



ICAI-GST

NEWSLETTER

A Newsletter from The Institute of Chartered Accountants of India on GST

GST





Conference on GST at Kanpur



GST Sahayata Desk at Visakhapatnam



GST Seminar Inauguration at Hyderabad by Shri Arjun Ram Meghwal, Union Minister of State in Finance and Corporate Affairs



Inauguration of ICAI GST Sahayata Desk at UDUPI by Smt Nirmala Sitharaman, Minister of State for Finance and Corporate Affairs



National Conference on GST at Bhilai



National Conference on GST at Ernakulam



Workshop on GST at Brahmapur



Workshop on GST at Jammu and Kashmir

President's Communication



Esteemed professional colleagues,

It is indeed a great pleasure to witness and be a part of this the biggest economic reform of the country since independence. The Institute of Chartered Accountants of India (ICAI) welcomes launch and implementation of GST and reiterates its support towards its implementation. GST is based on the concept of "One Nation; One Market; One Tax" and intends to provide a competitive edge to the Indian products in the International market.

For smooth implementation of GST, the Government has recently notified rates for the goods and services under the CGST Act, UTGST Act as well as IGST Act. Also, it had earlier via notifications issued under Central Goods and Services Tax Act and Integrated Goods and Services Tax Act, made some of the provisions of the GST Act effective from 22nd June, 2017. Further, in order to provide the relaxation to the industry, provisions related to return filing for the first two months of the GST implementation have been relaxed along with the postponement of the provisions relating to Tax Deduction at Source and Tax Collection at Source.

A long proponent of this mega tax reform, we at ICAI are very much proactive in our role as facilitator and have been supporting Government in the implementation of GST. We are going all out for providing suggestions on the GST Acts to the Governments, and organising a series of relevant GST dissemination and training programmes. Recently, the virtual classes for Certificate Course on GST through Live Telecasts have been completed, which were concurrently hosted by 63 Branch(es)/Regions and more than 1700 members have been

benefitted from this virtual course in a short span of one month. Another 800 members got benefitted through the GST Certificate Course organised in physical mode. Apart from above, ICAI is constantly updating its GST publications with latest changes for ease of understanding and enhancement of knowledge of reader.

Continuing its commitment and support towards this game changing reform, ICAI's GST Sahayata Desk have been set up at all across the country which aims to resolve the GST related issues of traders, industry and public at large by the GST experts. Also, since January 2017, more than 2000 workshops, seminars and conferences on GST have been organised across the country with more than 1,30,000 participants. The website of Indirect Taxes Committee of ICAI, www.idtc.icai.org too holds the offline webcasts, while offering regular indirect taxes updates, articles, information on upcoming programmes/seminars, e-publication on GST, etc., to all its registered users. I would request all concerned stakeholders to get themselves registered at the website www.idtc.icai.org to get regular updates on GST.

Let all of us welcome the launch and be an enabling partner of implementation of GST with great enthusiasm.

With Best Wishes,

N. S. Vikamsey

CA. Nilesh S. Vikamsey

President, ICAI

27 June 2017



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CONTENTS

➤ GST updates	5-7
➤ Articles	
1. Common Errors while transitioning into GST	8-10
2. Tax Treatment of Services provided in pre-GST regime	11-13
3. Impact of GST on Pharmaceutical Industry	14-15
4. Impact of GST on Construction Industry	16-18
➤ Test your Knowledge	19
➤ FAQs on Apportionment of credit	20
➤ FAQs on Returns under GST	21
➤ FAQs on Payment of Tax	22
➤ ICAI's Contribution for Smooth Implementation of GST as Partner in Nation Building	23
➤ GST Events	24



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GST UPDATES

Interest Rates under CGST Act, 2017 prescribed

Central Government vide Notification No. 13/2017-Central Tax, dt. 28-06-2017 has w.e.f 1st July 2017 prescribed the following rates of interest per annum for respective sections as follows:

S. No.	CGST Act, 2017 Sections	Section description	Rate of interest
1.	50(1)	Failure to pay tax or part thereof to the Government within period prescribed	18%
2.	50(3)	For undue or excess claim of ITC or reduction of output tax liability	24%
3.	54(12)	Interest on withheld refund	6%
4.	56	Interest on delayed refunds	6%
5.	Proviso to 56	Interest on refund arising from order passed by Adjudicating Authority/ Appellate Authority/ Tribunal/ Court and not refunded within 60 days	9%

Further, similar interest rates have been prescribed under IGST Act, 2017 vide Notification No. 06/2017-Integrated Tax, dt. 28-06-2017 with regards to section 20 of IGST Act, 2017.

Number of HSN digits required on tax invoice notified

Central Government vide Notification No. 12/2017-Central Tax, dt. 28-06-2017 has w.e.f 1st July 2017 has prescribed following number of digits of Harmonized System of Nomenclature (HSN) Codes which are required to be mentioned in a tax invoice issued by a registered person having prescribed annual turnover in the preceding financial year:

S. No.	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
1.	Upto Rs. 1.5 crore	Nil
2.	More than Rs. 1.5 crore and upto Rs. 5 crores	2
3.	More than Rs. 5 crores	4

Similar requirement for mentioning HSN Codes in tax invoice has been prescribed under IGST Act, 2017 vide Notification No. 05/2017-Integrated Tax, dt. 28-06-2017.

Central Goods and Services Tax Rules, 2017

Central Government vide Notification No. 03/2017-Central Tax, dt. 19-06-2017 has notified Central Goods and Services Tax Rules, 2017 w.e.f 22nd June 2017 which includes the following:

Chapter No.	Description
I	Effective Date and Definitions

II	Composition Rules
III	Registration Rules

Further, Central Government vide Notification No. 10/2017-Central Tax, dt. 28-06-2017 has amended Central Goods and Services Tax Rules, 2017 w.e.f 1st July 2017 to include the following:

Chapter No.	Rule(s)	Description
IV	27-35	Determination of Value of Supply
V	36-45	Input Tax Credit
VI	46-55	Tax Invoice, Credit and Debit Notes
VII	56-58	Accounts and Records
VIII	59-84	Returns
IX	85-88	Payment of Tax
X	89-97	Refund
XI	98-102	Assessment and Audit
XII	103-107	Advance Ruling
XIII	108-116	Appeals and Revision
XIV	117-121	Transitional Provisions
XV	122-137	Anti-Profiteering
XVI	138	E-way Rules

The Rules and the formats provided therein are final to the effect and required to be adhered for respective purposes. Majority of sections of CGST Act, 2017 have been made effective:

(a) Effective from 1st July, 2017

Central Government vide Notification No. 09/2017-Central Tax, dt. 28-06-2017 has provided that the provision of sections 6 to 9, 11 to 21, 31 to 41, 42 except the proviso to sub-section (9) of section 42, 43 except the proviso to sub-section (9) of section 43, 44 to 50, 53 to 138, 140 to 145, 147 to 163, 165 to 174 of CGST Act, 2017 will come into force from 1st July, 2017.

(b) Effective from 22nd June, 2017

Central Government vide Notification No. 01/2017-Central Tax, dt. 19-06-2017 has provided that provision of sections 1, 2, 3, 4, 5, 10, 22, 23, 24, 25, 26, 27, 28, 29, 30, 139, 146 and 164 of CGST Act, 2017 will come into force from 22nd June 2017.

Turnover Limit for Composition Levy for CGST revised

Central Government vide Notification No. 08/2017-Central Tax, dt. 27-06-2017 has revised the turnover limit for Composition Levy from Rs. 50 lakhs to Rs. 75 lakhs. Thus, an eligible registered

person, whose aggregate turnover in the preceding financial year did not exceed Rs. 75 lakh, may opt to pay, in lieu of the central tax payable by him. However, for the special category states, turnover limit for composition levy will be Rs. 50 lakhs.

Similar provision has also been issued under UTGST vide Notification No. 2/2017-Union Territory Taxdt. 27-06-2017

Additional modes of Verification of electronic documents notified

Rule 26(1) of the CGST Rules, 2017 to be effective from 22nd June 2017 provides that all applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf.

In this regard, Central Government has provided the following additional modes of verification, for the purpose of the Rule 26: -

1. Aadhaar based Electronic Verification Code (EVC);
2. Electronic verification code generated through net banking login on the common portal;
3. Electronic verification code generated on the common portal.

