce companies by the customers.

In the case of return of the products by the customers post sales, wherein the tax is already deposited based on credit to supplier or payment received, there are no provisions for either reversal or adjustment of the tax already paid. It may be noted that e-commerce sector experiences 10-15% of the total sales as returns by the customers for various reasons. It is recommended that a provision for refund/adjustment of tax paid earlier be incorporated on sales returns and as consistent with the present VAT and excise laws also.

In case the provisions relating to TCS are not dropped, such adjustment is also required for TCS.

Suggestion/Recommendation

It is recommended that a provision for refund/adjustment of tax paid earlier be incorporated on return of goods sold.

68. TIME LIMIT FOR FURNISHING ADDITIONAL INFORMATION

Section of draft Model GST Law

Section 43C (11)

Issue

Under the draft Model GST law, an Operator may also be required to furnish information relating to supplies made through the Operator, stock of goods held in warehouses managed by such operators and declared as additional places of business upon issuance of a notice by the Authority as prescribed. Such information would have to be furnished within 5 working days of service of notice. Considering the volume / quantum of transactions undertaken through the Operator on a daily basis, 5 days may not be sufficient time to furnish such information; it may take weeks or more depending on the nature of information sought.

Suggestion/Recommendation

It is suggested that a provision be made for extension of such time limit on a reasonable cause being shown.

69. ISSUE OF NOTICE/ORDER FOR DETERMINATION OF TAXES NOT PAID/SHORT PAID ETC.

Section of draft Model GST Law

Determination of Tax not paid / Short paid / Erroneously refunded [Section 51]

Issue

Section 51A provides for the manner in which a tax not paid or short paid or erroneously refunded for any reason other than fraud etc. will be determined.

Sub-section (1) of section 51A provides for service of a notice on the person chargeable with tax which has not been paid or short paid or erroneously refunded. There is however no time-limit prescribed within which such a notice can be issued. The only limiting factor for the proceedings to conclude is the time-limit specified in sub-section (7) of section 51A wherein an order against the said notice is required to be issued within three years from the date of filing of annual return for the year to which the tax demand pertains. It is observed that effectively such an order can be made after four years and nine months of the short payment or non-payment. This period is considered to be too long for keeping the assessments open; finality needs to be brought to the assessments at the earliest.

Suggestion / Recommendation

A time limit should be prescribed in sub-section (1) of section 51A within which a notice requiring the taxpayer to show-cause why he should not pay the amount specified in the notice, can be issued. Given that GST Network will record all the transactions of the assessees and make them available to the tax officials of the Central and State Governments online, there is no reason as to why the period for issue of the show-cause notice should be more than one year from the date of short payment, non-payment or excess refund.

Likewise, there should be a limit placed on the time taken by the department to adjudicate the notices issued under sub-section (1) of section 51A. Instead of linking the issue of order to the date of filing returns or the date of erroneous refund, the time limit should be from the date of issue of the show-cause notice and should not exceed one year therefrom.

Issue

Sub-section (2) of section 51A dispenses with the need to issue a proper show-cause notice for any short levy or non-levy etc. provided a show-cause notice has been previously issued for a specified period. The sub-section (2) provides that the subsequent period merely issue of a statement would serve the purpose of a show-cause notice.

This provision has the potential for serious misuse. It is well known that the department tries to invoke the extended period of time limit of 5 years for central excise, service tax matters even though there has been no mis-declaration etc. By inserting sub-section (2) it is likely that the officers would issue a show-cause notice on a new dispute by merely serving a statement alleging that the matter is in continuation of a previous show-cause notice.

By inserting this provision, the department is only trying to avoid repeating the facts of the issue already stated in a previous show-cause notice. It is felt that the department will not be wasting much time in preparing a new show-cause notice for a subsequent period but such a measure will clearly specify the reasons for the demand and the liability of the taxpayer.

Suggestion / Recommendation

Sub-section (2) of section 51A should be omitted to prevent its possible misuse. A proper show-cause notice should be issued each time the department detects a short payment or a non-payment of tax even if it is in respect of an issue for which a notice has been issued for a previous period.

Issue

Sub-section (3) of section 51A provides for voluntary payment of tax and interest by the taxpayer and in such cases no show-cause is required to be issued by the tax officers and no penalty is leviable.

There have been several instances wherein during the course of audit / checks by enforcement agencies differences have arisen between the assessee and department on interpretation on provisions of law. The audit / enforcement officers make out a case for short levy and require the taxpayer to pay up the amount immediately. There are also threats of arrests and prosecution unless the assessee makes “voluntary payment” of taxes. Making a formal provision in the new law for voluntary payments would only sanctify the arm twisting methods followed by the tax officers in their zeal to achieve revenue targets.

Suggestion / Recommendation

Sub-section (3) of said section 51A should be deleted from the proposed GST legislation to avoid pressure being brought upon the taxpayers to pay up disputed amounts. All such recoveries should be only by issue of formal communication by the department.

In case, however, the Department wishes to provide for eventualities where the taxpayer may have made a mistake and wants to rectify the same genuinely on his own accord, a provision should be included in Chapter XII – Assessments. The section could be titled as "Self-Assessment" and provide that where the assesse discovers that an error has occurred, he can suo-moto pay the differential amounts of tax and interest and file revised returns without inviting any penalties.

Aforesaid changes should be carried out mutatis-mutandis in section 51B as well.