It is important to note that where the mode of authentication of any document is through any of the aforesaid modes, such verification will be done within 2 days of furnishing the documents.

No registration for dealer supplying only goods and services liable to tax under reverse charge

Central Government vide Notification No. 05/2017-Central Tax, dt. 19-06-2017 has included the persons, who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) of the CGST Act, 2017, in the category of persons exempted from obtaining registration under the CGST Act.

Goods & Services Tax Electronic portal notified

Central Government vide Notification No. 04/2017-Central Tax, dt. 19-06-2017 has w.e.f 22nd June 2017 notified www.gst.gov.in as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and electronic way bill both under the CGST Act, 2017 as well as the IGST Act, 2017. This website i.e. www.gst.gov.in would be managed by the Goods and Services Tax Network, a company incorporated under the provisions of section 8 of the Companies Act, 2013.

Jurisdiction of Central Tax Officers

Central Government vide Notification No. 02/2017-Central Tax, dt. 19-06-2017 has in exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 and section 3 of the Integrated Goods and Services Tax Act, 2017 appointed various Central Tax Officers and vested them with all the powers under both the said Acts and the rules made thereunder with respect to the jurisdiction specified. The detailed breakup of designation and respective jurisdiction are available on www.cbec.gov.in.

Integrated Goods and Services Tax Rules, 2017 notified

Central Government vide Notification No. 04/2017-Integrated Tax, dt. 28-06-2017 has w.e.f 22nd June 2017 notified Integrated Goods and Services Tax Rules, 2017. In the rules, it has been provided that the Central Goods and Services Tax Rules, 2017, for carrying out the provisions specified in section 20 of the Integrated Goods and Services Tax Act, 2017 will apply in relation to integrated tax as they apply in relation to central tax.

Majority of sections of IGST Act, 2017 has been made effective

(a) Effective from 01.07.2017

Central Government vide Notification No. 03/2017-Integrated Tax, dt. 28-06-2017 has provided that the provisions of sections 4 to 13, 16 to 19, 21, 23 to 25 of the IGST Act, 2017 will come into force from 1st July 2017.

(b) effect from 22.06.2017

Central Government vide Notification No. 01/2017-Integrated Tax, dt. 19-06-2017 has provided that provisions of sections 1, 2, 3, 14, 20 and 22 of IGST Act, 2017 will come into force from 22nd June 2017.

Registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient

Central Government vide Notification No. 02/2017-Integrated Tax, dt. 19-06-2017 has w.e.f 22nd June 2017 notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers sub-ordinate to him as the officers empowered to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient.

Some sections of UTGST Act, 2017 to come into effect from 1st July, 2017

Central Government vide Notification No. 03/2017-Union Territory Tax, dt. 28-06-2017 has provided 1st July 2017 as the date on which the provisions of sections 6 to 16, 18 to 20 and 23 to 26 of UTGST Act, 2017 will come into force.

Relaxation in Return filing for first 2 months of GST implementation

A summary return (single page) form in GSTR-3B will be required to be filed on self-declaration basis for first 2 months i.e. July and August by 20th day of next month. i.e. for the month of July, a summary return needs to be filed by 20th August after paying appropriate taxes, and for the month of August, the same needs to be filed by 20th September.

However, GSTR-1 with invoice level details needs to be filed for the month of July by 5th September, and for the month of August by 20th September. GSTR-2 and GSTR-3 for these 2 months will be filed thereafter. It means matching for first two months of July & August will take place only after 5th/20th September respectively.

Postponement of provision relating to TDS and TCS

In order to ensure smooth rollout of GST and taking into account the feedback received from the trade and industry, the Government has provisions of section 51 and section 52 of the CGST/SGST Act as follows:

1. The provisions of Tax Deduction at Source and Tax Collection at Source will be brought into force from a date which will be communicated later.

2. Persons who will be liable to deduct or collect tax at source will be required to take registration, but the liability to deduct or collect tax will arise from the date the respective sections are brought in force.
3. The persons supplying goods or services through electronic commerce operator who is required to collect tax at source under Section 52 will not be liable to register till the provision of Tax Collection at Source is brought under force. In other words, they would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST / SGST Act, 2017.

Passage of SGST Act by all the States except Jammu and Kashmir

As of today, all the States and Union Territories (having assemblies), except the State of Jammu & Kashmir, have approved the State Goods and Services Tax (SGST) Act. The State of Kerala and West Bengal has issued an Ordinance approving State GST Act. Now only one State is left i.e. the State of J&K which is yet to pass the State GST Act. Thus, the entire country including all the 30 States/UTs are now on board and ready for the smooth roll-out of GST with effect from 1st July, 2017.



INDIRECT TAXES COMMITTEE (IDTC) OF ICAI
A ONE STOP DESTINATION FOR INDIRECT TAXES i.e. IDTC
 website: www.idtc.icai.org



The Indirect Taxes Committee of ICAI has launched its website viz. www.idtc.icai.org to provide the users a well set platform for sharing and gaining knowledge on indirect taxes and easy accessibility to the Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

Main features:

- * Regular Indirect Taxes Updates
- * Knowledge Bank of Indirect Taxes – Articles, Legal Updates etc.
- * Publication on Excise, Service Tax, VAT, GST etc.- (Available for free download and online ordering)
- * Recordings of Live Webcasts
- * **Dedicated GST Tab on IDT Website**
- * Upcoming events
- * Details of Certificate Courses, Programme, Seminars etc.
- * Links of related important website
- * Connect with Indirect Taxes as a faculty/author of the publication etc.

Your suggestions on the website are also welcome at idtc@icai.in

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COMMON ERRORS WHILE TRANSITIONING INTO GST

Common Errors while transitioning into GST

One of the most important aspects that a registered taxable person must understand while ushering in the GST regime would be aspects relating to transition. This paper attempts to list down some representative crucial issues that one needs to bear in mind while transitioning into the GST regime. Caution must be exercised by every person who transits into the new regime while bearing in mind the nature of business, the type / class of goods and / or services, the nature of tax etc., while transitioning. While this paper attempts to bring out several issues it may not address each issue of every business. This paper only stimulates debate while business being dynamic has to address each of the issues keeping the GST laws in mind.

1. Registration of multiple locations

'Place of business' and 'place of supply' are two completely different terms that are very often understood interchangeably. Registration is required in respect of the 'place of business' and not the 'place of supply'. For example, a registered person may be engaged in renting of immovable property and carries on his 'business' from his Office and not from the 'location' of property let-out. Unless this distinction is truly appreciated, it would be impossible to recognize the registration requirement. Of course, the migration process demands that all current registration/s to be migrated, but the Registration Rules provide for deregistration of places that will not require staying registered in GST regime.

Registration is, therefore, not a mundane task that can be left to any delegate to carry out, but demands careful consideration to select the nature and location in which it is to be obtained. Goods and Services Tax is a destination-based tax and therefore registrations currently obtained under an origin-based tax regime are bound to be outdated.

Routinely migrating into GST will only mean that the paradigm shift in the basic framework of tax regime (before-after) may not have been fully appreciated. Here's where one could go wrong. For example, a manufacturer in Tamil Nadu has set-up depots in Andhra Pradesh and Karnataka currently and on an average Rs.10 crores worth of inventory is maintained at these depots. The purpose of these depots would be to save 2% CST payable on inter-State sales which is not creditable down the line. Now, if these depots were to continue in GST regime, inter-State stock transfers would attract IGST at (say) 12% or 18% making the entire depot-model unviable. Of course, it would be available as credit to the depot, but remember depots hold Rs.10 crores as stocks throughout the year. So therefore, catering to the market in Andhra Pradesh and Karnataka when the factory is in Tamil Nadu needs to be re-examined by moving those depots inside Tamil Nadu but within short distance to reach the market. For those familiar with local geography, Vellore would be a good location for a depot to cater to Andhra Pradesh market and Hosur for Karnataka market and if need



be, Coimbatore for Kerala market. These new depot locations are within Tamil Nadu so that there is no GST applicable on transfer of stock from factory to depot. And these depots are close to the target market to cater to. The short-point from this long illustration is that many aspects of the current tax regime will be outdated and these demands, rethinking about the new go-to-market plan. Looking at the GST registrations obtained will showcase whether the planning has been done well or not.

2. Review of Past Cases

Most on-going litigations can be classified into:

- Statutory Forms related matters (CST)
- Reverse charge matters (Service Tax)
- Classification-Valuation matters (Excise-Service Tax)
- Procedural non-compliance matters (All Laws)
- Input / Output tax related matters (All Laws)

As a general rule, success in current litigation will be subdued as these rulings will not provide any precedence value for the future, because the law is being changed. The interpretation of law or selection of its application to the tax payer's facts will not have any further shelf-life. So, all on-going litigation needs to be reconsidered in the light of this fact. After giving careful consideration to all pending matters, a tax payer may see that there may not be any merit in continuing some of them. With this general observation, two specific kinds of pending litigations can be examined, namely:

- Reverse charge matters – Where the demands, if paid, are eligible to Cenvat credit entails a dilemma where in case an adverse decision were to be delivered (after appointed date), the service tax would be payable without any credit or refund or transition because the opportunity has passed after 60 days from appointed date. And however, sound, the arguments in defense are in the matter, surely it is no one's case that higher Courts are free from pro-revenue leanings. And if the probability of such a pro-revenue leaning is say

- more than 10%, it does not justify carrying the risk of a confirmed demand without relief of credit or transition. Hence, it may be advisable to consider making payment of the demand and claiming credit which will transition into GST but continue with the litigation on interest / penalty.

- Statutory forms – which are required to be issued quarterly by the customer uploading the corresponding sales but are still pending on appointed date. And especially if the forms are long-pending, the appeal filed may be merely to gain time without any rigorous effort underway to ensure recovery of the forms. With the imminent change in the Office-Order under the current law, it is even less likely that the forms can be procured if the pending cases are continued. Given the accumulating interest burden, it may be prudent to consider paying-up the demand on long-outstanding forms.

Transition into GST cannot be attempted by leaving aside the pending litigation from the scope of any transition exercise. Thus, it would be fair and just to state that pending litigation matters need to be sanitized before one moves into the GST regime.

3. Transition Credits

It is well understood that closing balance of credits (Cenvat or VAT) will transition seamlessly into GST. But, this seamlessness demands a relook into – what is the closing balance comprised of – to know the merits. It must be conceded that tax payers have accumulated credit balance without being diligent in giving effect to the following:

- Reversal required in respect of taxable and exempt activities u/r 6(3) of Cenvat Credit Rules
- Reversal required in respect of delayed receipt or non-receipt of export receivables u/r 6(8)
- Reversal required in respect of inter-State stock transfer of VAT paid inputs by partial rebating

In fact, it would merit examining – why a tax payer would have any balance to carry forward? A business that has a reasonable value addition without inversion in tax rates should not have a large amount of credit balance. Surely, there will be some credit balance relatable to inventory but the tax on value addition should ensure utilization of all credits leaving only a small credit balance. But, if a large credit balance is found, it is attributable to:

- High inventory – except for factors like unusually high minimum order quantity or sub-optimal purchase decisions leading to inventory build-up, it is unusual to find business holding lot of inventory as it costs in terms of holding cost and / or potential obsolescence
- Recent investment in capital goods
- Inverted tax structure (current law – viz., local purchase but sold inter-state against declarations or exports)
- Credit availed on doubtful inputs / inputs services and left unutilized (as no interest liability arises in such cases u/r 14 of Cenvat Credit Rules)
- Low value-addition reported

If any of the above reasons are noted, it calls for a thorough inquiry into the real reasons for substantial closing credit balance. And this inquiry will help identify whether the available credit balance requires to be sanitized by adjusting for the above sets of reasons before conceding that whatever balance is available, the same may be carried forward.

Holding inventory entails payment of 'eligible duties and taxes' which is quite a task to recovery u/s 140(3) and whether there are any compelling reasons not to taper off purchases as we near the appointed date to minimize the burden of recovering 'eligible duties and taxes'. Claim for this transition credit states that it is not 'intimation' but 'application'. Application demands disposal by approval. Approval means imminent delay. In view of this eventuality, review the business reasons for holding large inventory on appointed date to identify errors.

Further, if for any reason the balance of credit were carried forward, the 'application' for transition credit resulting in inquiry and if the credit balance is found to be untenable, it would attract interest u/s 50(3) of the CGST Act at a rate not exceeding 24%. Please note that this inquiry may be taken up long after the appointed date which only aggravates the interest burden. One needs to bear in mind that carry over of credit is 'at risk of an interest rate not exceeding 24% on excess credit'. The remedy lies in pre-scrutiny of credit balance – both Cenvat and VAT – for compliance with the likely reasons for high credit balance.

4. Cost Reduction

GST is designed to lower costs (and therefore prices) of supply at each level. It is imperative that the extent of reduction in costs (to suppliers) is examined and such suppliers be put at notice long before the appointed date to pass on the cost reduction. It would be a serious lapse to omit notifying suppliers to bring prices down in respect of current POs where deliveries are likely to be made after the appointed date.

If it is found that supplies are ready to be dispatched, it would be a wonderful opportunity to 'pay VAT / ST' even if the actual supply can be after appointed date (see section 142(11)).

5. Optimizing transition facilities provided in GST

Transition facilities provided in GST are contained in the numerous sub-sections and provisos from sections 140 to 142. It is important to optimize these facilities and some of the steps that can be taken are:

- Exit beneficial schemes before GST to claim transition credit – pre-GST tax position is found to be a condition for eligibility to claim transition credit. For example, clause (iii) to proviso to section 140(1) states that in certain cases, that the Government may notify, the benefit of transition credit would not be allowed. If there is some advantage that flows in subscribing to a notification under the current law, the same may prove to be counter-productive in respect of input tax credit on inputs in stock on the appointed date which would be liable to GST but not be permitted to transition credit. In such cases, it may be prudent to exit the facility permitted by these notifications near about the appointed date. All though the list of these notifications are not known (yet), but given the restriction involved, all those

tax payers availing preferential tax treatment such as '2% excise duty without Cenvat Credit may prepare to exit once the notifications are made known.

- b. Non-payment of Reverse Charge dues – for various reasons, demand for service tax on import of services may have been contested even though these services may qualify for Cenvat Credit. Now, this process of litigation may take a long time (certainly long past the appointed date) and although, this tax demand may not come to rest but it is not impossible that among the various uncertainties in tax litigation, there is a more than 'zero' chance of an adverse order. Now, within the domain of this (miniscule) probability of an adverse order, we need to consider that tax, if paid, would be creditable under current law that can easily transition into GST but if this tax were to be paid after appointed date, it would be paid as service tax and would not transition into GST. It therefore merits to consider paying this tax while continuing to contest the demand (up to any forum of appeal) while having included the same in the transition credit. A favourable order will only result in demand for interest and penalty being dropped. An adverse order will entail payment of interest as there would still be a good case for dropping penalty. Though the probability of adverse order is miniscule, ignoring the fact that this matter borders around recklessness to move into GST with RCM notices pending. If the issue involved in a non-creditable tax, then status quo may be continued.
- c. Non-payment of Service tax on advances – Advances received are liable to Service tax but tax may not be paid and this is a serious violation which can result in service tax demands being raised after the appointed date too. Payment of GST on these advances or on actual supply against these advances does not extinguish the service tax default. Double outflow without recourse of transfer the same as credit to customer. It is advisable to review

6. Omissions - Following are illustrative list of areas where errors generally are noted:

- a. Cenvat credit not availed on courier bill of entry;
- b. Cenvat / VAT credit delayed and not accurately captured in returns filed which must be rectified in the last returns to be filed;
- c. Bills towards costs incurred by CHA and claimed as reimbursements are not included in the claim for Cenvat credit, these need to be reworked and captured from up to 15 months ago;
- d. Credit reversed due to delay in payment to supplier but the same may have been missed in being restored;
- e. Where Cenvat credit may not have been reversed in relation to removal of exempt goods or provision of exempt services, the same may now be carried in the closing balance of Cenvat credit. Care may not have been caused on any interest burden under Rule 14, but this will no longer be true if the credit is transitioned due to the language of section 50(3) of the CGST Act being recast substantially;
- f. Credit in respect of goods lying with third parties – demo / trial – may not have been well documented to be claimed

now. Now, it is important to identify inputs lying with third parties so as to optimize claim of credit;