70. AUDIT

Section of draft Model GST Law

Audit [Section 49]

Issue

Tax officers are authorised under section 49 of the Model GST Law to carry audit of the business transactions of a taxable person. Subsequently in case of Special Audit, the audit work is proposed to be entrusted to the Chartered Accountants and Cost Accountants.

Suggestion / Recommendation

Since all records including invoice level details of all transactions of taxable persons are proposed to be captured on the GST Network, it is recommended that manual audit at the business premises of taxable persons should be dispensed with. Tax authorities should carry out E-Audit of the assessee from their own office premises only. A physical audit by deputing officers to the business premises should be conducted only when there is a reasonable belief of evasion of taxes by the taxpayers and such an audit should be expressly sanctioned by an officer not below the rank of a Chief Commissioner.

The provision of Special Audit by Chartered Accountants and Cost Accountants as proposed in Section 50 could be retained for business entities having transaction over Rs.1 crore in the prescribed circumstances.

71. AUDIT REPORTS TO BE MADE AVAILABLE TO ASSESSEES

Section of draft Model GST Law

Audit [Section 49]

Issue

Section 49 provides for audit of the business transactions of any taxable person by officers authorized by the Commissioner - CGST / SGST.

Since all the business transactions would be captured on the GST Network including details of input tax credit, conducting an onsite audit in all cases may not be necessary.

As per existing practice in the Central Excise and Service Tax laws, the taxpayers are never handed over a copy of the audit report. They are served with show cause notices if any short levy is detected.

Suggestion

On site audit should be avoided in case the audit can be completed from the tax office on the basis of the records available online on GST Network.

A statutory provision be made providing for a copy of the audit report to be served on the taxpayers within one month of the completion of the audit.

72. TAX WRONGFULLY COLLECTED AND DEPOSITED WITH THE GOVERNMENT

Section of draft Model GST Law

Tax wrongfully collected and deposited with the Central or State Government [Section 53(1)]

Issue

As per Section 53(1), a taxable person who has paid CGST/SGST (in SGST Act) on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply, shall, upon payment of IGST, be allowed to take the amount of CGST/SGST (in SGST Act) so paid as refund subject to the provisions of section 38 and subject to such other conditions as may be prescribed.

Suggestion / Recommendation

In case of tax wrongfully collected and deposited with the Government, instead of making the payment first and then seeking refund, the assesse should be permitted to take the tax wrongfully paid as credit in the respective accounts.

73. RECOVERY OF SUMS DUE FROM AMOUNTS HELD BY THIRD PARTIES

Section of draft Model GST Law

Recovery of tax [Section 54(1)(c)(i)]

Issue

As per Section 54(1)(c)(i), the proper officer may, by a notice in writing, require any other person from whom money is due, to pay to the credit of the Central or a State Government either forthwith, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

Suggestion / Recommendation

Resorting to the recovery of tax amount from a third person should only be after a determination that the tax/other sums are in fact recoverable has been made at least at the level of Tribunal and no stay has been granted by a high Court or Supreme Court on such determination. It is only at the level of Tribunal that fair decisions are currently being handed out. The recovery from third person should not be proceeded with merely on the issue of a show cause notice or passage of an adjudication order.

74. PROVISIONAL ATTACHMENT OF PROPERTIES DURING PENDENCY OF PROCEEDINGS

Section of draft Model GST Law

Provisional attachment to protect revenue [Section 58]

Issue

Where during the pendency of any proceedings, inter-alia under Section 51, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government Revenue, it is necessary to do so, he may by order in writing attach provisionally any property belonging to the taxable person in such manner as may be prescribed which may be effective up to one year.

Provisional attachment of property will cause undue hardship on the genuine assessee.

Suggestion / Recommendation

This section should be removed or alternatively, it may be suitably worded to allow provisional attachment of property only on the basis of order passed by the High Court or the Supreme Court.

75. VALUE LIMITS FOR RESORTING TO ARREST OF OFFENDERS

Section of draft Model GST Law

Power to arrest [Section 62]

Issue

Currently, the monetary threshold for tax authorities to carry out arrest for any offence under the provisions of the Central Excise Act, 1944, is Rs. 1 crore, and Rs 2 crore under the Finance Act, 1994, (dealing with the service tax law). The threshold was raised from Rs 50 lakh for service tax to Rs 2 crore in the Finance Act, 2016. However, it is proposed to revert to the Rs 50-lakh threshold to trigger arrest in the model GST law.

This is a retrograde step, particularly when the GST provisions would be new, and the government should tackle such issues with understanding rather than through threats of arrest.

Suggestion / Recommendation

Threshold to trigger arrest should be at least Rs 2 crores under the proposed GST legislation.

76. PERSONS AUTHORISED TO ORDER ARRESTS

Section of draft Model GST Law

Power to arrest [Section 62]

Issue

Stringent provisions of arrest and prosecution including imprisonment up to five years have been envisaged in the proposed GST law. There are apprehensions based on current experience that authorities may abuse the power and harass the genuine tax payers. There is high possibility that authorities may adopt arm twisting tactics to extract undue advantage.

Suggestion / Recommendation

Such stringent provisions should be invoked rarely and in cases involving fraud and evasion of taxes. No such action should be taken in cases of difference of opinion between the tax authorities and the tax payer on question of interpretation of law where the declaration of

supplies has been truthfully made. Orders of arrest should be issued with the approval of Principal Chief Commissioner (CGST) or Commissioner (SGST).