- g. Eligible refund – VAT, ST and SAD – being allowed to be claimed as refund under the current law even after the appointed date (142(3)), it would be prudent to reverse the qualifying amount of credit in the last returns and make a claim, after appointed date, under the current law. If refund is rejected (partly) on account of failure of nexus test in Service Tax, that would be the last step. And in GST, refund is allowed only in respect of 'tax credit availed during the current tax period' and this appears to exclude 'brought forward balance of credit';
- h. Duty free procurement entitlements – Obtained by EOUs – are likely to be ineligible to procure with the full extent of duty exemption after appointed date. Imports being exempt u/n 52/2003-Customs, the same has been modified u/n 44/2016-Customs where the bonded warehouses operated by EOUs have been 'delicensed'. As such any procurement certificates already obtained may be fully utilized to avoid IGST payment on imports;
- i. Ensure realization of export proceeds – non-realization of export proceeds attracts requirement to reverse Cenvat credit and if the same is carried forward after appointed date, this aspect will not be masked. Carrying ineligible credit attracts interest u/s 50(3) of the CGST Act. Either reverse the credit in case of unrealized exports or evaluate if the export proceeds may be pursued so as to protect from the risk of credit reversal. Please note that any credit reversed before the appointed date will only be available as refund and not GST credit;
- j. Enrolment errors – due to the reluctance to proceed with enrolment / migration, important information about an assessee may not appear in the records of tax administration. Hence, it is important to ensure that information about business activities – taxable and non-taxable – as well as place of business (and not merely the site of discharge of contracted activities) are clearly captured in the records of the administration at the earliest. This extends to identifying depots and branches that are not to continue after appointed date;
- k. Several other issues that may merit attention that would be in respect of - amendment to contracts / POs, Rates of taxes / HSN Codes, sales during the current regime and returns / reversal during the GST regime, Goods in transit on the appointed date etc.,

7. Conclusion

While the above discussions are not meant to be an exhaustive list of common errors to attend to, it is meant to guide the various areas of business wherein errors may lie. One may extrapolate based on these areas to identify the approach to eliminating such common errors and transition into GST smoother. This paper has only attempted to stimulate the thought process and does not carry any views on the issues discussed. Reader may also like to view the web cast on common errors on the IDTC web site. However the correctness / appropriateness of the view advanced is to be confirmed with the old law as well as the GST Acts and Rules.

TAX TREATMENT OF SERVICES PROVIDED IN PRE-GST REGIME

There have been hue and cry about how the transactions would be viewed legally as well as by the department which have commenced provision of service in June 2017 but the invoicing and the payment for the same are spilling over to July 2017 when the GST is expected to be effective. In this regard Study Group on GST at Bangalore has made an attempt to analyse implications of the following transactions to enable trade and practice to take necessary corrective actions well before the D-Day i.e., July 1, 2017:

Nature of service: GST consultancy services

Sl No.	Completion of service	Invoice date	Payment date
1	Before June 30, 2017	Before June 30, 2017	Before June 30, 2017
2	Before June 30, 2017	Before June 30, 2017	After June 30, 2017
3	Before June 30, 2017	After June 30, 2017	After June 30, 2017
4	After June 30, 2017	After June 30, 2017	After June 30, 2017

Before we analyse each of the above scenarios, we have to first understand the levy or charge, as we commonly relate to in any tax law, under Chapter V of Finance Act, 1994 ("Act") (Statutory provisions for Service Tax) and also understand the levy provisions and transitional provisions under Central Goods and Services Tax Act ("CGST").

The Sections relevant for our analysis are Section 66B and Section 67A of the Act which are reproduced below:

"Section 66B - Charge of service tax on and after Finance Act, 2012"

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

SECTION 67A - Date of determination of rate of tax, value of taxable service and rate of exchange

(1) ***The rate of service tax, value of a taxable service and rate of exchange***, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, ***in force or as applicable at the time when the taxable service has been provided or agreed to be provided.***

Explanation. — For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed].

(2) ***The time or the point in time with respect to the rate of service tax shall be such as may be prescribed."***

Levy under Section 66B – Whether an individual force or a component of taxability:

On analysing the above two sections of the Act, we understand that the levy is on services provided or agreed to be provided. Since services are intangible in nature and the very fact that they are intangible in nature, they are not visible to a naked eye makes it even more difficult to understand and come to a conclusion as to when the service has really been provided.

To mitigate this difficulty, law in Section 67A has made it clear that these three elements (rate, value, exchange rate) of service would be that in force when the taxable service has been provided or agreed to be provided. To understand when is the service provided or agreed to be provided sub-section 2 of Section 67A describes that it is "as may be prescribed".

The phrase "as may be prescribed" appearing in Section 67A (2) is notified through Point of Taxation Rules, 2011 ("POTR"). So one may have to reach out to POTR to get an answer as to when the services are provided or agreed to be provided. For this purpose, Rule 2(e) of POTR defines "Point of taxation to mean the point in time when a service shall be deemed to have been provided."

Based on the above analysis, we can come to a conclusion that even though Section 66B is the charging section for the levy of service tax on any services, it is Section 67A through POTR which determines the time at which the service tax would become liable. Unless the point of taxation is determined using POTR, the services under consideration would not become taxable, since Section 66B alone cannot conclude on taxability.

Further Rule 3 of POTR defines the point of taxation generally as the earlier of the following events:

- Date of invoice, if the same is issued within 30 days of completion of service, if not, the date of completion of the service;
- Receipt of advance to the extent of such advance or receipt of payment

So based on above analysis of various sections and POTR, we can infer that even though the service is completed on a particular date, the levy is either advanced or deferred to the date as determined based on POTR. Levy need not coincide with the completion of service. As service 'provided' is taxable as well as service 'agreed to be provided' is also taxable.

Implication of above analysis on the listed transactions under Service Tax:

Before we conclude on the impact on the above listed transactions, we must bear in mind that there are three events which are important for us to understand when is the levy complete. The three events are as under:

- a. Completion of service
- b. Date of invoice
- c. Date of receipt of payment

The above three events will determine when is the levy complete for taxation under Service Tax Law.

1. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 and payment also received before June 30, 2017.

Since all the three events are concluded before June 30, 2017, the relevant service would be taxable under Service Tax.

2. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 but payment received after June 30, 2017.

Since service is completed before June 30, 2017 and the invoice for same has also been raised before June 2017, payment has no role here for decided taxability under Service tax. This transaction is certainly taxable under service tax.

3. Services are provided before June 30, 2017 but Invoice raised and payment received after June 30, 2017

Two scenarios are possible:

- a. Invoice is raised within 30 days from the date of completion of service even though it is after June 30, 2017

As per POTR in case the invoice is raised within 30 days then the point of taxation is date of invoice. Since the invoice is issued in the month of July when the Act is not in force, then strictly by going through the legal provisions service tax is not applicable on the said transaction. However, one may take a view that since the service was completed in the month of June 2017 but only the invoice was issued subsequently, service tax on the said transaction may be discharged to ignore any litigation that may crop up in future.

- b. Invoice is not raised within 30 days from the date of completion of service after June 30, 2017

As already discussed above if the invoice is not issued within 30 days from the date of completion of the service, then the point of taxation is the date of completion of service. Since the service is completed in the month of June 2017, service tax is applicable on the said transaction.

As per Rule 4A of Service Tax Rules, 1994 an invoice needs to be issued not later than 30 days from the date of completion of service. The time limit of 30 days must be construed only as an

upper limit and not the actual date on which an invoice needs to be issued. Therefore, one needs to be cautious especially in case of fixed term services (renting, leasing, AMC, retainer etc.) to not wait for the completion of 30 days / going beyond 30 days for issuing an invoice. The ideal approach would be to raise invoice as on the date of completion of service than waiting for completion of time limit of 30 days or going beyond 30 days.

4. Services are provided, Invoice raised and payment also received after June 30, 2017.

Since all the 3 events are after June 30, 2017, service tax is not applicable on the said transaction.

Applicability of GST for the above list of transaction

Having understood the impact of the above list of transactions under service tax, it is important for us to understand whether there can be any overlapping transaction liable to GST as well. For this purpose we need to under the levy provisions under CGST:

“Levy - Section 9 (1)

there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Time of Supply 13

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

- a. *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*
- b. *the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*
- c. *the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply”*

On analysis of the above two provisions of CGST, we can come to a conclusion that levy under GST, very similar to service tax provisions (as detailed in the earlier part of this document), concludes only at the time as determined under Section 13 reproduced above. Therefore it is safe to understand that supply alone cannot trigger levy. Supply coupled with the time of supply as detailed above would conclude the taxable event under CGST. Hence, only if

supply as well as the time of supply (invoice, provision of service, receipt of payment) are under GST only then GST could be charged on such service. If only one of the event takes place under GST and the other under pre-GST or post-GST era, then it can be said that the levy is not under GST.

Before we get into analysing the impact of the above listed transactions under CGST, we need to understand the transitional provisions under CGST:

“Section 142(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

Section 142(11)(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994”

From the above two transitional provisions, we understand that if the supply is made under GST then taxes are to be paid under CGST. Also that if the transaction was leviable to tax under service tax, then no tax shall be payable under CGST on the same transaction again.

To the extent of the above, the law has tried to make the tax incidence mutually exclusive. The intention of the law is also not to tax the same transaction twice under both service tax and under CGST.

1. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 and payment also received before June 30, 2017.

Not taxable under GST, it is taxable under Service Tax. This is also for the reason that levy is already attracted under service tax and hence not taxable under GST as per Section 142(11) (b).

2. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 but payment received after June 30, 2017.

Levy is already attracted under service tax and hence not

taxable under GST as per Section 142(11) (b). Since only one of the event that is payment is under GST but the actual supply of service is under service tax it is not taxable under GST, it is taxable under Service Tax.

3. Services are provided before June 30, 2017 but Invoice raised and payment received after June 30, 2017

Two scenarios are possible:

- c. Invoice is raised within 30 days from the date of completion of service even though it is after June 30, 2017

The non-obstante clause in Section 142(11)(b) indicates that one of the ingredients of time of supply under Section 13 of CGST is attracted but still GST is not payable since supply did not originate under GST. Also service is completed in service tax era and not under GST, supply has not completely taken place under GST, only tax invoice is under GST. Hence, GST is not applicable to this transaction. Also as earlier discussed that it is better to conclude this transaction as leviable to service tax and hence taxable under service tax. Section 142(11) (b) would help to not tax the same transaction again under CGST.

- d. Invoice is not raised within 30 days from the date of completion of service after June 30, 2017

Levy is already attracted under service tax and hence not taxable under GST as per Section 142(11) (b). Since service is completed in service tax era, no GST can be levied under CGST as supply is not under GST.

4. Services are provided, Invoice raised and payment also received after June 30, 2017.

GST is applicable on this transaction as both supply and time of supply is under CGST.

The group has made an attempt to cover all scenarios of provision of service which are not totally concluded before June 30, 2017 and the issues which trade and profession would face going into GST and give a solution for each such instance.

**TAX APPLICABLE
ON SERVICES PROVIDED
PRE GST
AND FILE RETURN
POST GST**

IMPACT OF GST ON PHARMACEUTICAL INDUSTRY

1. Indian pharma industry is one of the most regulated industries. The prices of certain medicines are capped by the Govt, i.e, National Pharmaceutical Pricing Authority (NPPA). Further, The Drug Price Control Order 2013 (DPCO) requires the mentioning of Retail Sales Price (RSP) inclusive of all taxes on the medicaments including outer packings. Any change in the rate of tax on the medicaments as well as Active Pharmaceutical Ingredients (API) / bulk drugs will affect the manufacturer and consumers.
2. Currently, medicaments falling under chapter heading 3003 and 3004 are generally liable for excise duty at the rate of 6%. Certain medicaments are exempted from excise duty also. Area based excise exemptions are largely availed by many pharmaceutical industries. The inputs required for manufacture attracts 12.5% excise duty. Due to this invert duty structure and exports, in many cases there is accumulation of the cenvat credit which is a major concern faced by the industry. MRP based valuation is applicable to medicaments and abate is 35%. Effectively the excise duty is 3.9%.
3. Concessional rate of VAT is applicable on medicaments. In Maharashtra, VAT rate is 6% and in Karnataka, it is 5.5%. The medicaments are exempted from octroi.
4. Certain food supplements (nutraceuticals) are also manufactured by pharma companies which attracts full rate of excise duty i.e, 12.5% and VAT 13.5% in Maharashtra, 14.5% in Karnataka.
5. It is very common practice in pharmaceutical industries to get the final products manufactured under job work, here it is typically known as 'Loan License'. Import of medicines is also a very common practice. However, certain process like, altering the MRP, relabeling, repacking for retail sales etc amounts to manufacture under central excise.
6. It is a general practice in pharmaceutical industries to distribute Physician's Samples (PS) to medical fraternity. Presently excise duty is being paid and VAT is not applicable.
7. There is no direct sale of medicaments. Generally, medicaments are sold by manufactures to Distributors (also known as Stockists), distributors sell to Chemists and Chemists sell the medicines to patients upon the prescription by the doctors. Nutraceuticals can be sold over the counter. The margin to the distributors is 10% of their sales and margin to the Chemist is 20% of their sales. Stock transfer is also generally followed. The distributors and chemists are registered under VAT laws but not under Central Excise. The medicaments have defined expiry date and expired medicaments is returned back to the manufacturer who destroys them after following the



prescribed procedure.

8. Classification of the medicaments as per the Central Excise Tariff is always a subject matter of litigation due to its complexity. The ingredients or contents, the application or end use etc factors for classification.
9. Under GST, the general rate applicable to medicaments is 12% and GST applicable for API is 18%. The problem of accumulation of Input Tax Credit (ITC) on account of invert rate structure is going to continue.
10. Manufacturing units set up in certain areas of Himachal Pradesh & Uttarakhand are exempt from excise duty (area based exemption) at present. Many pharmaceutical industries have manufacturing units in such places and currently enjoying the excise duty exemption. These exemptions are unlikely to continue in GST. The state Govt. may come out with some compensatory measure till the sunset period.
11. Batch failure is very common in the manufacturing of pharma products. Since it is a process loss, no cenvat credit is required to be reversed at present. However, in GST if the input is lost or destroyed, no ITC is available.
12. Further, quality control is an integral part of manufacture. Therefore, the finished products used for quality control or kept as sample till its expiry period is not liable for excise duty unless the same is removed outside the factory. Under GST, even if the same are sent out for quality test GST may not be applicable since it does not amount to supply.
13. There are other factors which may contribute the impact under GST. The seamless credit under GST per se may not add anything to the quantum of present VAT set-off and cenvat credit. Reversal of VAT set off in case of stock transfer and CST

liabilities which are required currently, add to the margin of the manufacturers under GST.

14. Distribution of physician's samples is not free from any issue in GST. As per provisions related to input tax credit, ITC is not available on goods disposed of by way of gift or free samples. As per the provisions related to supply, disposal of business asset without consideration is liable for GST. The term business asset is not defined in GST, whether it is capital assets only or current assets also included. Clarification is required about the implication of ITC or GST on this.
15. Job work can continue as before under GST with some procedural changes. No botheration about the processes which are amounting manufacture, since concept of manufacture is absent in GST. Pharma companies can import or buy in bulk quantities and do the packing or repacking the same for retail sale without any difficulties. The business operation can be restructured conveniently. Classification remains to be crucial under GST also, litigation may continue. Transportation cost is likely to come down on account of removal of check posts at state borders and octroi check posts.
16. Returning of expired goods or near expiry goods after specified period of their supply will amount to taxable supply in GST. The return of such goods can be made under the cover of Debit Note/Credit Note and included in the return before end of September or filing of the annual return, whichever is earlier. In such cases, the supplier can reduce his GST liability provided the recipient reverses the credit. The returns made after this period, would amounts to supply and GST is required to be charged by the chemists/stockists. Since such goods are required to be destroyed, the manufacturer shall not be eligible to take the credit of GST paid on returned goods.
17. There are concerns of transitional issues to the stockists and chemists. They are currently not liable to be registered under central excise hence not taking the cenvat credit. They need to discharge GST at full rate on the stock sold after appointed day whereas they have taken only setoff under VAT laws. The transitional provision, Sec 140(3) of CGST Act, provides that a person who was not liable to be registered under laws passed by the Parliament, shall be entitled to take the credit of eligible duties on stock held in his electronic credit ledger subject to the conditions that, such goods held in stock are supplied on payment of GST, duty paid documents are available with him and such documents are not older than 12 months. However, going by the strict interpretation, the above provision may not be applicable to stockists and chemists since they are presently registered under CST Act and this transitional provision is applicable only in case of un-registered persons under any laws subsumed, manufacturers of exempt goods, 1st Stage and 2nd Stage Dealers, importers, depot of Mfrs etc. The other transitional provision which provides for 40% of the GST paid is also not available to the stockists and chemists since one of the conditions there in is that this credit needs to

be passed on to the buyer, which will not happen here. The possibilities of registration of the stockists and chemist as 1st stage and 2nd stage dealer may be thought of to overcome this issue! This credit issue is bound to reduce the sales during transitional period since every stockist and chemist would like to keep the minimum stock of goods. The manufacturers may have to bear this loss of credit to maintain the sales volume.