77. SCOPE OF "SUBSTANTIAL PENALTY"

Section of draft Model GST Law

General disciplines related to penalty [Section 68(1)]

Issue

"Minor breaches" have been defined expressly however substantial penalty is not defined.

Also limit of Rs.5000/- as minor breach is very low for large dealers whose turnover is in hundreds of crores.

Suggestion / Recommendation

Law should expressly provide the meaning of "substantial penalty" and not leave it to the whims of the officers.

The limit of minor breach should be suitably defined keeping in mind the fact that for business entities having turnover in crores Rs 5000 is a negligible amount.

78. PRESUMPTION OF CULPABLE MIND

Section of draft Model GST Law

Presumption of culpable mental state [Section 75(1)]

Issue

As per Section 75(1), in any prosecution for an offence under the proposed law which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Such a provision assumes all the assessees to be of culpable mind and the entire burden to prove the contradictory comes on the assessee.

Suggestion / Recommendation

This provision needs to be deleted; it should be the responsibility of the persons who make an allegation to prove that the allegation is true.

79. CAP ON AMOUNT OF PRE-DEPOSIT FOR FILING APPEAL

Section of draft Model GST Law

Appeals [Section 79(6) and Section 82(10)]

Issue

As per the proposed provisions relating to CGST, no appeal shall be filed before 1st Appellate authority/National Appellate Tribunal unless the Appellant deposits sum equal to 10% of the disputed amount which includes fee & penalty also.

Similarly in the case of SGST, no appeal shall be filed before 1st Appellate authority/National Appellate Tribunal unless the Appellant deposits sum equal to 10% of the disputed amount which includes fee & penalty also. Further, Departmental authorities may apply to 1st Appellate authority to order higher amount of pre-deposit, not exceeding 50% of the amount in dispute, in a case which is considered by Commissioner as 'serious case' i.e. case involving disputed tax liability of 25 Crores where Commissioner is of the opinion that department has very good case against the taxpayer.

Above provisions will have negative impact on cash flow and may result into working capital shortage for meeting the genuine business requirement. Hence the provision needs to be modified.

It is well known that demands are often confirmed arbitrarily against assessees. It will result in financial burden on the person to deposit 10% of the disputed amount. Moreover, disputed amount will include tax, interest & penalty.

Presently, in cases involving demand & penalty, 7.5% deposit is applicable on demand only and also there is an absolute cap of Rs. 10 crores if the amount of pre-deposit exceeds Rs. 10 Cr.

Suggestion / Recommendation

A cap of Rs 10 crores be introduced on the amount of pre-deposit in case the 10% of the disputed tax exceeds Rs. 10 crores. Provision to increase the pre-deposit to up to 50% of the disputed amount in ‘serious cases’ should be deleted. Differentiation between serious and non-serious cases should be deleted.

Also in case of pronouncement of judgment in favour of assessee, pre-deposit amount should be automatically refunded to him without any refund application and within a specified time.

80. PRE-DEPOSIT FOR APPEALS

Section of draft Model GST Law

Appeals to first appellate authority [Section 79]

Issue

As regards pre-deposits, the code proposes that pre deposit of disputed amounts will include penalties levied in the respective orders. This is applicable as per Section 79 which extends to both CGST and SGST appeals.

It is pertinent that definition of tax payable under Section 2(94) only includes taxes which is GST but does not include any penalties levied under the law.

In actual litigation, it is a fact that penalty levied by the Department is dropped by higher Tribunals and Courts as the conditions or attendant circumstances for its levy are not met. It is also a fact that more than 80% of the cases are decided against the tax authorities at the Tribunal level.

Suggestion

Considering the track record for levying penalty in both legislations, it is prayed that the appeal pre-deposit should not include the penalty levied in the order.

81. RIGHT TO FILE APPEALS

Section of draft Model GST Law

Non-appealable decisions [Section 93]

Issue

No appeal shall lie against any decision taken or order passed by GST officer if such decision taken or order passed inter-alia relates to any one or more of the following matters:

a) An order pertaining to the seizure or retention of books of accounts, register and other documents

b) An order sanctioning prosecution under this Act

It is a harsh provision against the assessee taking the legitimate right to approach higher authorities.

Suggestion / Recommendation

Proposed section 93 should be deleted; let the normal provisions be made applicable.

82. PROVISIONS FOR REVISION OF ORDERS BY COMMISSIONER

Section of draft Model GST Law

Revisional Powers of Commissioner [Section 80]

Issue

The draft Model GST Law contains two chapters XVIII (page 91 and page 96) titled “Appeals” and “Appels and Revision” respectively. Section 80 in Chapter 18 on page 92 has been left blank. Section 80 of Chapter XVIII on page 97, however, provides for the Commissioner to call for and examine the record of the any proceeding under this Act and to revise the order of the subordinate officer after due notice to the assessee if he considers the decision or order passed by an officer subordinator to him to be “erroneous in so far as it is prejudicial to the interest of the revenue”

Such exercise of revisionary powers is uncalled for especially when only orders against the revenue are sought to be revised and no provision has been made to provide relief to the taxpayers who may be a victim of an error on the part of such subordinate officer. Moreover, executive officers who have the responsibility to meet revenue targets should not be entrusted with the task of revising assaessments.

It is recommended that this provision conferring revisionary powers on the Commissioner should be deleted. As in the case of an assessee who is required to file an appeal if he is aggrieved of any order, the revenue authorities should also be made to approach the appellate authorities for review of an order of a subordinate officer which is deemed to be

prejudicial to the interest of revenue. Moreover adjudicating and appeal mechanism should be uniform for CGST/SGST.

Suggestion / Recommendation

Provisions conferring revisionary powers on Commissioner (SGST) should be omitted. Further, adjudicating and appeal mechanism should be uniform for CGST/SGST and there should be a unified authority for adjudications/appeals.

83. REQUIREMENT OF ADDITIONAL DOCUMENTS DURING TRANSIT OF VEHICLES

Section of draft Model GST Law

Inspection of Goods in Movement [Section 61(1)]

Issue

The Model GST Law provides that the Central or a State Government may require the person in-charge of a conveyance carrying any consignment of goods of value exceeding Rs.50,000/- to carry with him such documents as may be prescribed.

It was expected that in the GST regime there will be no check posts and the objective of 'one nation one tax' would be achieved. It is not understood why an enabling provision is being made to empower Governments to prescribe additional transport documents for high valued consignments. Waybills and Check Posts related compliances need to be dispensed with to optimise delivery schedules and lower operational costs resulting in competitive pricing.

Suggestion/Recommendation

The requirement of any additional document other than invoices during transit should be abolished irrespective of the value of the consignments. The perceived benefits of GST would be lost if the compliance regime is harsh. Section 61 needs to be deleted if the dream of 'one nation-one tax' is to be realised.

84. SETTLEMENT OF CASES

Section of draft Model GST Law

New Provision

Issue

Chapter VIII of the Integrated Goods and Services Tax Act specifies provisions relating to settlement of cases by a National Goods and Services Tax Settlement Commission. However, it is observed that no such corresponding provision exists in the Model Law for CGST and SGST. Settlement provisions in the existing indirect and direct tax laws are helpful in resolving disputes and reducing further litigation. There is equally a need to create this machinery in the CGST and SGST laws also.

Suggestion/Recommendation

Provision for settlement of cases corresponding to those in the Integrated GST Act need to be made in the CGST and SGST laws also. In fact, it will be incongruous to have this facility

only for inter-state transactions while omitting this important dispute resolution mechanism for intra-state transactions. Further the scope for settlement of disputes needs to be widened.

85. AUTHORITIES FOR ADVANCE RULING

Section of draft Model GST Law

Advance Ruling [Chapter XIX]

Issue

The draft Model GST Law envisages setting up of an authority for Advance Ruling in each state. The Authority shall comprise of one member - CGST and one member - SGST and these persons will be officers of the Central and the State Government respectively.

There is also a provision for setting up an Appellate Authority for Advance Ruling which shall again comprise of an officer each of the Central Government and the State Government. The Appellate Authority would decide appeals filed against the order of the Authority for Advance Rulings and other specified matters.

It is observed that all the authorities under this chapter would comprise of Government officials and there will be no person with a judicial background present in any of the forums. Further, in case of disagreement between the members of the Authority for Advance Ruling, the case would need to be placed before the Appellate Authority resulting in delays.

It has been stipulated that each state would have an authority consequently it is likely that on the same issue different authorities may take different decisions.

Suggestion / Recommendation

It is suggested that the Authority for Advance Rulings should be a Central body comprising of a retired judge of the High Court / Supreme Court and two technical members having experience of administering the CGST or SGST. There can be multiple benches for the authority depending upon the volume of work envisaged. The Rulings of the Authority shall be binding on the Central and the concerned State Government. They should equally be applicable to other entrepreneurs from any State provided the facts are identical. There should be no need for an appellate forum since even without such a forum appeals can be filed in the High Court / Supreme Court by both the tax administration and the applicants.

86. RECEIPT OF SUPPLIES BY EOU/STP/SEZ UNITS

Section of draft Model GST Law

No provision

Issue

In the model law, imports of goods by STP/SEZ units are not zero rated which would imply paying of GST first and claiming refund later. This would lead to cash flow impact and accumulation of refund for such STP/SEZ units. Even if provisional refund is granted, the refunds could be disallowed during audit leading to litigation which we have in current regime.

Under present indirect tax laws, supplies made to Special Economic Zone (SEZ)/EOU have been treated as Exports. To avoid similar issues in GST regime, supplies made to SEZs should be expressly defined as Exports and/or Zero-rated in the Law.

Suggestion / Recommendation

Import of goods by EOU/STP/SEZ units should be zero rated so that there is no cash flow impact and also EOU/STP/SEZ units do not have to file refund claim in multiple locations and wait for refund (provisional and final).

87. COMMON INPUTS/ SERVICES

Section of draft Model GST Law

No provision

Issue

It is observed that no provision has been made in the draft law regarding availment of Credit in case a taxable person supplies both goods falling under GST law and goods not covered under GST law (e.g. Natural Gas).

Suggestion / Recommendation

It is requested that provisions may be kept in GST law to allow full credit of GST for assessees supplying both goods falling under GST law and goods not covered under GST law.

88. RATING OF TAX OFFICERS

Section of draft Model GST Law

Compliance Rating [Section 116]

Suggestion

While it is encouraging to see the GOI and States rating compliance of registered persons from point of view of encouraging voluntary compliance and the credibility of suppliers etc., it will be advisable in the same breadth to provide in law adequate Ombudsman provisions for addressing harassment complaints and improving stakeholder service.