18. Recently the National Pharmaceutical Pricing Authority (NPPA) has issued the order vide its Office Memorandum dated 09.06.2017 stating that MRP shall be exclusive of GST in case of scheduled formulations. The computation of the factor to arrive at the revised ceiling price would be as under;

a.	Ceiling price fixed before 30.06.2017 (incl. of excise duty)	100.00
b.	Add: Local Tax/VAT (@5%)	5.00
c.	MRP (Inclusive of all taxes)	105.00
d.	Less: Excise duty (6% on 65% of MRP)	4.095
e.	Less: Local Tax /VAT as applicable	5.00
f.	Revised ceiling price to be re-notified (excluding GST)	95.905
	Factor (f/a)	0.95905

In case of scheduled formulations, which are exempt from excise duty, no multiplication factor would be applicable, the existing ceiling price would be ceiling price exclusive of GST. In case of non-scheduled formulations, the companies will have no option but to absorb the net increase, if any, in the GST incidence within a permissible limit of 10% for increase of MRP compared to the MRP of preceding 12 months as prescribed under para 20 of the DPCO, 2013. However, in case of savings due to lower rate of tax, the same may be passed on to the consumers as per the anti profiteering clause in GST.

19. There is no clarity on the classification of nutraceuticals as on date. Nutraceuticals are food supplements taken for well being or to modulate immunity and thereby prevent or cure specific disease. Its position is in between medicine and food. At present nutraceuticals are covered under chapter 2106 of the Central Excise Tariff Act under residuary heading. In the rate schedule released by GST council, products of chapter 2106 are spread in all the rate slabs. The food preparations not elsewhere specified or included are attracting 28%.
20. From the above, it is seen that the GST rate proposed may be revenue neutral for pharma products. However, savings in CST, Swatch Bhart Cess (SBC), cascading effect of taxes like VAT on excise duty portion etc should have a positive impact of GST on the pharma products. The new tax rate may change the discount structure of the super stockists, stockists and chemists which may have some impact on the companies. The net surplus on account of change in the tax rate or structure is required to be passed on to the consumers, otherwise the same may attract the anti-profiteering provisions.

IMPACT OF GST ON CONSTRUCTION INDUSTRY

Construction and real estate has been a booming sector in India, which is facing a major slowdown in the aftermath of demonetisation. It has always been a sector riddled with litigation owing to multiplicity of taxes and dual administration mechanism; thereby exposing it to the conundrums of both Central and State levies. Currently, certain activities in this sector command a cumulative tax levy on effectively 140% of the actual transaction value owing to cascading effect. Further there are long standing issues which have not been concluded till date.

RELEVANT CHANGES TO PONDER UPON

Availability of Input Tax Credit for Construction of Immovable Property: Under the current tax regime, Cenvat Credit on inputs used for construction of a building or a civil structure or any part thereof is restricted, however, the Cenvat Credit of input services and capital goods is permitted. It is imperative to mention here that Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 ("CGST Act, 2017") restricts the Input Tax Credit (ITC) of goods (inputs and capital goods both) and input services only in the event when the goods and services are being used for construction of an immovable property (other than plant and machinery) by a taxable person on his own account including construction of such immovable property for furtherance of business. Therefore, it can be inferred that ITC is not restricted when goods and services are being used by a taxable person in the same line of business. Hence, under the GST regime builders/ developers would be eligible to take ITC on inputs which was earlier restricted.

Increase in cost of property: The Hon'ble Supreme Court in the case of K Raheja Development Corporation vs State of Karnataka (2005) 141 STC 298 (SC) upheld by the larger bench in Larsen & Tourbo Ltd vs state of Karnataka (2013) 65 VST 1 (SC) para 101, Para 115 of the said order clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the state Government. However, this is overturned in the GST regime by virtue of clause 5(b) of Schedule II in which it is mandatory to pay the entire consideration after occupation or completion certificate to avail exemption from GST. Meaning thereby in the construction linked payment cases GST is leviable on the full value of sale irrespective of the stage of construction status.

Impact on working capital in case of supplies from unregistered persons: If the registered person purchases goods or procures services from any unregistered supplier then as per Section 9(4) of the CGST Act, 2017 he would be required to pay GST from his own pocket under reverse charge mechanism in a month and would be eligible for ITC on the same in next month.

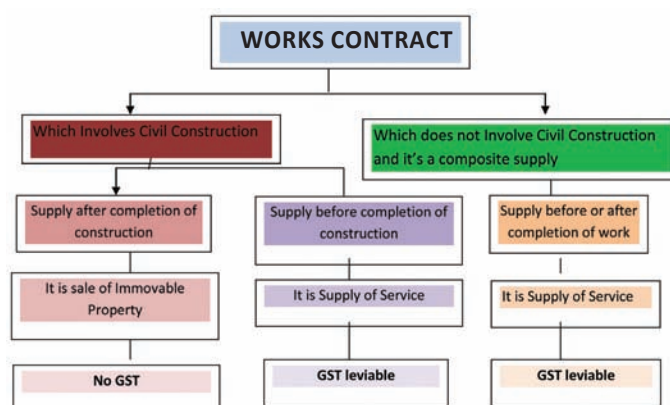
Taxability of Transfer Development Rights (TDR)

- a) Transfer of land development rights by the landowner to the builder/ developer: - TDRs being a benefit arising from the land, thus the same shall be considered as a benefit arising out of an immovable property as defined under Section 3(26) of General Clause Act, 1987, therefore the same is neither taxable under the Service Tax Law nor taxable under VAT regime. Now, as per entry no. 5 of the Schedule –III to the CGST, 2017, only sale of land and building is neither supply of goods nor supply of services. Thus, it needs to be clarified by the Government whether the benefit arising out of such land and building would be covered under the ambit of entry no. 5 of the Schedule –III to the CGST, 2017.
- b) Construction service provided by the builder/developer:- The builder/developer receives consideration for the construction service provided by him from two categories of service receivers:
 - i. from landowner, in the form of land/development rights:- In this case the builder/ developer has already received the consideration in the form of transfer of development rights prior to the issuance of completion certificate by the competent authority, therefore the same is taxable under Section 66E of Finance Act 1994.
 - ii. from other buyers:- In this case, if the builder/ developer receive any consideration prior to the issuance of completion certificate by the competent authority, then the same is taxable under Section 66E of Finance Act 1994 and if the entire consideration is received after the issuance of completion certificate by the competent authority, then the transaction is not taxable.

In the GST Regime, the provisions pertaining to the taxability of TDRs are in pari-materia with the current law, therefore TDRs would be taxable as explained herein above.

Works Contract Services

Diagram depicting taxability of works contract



Chargeability pertaining to Works Contract under existing law and GST regime

Changes in GST vis a vis earlier laws	Activity	Chargeability under VAT	Chargeability under Service Tax	Chargeability under GST
A	Works Contract relating to immovable property	On goods or specified portion as goods	On service or specified portion as service	Entirely as service
B	Works Contract relating to movable property	On goods or specified portion as goods	On service or specified portion as service	Depends upon which is the principal supply treating such works contract as a composite supply

Under GST regime, the definition restricts Works Contracts only in relation to immovable properties. Such contracts are expressly stated as services under Schedule II of the CGST Act, 2017. Currently, no abatements or exemptions have been notified in this respect. The value of taxable supply shall be transaction value except in case of supplies to related persons where valuation rules shall be applied. In the absence of such tax exemptions and concessions, there is a possibility of a significant increase in project costs.

Reversal of ITC under Works Contract: If the builder has a project in which there are 1000 flats. However due to market conditions or for any other reason he is able to sell only 800 flats till the time he receives the completion certificate. In this case, he will have to reverse the credit taken on the balance 200 units as upon receipt of completion certificate, these flats would become building and would be covered under entry no 5 of schedule III of the CGST Act, 2017. In this scenario, he may be liable to pay interest on such reversal of credits for the period starting from the date of completion certificate till the date of actual reversal at the prescribed rates.

Other receipts:

There may be various receipts which the builder usually receives from its customers like transfer charges, holding charges, cancellation charges, legal charges for registration purpose etc. These receipts are taxable under GST.

Under the current tax regime, interest on delayed payments by customers is exempt from service tax, however, under the GST, such interest is considered as part of consideration and would be subject to tax

Scope widened for ITC under GST

There is one welcome provision in the GST Law that the criteria for taking credits of taxes is made enlarged and liberalised. Now all

input and /or input services which are used or intended to be used in the course of furtherance of business, credit of taxes charged on such input / input services would be available without making any correlation with the output supply. This change will help increase the business efficiencies and cost effectiveness.

Impact of restricting ITC benefit for Assets for Lease

Under clause (d) and (e) of subsection (5) of section 17 of CGST Act, 2017, a supplier who constructs the building, flat, dwelling unit, independent floor or shop etc. either through works contractor or on his own for the purpose of letting out / leasing for consideration, will not be able to take any credit of taxes charged on input and input services used in the construction of such buildings, flats etc. due to specific restriction. Though letting of these building etc. for commercial purpose is taxable but benefit of input tax credit is not extended which is against the principal of Value added based tax. It will result into increased cost of constructions and higher rents of such commercial properties.

TRANSITIONAL CHALLENGES UNDER GST

In construction industry stock in hand comprises of the following namely:

- Building Raw Material and Components
- Land Stock
- Transfer Development Right Stock
- Work in progress
- Stock in Trade –Flats /Finished Products

Section 140 of the CGST Act, 2017 provides for transitional provisions in relation to credit of eligible duties in respect of inputs held in stock or inputs contained in semi-finished or finished goods held in stock on the appointed day.

Analysis of Section 140 transitional provisions

S. No.	Section	Registered person shall be entitled to take	Remarks
1	140(1) other than composition	CENVAT credit carried forward in the return furnished by him under existing law.	Conditions: 1. the said credit is admissible under GST law. (Section 17(5) (c) and (d) which restrict input credit of works contract or construction activity if used by end user only.) or 2. the registered person has filed all his returns for the last six months or 3. credit shall not relate to goods manufactured and cleared under such exemption notifications.

2	140(2) other than composition	Unavailed CENVAT credit in respect of capital goods, not carried forward in a return not furnished by him under existing law.	Conditions: 1. the said credit is admissible under GST law. (Section 17(5) (c) and (d) which restrict input credit of works contract or construction activity if used for end user only.)
3	140(3) Applicable in 8 special category of person including works contract or construction activity.	credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day	Conditions: 1. such inputs or goods are used or intended to be used for making taxable supplies under GST; 2. said registered person is eligible for input tax credit on such inputs under GST; 3. said registered person is in possession of invoice or other prescribed documents; 4. invoices or other prescribed documents were issued not earlier than twelve months; and 5. supplier of services is not eligible for any abatement under GST:
4	140(4)	This section allows CENVAT credit of point 1 & 3 above if manufacturer or service provider engaged in taxable as well as exempted activity both.	Refer point no 1 and 3 above.
5	140(6) Applicable where person paying tax at a fixed rate or paying a fixed Amount	credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock	Conditions: 1. such inputs or goods are used or intended to be used for making taxable supplies under GST; 2. said registered person is not paying tax under section 10; 3. said registered person is eligible for input tax credit on such inputs under GST; 4. said registered person is in possession of invoice or other prescribed documents; and 5. such invoices or other prescribed documents were issued not earlier than twelve months:

On-going contracts as on appointed date: The provisions relating to treatment of ongoing contracts on appointed day are contained in Section 142 (10) and 142 (11) of the CGST Act 2017 according to which;

- If the goods or services are being supplied on or after the appointed date in pursuance of the contract entered prior to the appointed date, then tax would be levied under GST.
- If the goods or services are supplied before the appointed date and VAT was leviable on such transaction on account of Sale of goods or Service Tax was leviable on account of provision of services, no tax will be required to be paid under GST.
- If the consideration has been received prior to appointed date in respect of such supply and tax has already been paid under current regime, no tax would be required to be discharged /paid under GST.
- If any VAT and Service Tax has been paid on any supply under the existing laws, but the supply of goods and/or services is to be received under GST scheme, then the tax already paid shall be allowed as credit under GST and the supplies when made shall be taxed under GST as well. This clause covers specifically works contract transactions. For example: If an invoice is raised on 30th June 2017 and the supply is for the month of

June 2017 and July 2017 and VAT and Service Tax have been paid, then such VAT and Service Tax paid shall be allowed as credit in GST proportionate to the month of July 2017; and when supplies are made in July 2017, they shall be put to tax under GST.

CONCLUSION

The above radical change in Indirect Taxes will surely foster the ideology of GST i.e. one nation- one tax. However, concerns remain w.r.t the taxability of TDRs when the development rights are being transferred to builder/ developer and seamless credit availability of ITC to a constructor/ developer/ works contractor. There is a pressing need for the Government to look into these issues in more detail to avoid any ambiguity which might affect the economic environment of the country.

Contributed by Delhi Study Group





TEST YOUR KNOWLEDGE

- Q1.** Which of the following is NOT a requirement for claiming the exemption from GST on job work?
- Job work should be for a specified purpose such as processing, testing, repair, etc
 - Goods should be returned after completion with six months or such extended period
 - Manufacturer should declare the details of inputs held in stock by the job worker on behalf of manufacturer
 - Job work should pay the GST even on returning the goods within the period of six months from appointed date
- Q2.** How will the refunds occurring due to any proceedings under the earlier law relating to CENVAT Credit is treated under GST?
- Such refund will be made in cash
 - Such refund will be allowed as input tax credit
 - Either a or b at the option of the taxable person
 - Either a or b at the option of the Department
- Q3.** Under what circumstances will the refund claim filed under the earlier law be rejected?
- Refund claim is filed after appointed date
 - Credit is carried forward equivalent to refund amount
 - Refund claim is withdrawn
 - Refund claim will never lapse and shall be payable mandatorily paid by the department.
- Q4.** Which of the following is mandatory pre-condition in respect of downward price revision during transition period?
- Recipient of credit note reduced his input tax credit
 - Supplier should revise earlier return and reduce tax liability
 - Supplier claims refund of downward revision
 - Recipient intimates his jurisdictional officer of such downward revisions
- Q5.** On what portion of the stock does the composition taxable person need to pay tax?
- Inputs held in stock only
 - Input within semi-finished/finished goods held in stock only
 - Both (a) and (b)
 - None of these
- Q6.** Where supply has been made before the date of implementation of GST, no tax shall be Payable:
- If tax/duty has been paid under the earlier law
 - If goods were exempted under the earlier law
 - If the goods were non-taxable under the earlier law
 - All of the above
- Q7.** The amount of credit of input tax will be paid by:
- Debiting the electronic cash ledger mandatorily
 - Debiting the electronic credit ledger mandatorily
 - Debiting the electronic cash ledger or electronic credit ledger or both
 - None of the above
- Q8.** For credit to be allowable, invoices should not be issued earlier than:
- Three months before the appointed day
 - Six months before the appointed day
 - Nine months before the appointed day
 - Twelve months before the appointed day
- Q9.** On the transition date which of the following credits are not available
- Credit available in the return filed under the old law
 - Credit of goods in transit
 - Credit of incomplete services
 - Exempted goods in transit and taxable under the new GST law

Answers

1. (d) Job work should pay the GST even on returning the goods within the period of six months from appointed date
 2. (a) such refund will be made in cash 3. (b) Credit is carried forward equivalent to refund amount 4. (a) Recipient of credit note reduced his input tax credit 5. (c) Both (a) and (b) 6. (d) All of the above 7. (c) Debiting the electronic cash ledger or electronic credit ledger or both 8. (d) Twelve months before the appointed day 9. (d) Exempted goods in transit and taxable under the new GST law



FAQS ON APPORTIONMENT OF CREDIT

Q 1. Will compliance of the provisions of Section 17(2) regarding restriction of credits relatable to exempt supplies be mandatory to a Banking Company/ Financial Institution engaged in accepting deposits or extending loans or?