The Commissionerates across the country on geographical or other possible divisions must be ranked in order of their service to stakeholders, courtesy shown during meetings, treatment meted when summon is issued etc.

89. CONTROL ON MOVEMENT OF GOODS

Section of draft Model GST Law

Movement of goods [Section 132]

Issue

With the GST regime one expected that the administrative controls on movement of goods will be removed. However, if one peruses the power to make rules under section 132 vide clauses (xxviii) and (xxix), there are powers under which rules will be made for these also.

Suggestion

Considering the avowed objective of GST of one national market, there should be no transit forms or declaration forms for movement of goods between one registered person to another registered person.

90. NOTIFICATIONS WITH RETROSPECTIVE EFFECT

Section of draft Model GST Law

Power to issue rules [Section 132]

Issue

The power to make Rules under sub-section (1) of Section 132 has also conferred on the respective Governments power to issue Notifications with retrospective effect under these Rules. The trade and industry have repeatedly voiced their concerns on the Government resorting to retrospective legislation with adverse impact on the taxpayers. The Central Government had in the context of certain retrospective changes in the direct tax laws had given an assurance in Parliament that no retrospective legislation will be undertaken which has the effect of creating a fresh tax liability. (Finance Minister's Budget speech in 2014)

Providing an enabling provision in the GST Law for retrospective legislation is a blow to the taxpayers even before the GST regime has come into effect.

Suggestion

Power to issue notifications with retrospective effect should not be included in the proposed GST Laws. In case, such a provision is required a stipulation should be included that no such retrospective notification shall create a fresh tax liability on the taxpayers implying that the retrospective legislation will be made only if it is beneficial to the taxpayers.

91. TRANSITION PROVISION FOR INPUT TAX CREDIT

Section of draft Model GST Law

No provision

Issue

The Model GST law does not contain transition provisions which have the effect of providing credit under the following scenarios:

- Credit available to traders for excise duty paid by manufacturers on goods held in stock for sale and on capital goods during transition.
- Credit available to traders on service tax paid relating to a period after the appointed date on services such as rent, freight, etc.
- Credit available to service providers of VAT and CST paid on inputs and capital goods intended for use in providing services
- Credit available to manufacturers of CST paid on various capital goods etc.

Further, the Model GST law provides that credit as per returns would be carried forward. However, there is no provision for:

- Goods in transit
- Invoices dated prior to GST not recorded
- Credit availed and reversed prior to GST
- Late filing of last return under erstwhile regime (which is filed post GST regime)

Suggestion

All the cases given here cover an expansion of credit compared to the current law. The logic for this in all cases is similar. Under GST, the coverage of the tax would increase. Similarly, the credit available for inputs, capital goods and input services would also increase, compared to that available under current law. However, in many cases, there would be enhanced taxation after the appointed date, but restricted credit. This seems iniquitous.

In all the cases mentioned above, the supplier in question would have a heavier burden of taxation for stocks, capital goods, prepaid services etc. on the appointed date as compared to stocks, capital goods etc. that are purchased after the appointed date. This would create an incentive for businesses to defer all possible expenditure to after the appointed date or even return of goods held in stock. This is something that the Government would not want to happen – a slowdown in economic activity due to the credit rules under GST during transition.

Accordingly, it is recommended that suitable transition provisions should be incorporated, which allow the credit on duties/taxes paid on various goods and services in stock.

Further, transition provisions should be provided in more detail to cover other scenarios. Detailed transition Guides should be issued to clarify various issues and their treatment under GST (this was done in other countries also at time of implementation of GST – such as in Malaysia).

92. TRANSITION PROVISIONS-ITC ON CAPITAL GOODS-FACTORIES UNDER CONSTRUCTION

Section of draft Model GST Law

No provision

Issue

The Model GST law does not contain transition provision which has the effect that CENVAT credit cannot be availed by factories under construction. A factory can obtain registration under excise when it is close to completion, post which CENVAT credit can be availed on capital goods.

Under current Model GST law, only credit which has been availed can be taken as credit in GST regime. Therefore, factories which have not obtained registration before GST regime will lose the CENVAT credit on capital goods.

Suggestion

This issue needs to be addressed in Model GST law and credit on capital goods should be available to such factories without any time limit for availment.

93. TAXES TO BE SUBSUMED IN THE GST

Section of draft Model GST Law

No provision

Issue

It is observed from the list of eligible duties and taxes furnished under Explanation to Section 145 that auto cess, R&D cess etc. are not finding mention as taxes eligible for credit. It is not clear whether these cesses and other cesses levied as duties of excise under various Central Acts (including those levied by Ministries other than the Finance Ministry) would be subsumed in GST. These levies should also be subsumed in the GST.

Suggestion / Recommendation

Auto cess, R&D Cess, Krishi Kalyan cess, Swachh Bharat cess and all such surcharges levied and collected as duties of excise or service tax should also be subsumed in the GST.

94. LIABILITY IN CASE OF AMALGAMATION /MERGER OF COMPANIES

Section of draft Model GST Law

Liability in case of amalgamation or merger of companies [Section 109(2)] read with Schedule III

Issue

As per section 109(2), in case of amalgamation/merger, Registration Certificate is to be cancelled from the date of order. According to Schedule III clause 4, transferee shall be required to be registered from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Suggestion / Recommendation

Date for RC cancellations of transferor companies and date for registration of the transferee must be from the date of court order. Both cannot be different.

95. CLARITY ON EXISTING TAX INCENTIVES

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Issue

Clarity on the current exemption schemes (area based exemptions, incentives under State policies) is required because the transition provisions prescribed under the draft law do not provide for the treatment of the said Exemptions/ Incentives. Companies' long term business plans are based on Government incentives. To maintain continuity, incentive also should be continued in GST scenario.

The existing model of tax exemption and other fiscal and financial incentives allow such units to compete with the other units situated in developed areas. Under the proposed GST if such units are obligated to pay taxes on inputs/capital goods this would impact their working capital severely and would add to financial burden.

Suggestion / Recommendation

Area based exemptions under the Excise legislation and incentives under the State Industrial policies should be converted into an effective, non-discretionary tax refund mechanism that allows automatic refund in the bank account of such units within a stipulated time period from the end of each month. Such period should not exceed 30 to 45 days.

96. TRANSFER OF SERVICE TAX CREDIT FOR PERSONS WITH CENTRALISED REGISTRATION

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Issue

Transition provisions allow input credit of balance lying in ST-3 as CGST credit as on the appointed date. Service tax has a concept of centralized service tax registration. The provisions do not provide for credit under CGST to be taken in the state of GST registration.

It will be very difficult to identify head/category wise closing balance of credit.

Further, the provision does not deal with the following type of cases

i. Input/input services/capital goods have been received but credit has not been availed/reported in returns.

ii. Material is in transit as on the cutoff date.

Such cases as mentioned above will not form part of the returns.

Suggestion / Recommendation

Specify that CENVAT credit lying in balance per ST-3 of centralized Service tax registration as on the appointed day of GST in India is to be considered as CGST credit of the state where Centralized registration was taken under erstwhile law.

Also, provide an option for assessee to distribute the credit to various states so that Industry does not have cash flow issues on account of credit lying in one state and cash is paid in another state as there is no credit. Further, with this option, also specify the mechanism in which credit can be distributed.

97. DUTY PAID GOODS RETURNED ON OR AFTER APPOINTED DAY

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Issue

It is prescribed that if duty paid goods removed under earlier law are returned within 6 months, no tax is payable and taxable person shall be entitled to take credit of the duty paid

earlier at the time of removal. However, in case goods are returned after 6 months, taxable person returning the goods shall be liable to tax under this Act.

Section is silent on reversal of credit availed by taxable person for cases where goods are returned within 6 months and in cases where goods are returned after 6 months, it is not clear whether credit shall be available to person receiving goods or not.

While in Sales tax law, time limit of 6 months is prescribed for return of goods, however Rule 16 of Central Excise Rules does not prescribe any such time limitation.

Suggestion / Recommendation

It should be prescribed that in all situations, removal of goods shall be on payment of GST with admissibility of credit to recipient of goods.

In the situation contemplated in Section 149, there would be issue in matching of credit

98. TAXABILITY IN SPECIFIED CASES DURING TRANSITION

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Issue

Section 160 provides that no tax shall be payable on the supply of goods and or/services made on or after the appointed day if the consideration for the said supply has been received prior to the appointed day and the duty or tax has already been paid under earlier law.

The provision does not deal with the case where services have been supplied before appointed date but invoice is raised after appointed date.

Rationale

Suggestion / Recommendation

It is suggested that proper provision should be made for those case where service has been rendered before appointed day and invoice has been raised after appointed day. Necessary clarification should be provided on taxes to be charged on such cases.

99. REDUCTION OF TAX LIABILITY ON ISSUING A CREDIT NOTE

Section of draft Model GST Law

Transitional provisions [Section 153]

Issue

Section 153 provides for reduction of tax liability on issuing a credit note on account of price revision pursuant to finalization of contract subject to conditions. From perusal of proviso, it is understood that taxable person will be allowed to reduce his tax liability only if the recipient of Credit Note has reversed Credit.

Existing provision of model GST law is not providing any safeguard to a taxable person (supplier) in case the recipient of Credit Note does not reverse input tax Credit.

Suggestion / Recommendation

It is requested that draft provisions may be amended to provide that a taxable person (supplier) shall be allowed to reduce his tax liability if he has issued Credit Note to recipient of goods / services (buyer) and the same has been duly accounted for in his books to pass on the benefit of Credit note to recipient (buyer). This will be in line with the existing provisions of Service Tax law.

100. TAXATION OF IMPORT TRANSACTIONS STRADDLING IMPLEMENTATION OF GST

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Suggestion / Recommendation

In respect of import transactions that straddle the date of implementation of GST, all goods reaching Indian ports before implementation of GST should be subjected to CVD and SAD (as applicable), with credit of such CVD and SAD extended to the importer under CGST and SGST, respectively.

101. ITEMS SUBJECT TO PRINTING OF MAXIMUM RETAIL PRICE

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Issue

On date of implementation of GST most manufacturers are expected to have inventory of finished goods on hand which have been cleared from the factory – on payment of central excise duty – to depots for purposes of onward sale. Within this, most packaged goods would carry a declaration (as is required statutorily under the Packaged Commodity Rules of the Standards of Weights and Measures Act) of the Maximum Retail Price (MRP) at which such goods may be sold to consumers. The MRP would have been set by the manufacturers after factoring in the cost of central taxes like Central Excise Duty and Service Tax and State Taxes like VAT that need to be recovered on sale of the goods.

Sale of such goods under the Standard Rate of GST would result in cascading of taxes since the GST would also get levied on the embedded central taxes.

Suggestion / Recommendation

It is suggested that a suitable provision be made to address this problem

102. SET OFF OF ENTRY TAX PAID ON EXISTING STOCKS

Section of draft Model GST Law

Chapter XXV (Transitional provisions)

Issue

In certain States that levy Entry Tax, the tax so paid is allowed as a set-off against VAT payable on the goods at the time of their sale. On implementation of GST it is quite possible

that manufacturers / trade may have stock of finished goods on which Entry Tax has been paid but no set-off is possible due to replacement of VAT with GST.

Suggestion / Recommendation

GST laws should provide for set-off of the Entry Tax against the SGST payable on supply of such finished goods in future.

103. EXPORT PROMOTION SCHEMES IN THE GST REGIME

Section of draft Model GST Law

No Provision

Issue

Currently the Model GST Law is silent as to how the various export promotion schemes would be planned further under the proposed GST regime. The process note released by the Government on refunds stipulates that all exemptions will be converted into post-tax refunds. In this scenario, the EOU/STP/SEZ schemes, the advance authorizations, EPCG licences, MEIS/SEIS scrips etc. become redundant under the GST regime as the same are as good as DTA exports. It is also not clear how such licences under operation will be treated during the transition period. In brief the entire import/export incentive policy would collapse under the proposed GST.

Suggestion

The intention of the Government in dealing with these schemes should be clearly specified in the GST law.

104. INPUT TAX CREDIT FOR NATURAL GAS IN THE GST REGIME

Section of draft Model GST Law

No provision

Issue

The petroleum (Crude Oil and Natural Gas) and petroleum products are temporarily being kept outside the ambit of GST for initial period of two years. Currently Natural Gas sector is coming under deemed export category hence import duty on project purchases and Excise duty on Domestic purchases are exempted.

In the proposed GST regime, on sale of Natural Gas, the VAT will be applicable (existing tax system) and GST is applicable on inputs side hence the credit of GST (SGST/CGST/IGST) paid on inputs will not be allowed against output taxes like VAT and Excise duty. This will result in a significant increase in the exploration and development costs.

Suggestion

Credit of GST (SGST/CGST/IGST) paid on inputs should either be allowed to be adjusted against output taxes in full or amount of GST paid should be refunded on monthly basis post filing of monthly return.

105. PENAL PROVISIONS UNDER THE MODEL GST LAW

As per Section 62 read with Section 73 of the proposed GST legislation, a Commissioner of CGST or SGST can authorize an arrest of a person if "has reason to believe" that the person has committed any offence punishable under the GST law. The person can be arrested even if such a person has not been issued a show cause notice intimating the alleged violation and even if the investigations are yet to be concluded. It also does not make a difference whether the alleged tax-liability is on account of deliberate tax-evasion or is simply a differential tax liability in a genuine and bonafide dispute. A legal regime which is meant to provide a business-friendly tax regime simply cannot accommodate such provision.

The Model GST law further enumerates twenty other categories of offences under Section 66 to provide for imposition of penalty in such cases which can be equivalent to tax amount in dispute. A bare look at these categories reveals strikingly resemblance with the existing provisions under the central and state enactments. One does not need reminding the mechanical exercise of these powers to saddle the taxpayers with unwarranted penal consequences in the most deserving of cases. Continuing these provisions under the GST regime is clearly unwarranted.

The Model GST law does carry a stipulation on 'general disciplines related to penalty' in Section 68. A bare look at this provision is sufficient for it to be written-off in as being inherently deficient. It provides against imposition of substantial penalties for 'minor breaches of tax' where a minor breach is defined to mean a case involving tax dispute of less than five thousand. The other regulations under this provision are again directory and do not tie the hands of trigger-happy tax officers.

The Service Tax law carried a simple provision for almost two decades prohibiting imposition for penalty in cases with a reasonable cause for default. Even such a simple provision does not find place in the GST law.

Further, even though the judiciary has contributed significantly in developing tests to identify cases where penalty should not be imposed, those lessons have been ignored in casting the penal provisions. Even cases involving classification disputes, interpretation disputes, etc. where the judicial opinion is firmly settled against imposition of penalty do not find mention in the list where penalties cannot be imposed.

Compared to the penal provisions, the Model GST law only turns draconian when one reviews the provisions relating to criminal liability. Section 73 prescribes twelve categories of prohibited action which can lead a person to prison. Depending upon the amount of tax involved, the person can be sentenced to seven years in prison with a threshold as law as two and half crores of alleged tax-liability. Further, Section 75 of the Model GST law puts the onus upon the person accused of the offence to establish that the alleged offence was unintended. In short the tax officer can lodge a complaint leading to prosecution even in a case where the officer is not required to establish the intent of the accused.

The Model GST law also does not instill the safeguard that the criminal proceedings will be initiated only if it has been proved in the tax proceedings that indeed the claims / actions of the taxpayer were motivated or driven by malafide. In other words, even before the tax

liability is crystalized, the taxpayer can be subjected to criminal prosecution under the Model GST law. What is worse in the fact that the law does not specify the officers who can initiate such action. In other words, the sanctity of the jurisdictional officer is also completely eroded under the Model GST law.

On an overall basis, thus, the Model GST law confers disproportionate powers upon the revenue offices in so far as it is highly discretionary upon them to impose penalties or prosecute for offences. There is, thus, no improvement in the proposed GST regime over the existing legal provisions. One would have expected a serious reining-in over the widely abused powers of the investigation officers under the current regime. However the policy-makers seem to have completely ignored this vital aspect in designing the law. The fact that some of these powers will now also be exercised by the State Governments' officers is only an added reason to specifically revisit the policy reasons to continue with such wide powers which are only susceptible of misuse.

106. TAXPAYERS' RIGHTS UNDER THE GST LAW

If one looks at the draft GST legislation, one finds a large of number provisions that cast obligations on the tax payer, with a number of provisions for creating the official machinery for tax collection and enforcement. However, there is little by way of recognizing and assuring the taxpayer's rights, particularly the broader rights relating to standards of service they can expect from the tax administration. The draft law thus appears one-sided and designed primarily to cover the risks of the tax administration at the expense of the taxpayer's interest.

It needs to be recognized that if the administration imposes a heightened requirement of compliance in terms of the frequency, complexity and detail of reporting, it needs to reciprocally offset the higher costs of compliance by improving the quality of administration, enhancing the level of certainty and predictability in taxation, demonstrating responsibility in dealing with taxpayer information and reducing the level of intervention in normal flow of business.

Essentially, the draft GST laws do incorporate the basic taxpayer's rights, as are incorporated in the current indirect tax legislation, such as the right to principles of natural justice. For example, the penalty provisions specifically provide that no tax, interest or penalty shall be determined without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

However, being incorporated in the law is not sufficient. In actual experience, the taxpayer often finds that even when there is an appearance of rights being respected through procedural adherence to them, they are devoid of substance and meaning because decisions are deficient in quality and fail the test of correctness and fairness. This forces on him the cost and inconvenience of unwarranted appeals and litigation. Further, no remedy is provided for against breach of such rights of taxpayers except the right to appeal, meaning thereby that the tax payer has no remedy against failure of service standards. That the remedy of appeal itself is often illusory is borne out by instances in which the Tribunal and High Courts have felt compelled to impose fines on the officers where orders were found to show caprice or absence of judicial discipline.

It is therefore necessary to strike the right balance between the taxpayer's and tax administration's legitimate interests in the draft law and create effective institutional mechanisms for protection of taxpayer's rights.

One way of restoring balance in the law would for the tax administration to take responsibility for the decisions of its officers. It could do so by intervening actively to prevent miscarriage of justice or incompetent and capricious orders by its officers and the law should empower it to do so. Such empowerment can be created by through suitable amendments to clauses 79 and 80 of the draft GST law. These provisions reflect a legacy carryover from the current review and revision provisions under the C. Excise, Service Tax and VAT laws and are entirely stacked against the taxpayer. There is no reason why a taxpayer should be forced to bear the costs of needless litigation arising from an incompetent and/or capricious order. The central and state administrations should regard it as their duty to step in and cure such orders to spare the taxpayer such avoidable cost and inconvenience. Needless to add, besides the remedy to the taxpayer, the concerned officers should be held accountable for such poor decisions.

Secondly, it is also necessary that concurrent with the rolling out of the GST, the central and state administrations should implement revamped taxpayer's charters that ensure the protection of the broader taxpayers' rights and contain service standards meant to ensure the protection of statutory and non-statutory rights of the taxpayers. Bearing in mind the experience of the implementation of the Charter and the Ombudsman, an independent institution that includes the representation of the taxpayers needs to be created to oversee the performance of the central and state administrations in the protection of taxpayer's rights. This institution should be tasked with the monitoring and publishing of the details of the administrations' performance against the promised service standards. This will ensure a degree of accountability that has hitherto been conspicuously absent from the system both at the central and state levels.

Further, in the proposed GST Laws officers have been conferred unlimited powers – power to summon, power to arrest etc. These powers are often abused and are exercised to coerce the taxpayers. There have been instances of investigating agencies threatening taxpayers with arrest if disputed taxes are not paid immediately. Departmental machinery has failed to protect taxpayers from such abuse. Even approaching very senior officers in the department has not helped much. The relief is generally granted by the courts but it comes at a cost and with delays. An alternative mechanism needs to be developed to protect the taxpayers. They must be conferred the rights to protect them from abuse of such powers.

In this background, following suggestions could be considered:-

A. Create a legally empowered machinery to prevent miscarriage of justice or patently illegal demands for payment of tax on matters of disputed interpretation. This body comprising of 2 or 3 members should have senior tax officers and include non-official persons. This institution should have the legal power to set aside a show-cause notice/adjudication order which is prima-facie illegal. Similarly, it should have the authority to direct tax officers not to arm twist taxpayers for payment of tax during audit /

investigation where the tax demand has arisen because of dispute in interpretation of a provision of law.

B. Lay down service standards for tax offices. A body should be set up to monitor and publish the details of performance of the tax administration against the promised service standards. The results of the performance should be placed in public domain.

C. The proposed GST law envisages compliance ratings for business entities. There is a need for evaluating the performance of the officers on the trait of competence, judiciousness and fair play in their assessment orders. Performance should be judged, among other things, on the basis of decision in appeals at the level of Tribunal (where a fair decision is currently expected) against the orders of the officers. The review process should also be used to assess the quality of officers' orders on these yardsticks. In suitable cases, the administration should not shrink from penalizing officers where their actions are patently illegal, arbitrary and amount to harassment of taxpayers. This will ensure accountability of the officers.

D. The dispute resolution function should be vested in an independent vertical of the departments which is separate and distinct from the collection and enforcement wings.