Ans. No. A Banking Company/ Financial Institution engaged in supplying services by way of accepting deposits, extending loans or advances has the following options:

- Comply with the provisions of Section 17(2) regarding restriction of credits relatable to exempt supplies in the manner prescribed; or
- Avail 50% of the eligible input tax credit every month on inputs, capital goods and input services and the remaining 50% shall not be available.

The option exercised cannot be withdrawn in the same year. The restriction of 50% will not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN.

Q 2. Whether input tax credit is allowed on inputs which become waste and is sold as scrap?

Ans. Section 17(5) (h) specifically restricts input tax credit on goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. Therefore, If the goods have been destroyed in full, input tax credit will not be available. However, if in the process of manufacture some inputs become waste and are sold as scrap, credit shall not be denied. Further, output tax shall be payable on sale of such waste/scrap.

Q 3. Whether input tax paid on Motor vehicle and other conveyances which is used for courier agency, outdoor catering, pandal and shamiana and tour operator is eligible?

Ans. The restriction of input tax credit on motor vehicles and conveyances provided under Section 17 (5) (a) is on such motor vehicles/ conveyances except when they are used for further supply of vehicles/ conveyances, transportation of passengers, imparting training or for transportation of goods only. Therefore, input tax credit will be available when it is used by courier agency, outdoor catering, pandal

and shamiana and tour operator as it covers use of vehicles for transportation of goods/ transportation of passengers.

Q 4. What are the conditions to avail the input tax credit on Rent a cab, life Insurance, Health Insurance?

Ans. Tax paid w.r.t rent a cab services, life/ health insurance services will be eligible as input tax credit subject to the following conditions:

- If the Government notifies that such services are obligatory for an employer to provide to its employees under any law for the time being in force, or
- Such services are used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply.

Q 5. Whether taxes paid on change of interiors of service apartment is eligible for input tax credit?

Ans. Input tax credit is not available on goods or services received by a taxable person for construction of an immovable property on his own account other than plant and machinery even when used in course or furtherance of business. The word "construction" includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property. If the cost of interiors is capitalized towards the cost of immovable property then it forms part of the cost of immovable property (Service apartment) and accordingly taxes paid on change of interiors of service apartment will not be eligible as input tax credit.

Q 6. Whether benefit of input tax credit would be available if the company procures health insurance services for benefit of its employees. Procurement of such services is mandatory under Factories Act.

Ans. Yes. Section 17(5) (b)(iii)(A) provides that tax paid w.r.t rent a cab services, life/ health insurance services will be eligible as input tax credit where the Government notifies that such services are obligatory for an employer to provide to its employees under any law for the time being in force.

FAQs ON RETURNS UNDER GST

Q 1. Is the word refund defined in the GST Act?

Ans. Yes, the word refund is defined in explanation to Section 54 of the CGST Act. As per the said definition, refund includes refund of tax paid on,

1. Zero-rated supplies of goods or services or both; or
2. Inputs or input services used in the effecting such zero-rated supplies of goods or services or both; or
3. Supply of goods regarded as deemed exports; or
4. Refund of unutilized input tax credit at the end of any tax period.

Q 2. Is there any time limit to claim refund under Section 54?

Ans. Yes, as per Section 54, refund application is to be filed before the expiry of two years from the relevant date.

Q 3. Can United Nations Organisation claim refund?

Ans. Yes. UNOs are entitled to claim refund of IGST/CGST/SGST paid on inward supplies of goods and/or services.

Q 4. Is there any time limit for claiming refund by UNOs?

Ans. Yes, the refund application is required to be made before the expiry of 6 months from the last day of the Quarter in which such supply was received.

Q 5. Can any person claim refund of any unutilised ITC at the end of the tax period?

Ans. No, only the following registered persons can claim refund of unutilised ITC:

1. Persons undertaking exports (including other zero-rated supplies). Exception: No refund will be allowed on the goods exported out of India where such goods are subjected to export duty [second proviso to Section 54(3)];
2. Credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outward supplies (other than cases of nil-rated or fully exempted supplies)

Q 6. Is there any document to be enclosed along with refund claim? If yes, what are the documents to be submitted?

Ans. Yes, the following documents are required to be enclosed along with the refund application:

1. Documentary evidence to establish that a refund is due to the applicant (prescribed under Rule 1(2) of the Refund Rules, 2017, and
2. Documentary evidence to prove that incidence of tax and interest had not been passed on to any other person.

Q 7. Can amount of refund sanctioned be adjusted towards any tax payable by the taxable person?

Ans. Yes, the refund due to the applicant can be adjusted towards tax, interest, penalty or any other amount which

the applicant is liable to pay but which remains unpaid under the Act or under any earlier law.

Q 8. Under what circumstances would refund be paid to the applicant?

Ans. On receipt of application, where the proper officer is satisfied as regards the refund application filed, he would pass an order sanctioning the refund.

In the following situations, the refund sanctioned would be paid to applicant -

1. refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India;
2. refund of unutilized input tax credit under Section 54(3)
3. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued
4. refund of tax in pursuance of Section 77
5. the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
6. the tax or interest borne by such other class of applicants as the Central or a State Government may, on the recommendation of the Council, by notification, specify

In all other cases, the amount sanctioned shall be credited to the Fund.

Q 9. Is there any other case apart from those covered in Section 54, wherein refund can be claimed under GST?

Ans. Yes, as per Section 55 of the Act, the Central/State Government may, on recommendation of the Council, by notification, specify any other person or class of persons who shall be entitled to claim a refund of taxes paid on the notified supplies of goods or services received by them including specialized agency of the UNO, Consulate or Embassy of foreign countries etc.

Q 10. Would interest be paid on the amount of refund sanctioned?

Ans. Yes, interest would be paid at a rate not exceeding 6%, if the refund is not sanctioned within 60 days from the receipt of refund application. Interest rate is yet to be prescribed.

Q 11. How would the interest be computed and paid?

Ans. Interest would be computed and paid for the period after expiry of 60 days till the date of actual refund of tax.

Q 12. If refund is made based on the order of appellant authority, then would interest be paid?

Ans. Yes, interest (at a rate not exceeding 9%) would be computed and paid for the period after expiry of 60 days from the date of application consequent to the order till the date of actual refund of tax.

FAQs ON PAYMENT OF TAX

Q 1. How one can deposit tax under GST?

Ans. A registered taxable person, or any other person on his behalf, shall generate a challan in FORM GST PMT-06 on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount and pay the amount through the following means:

- Internet banking through authorized bank;
- Credit/debit card through the authorized bank;
- National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) from any bank;
- Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

Q 2. To whom the restriction of deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft is not applicable?

Ans. The restriction of deposits upto ten thousand rupees per challan per tax period, by cash, cheque or demand draft is not applicable to the deposit made by:

- Government Departments or any other deposit to be made by persons as may be notified by the Board/Commissioner (SGST) in this behalf;
- Proper officer or any other officer authorized to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
- Proper officer or any other officer authorized for the amounts collected by way of cash or cheque, demand draft during any investigation or enforcement activity or any ad hoc deposit.

Q 3. What is the validity of challan FORM GST PMT-06 generated at the common portal?

Ans. The challan FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.

Q 4. What is Challan Identification Number (CIN) and when can it be generated?

Ans. CIN is the number generated for identification of payment made by the taxable person. It will be generated upon successful credit of the amount to the concerned government account maintained in the authorized bank.

Q 5. Should the payment be made only from the account of the taxable person?

Ans. There is no restriction on the account to be used by the taxable payment for payment of tax. The payment can be made by a third party from his account using the GSTIN

of the taxable person to get the amount debited to the electronic cash ledger of the taxable person.

Q 6. What are the differences between electronic cash ledger and electronic credit ledger?

Ans.

Sl No	Electronic cash ledger	Electronic credit ledger
1.	Can be used for payment of tax, interest, penalty and other amounts	Can be used only for payment of output tax
2.	Credit to the ledger will be through payment vide Challans	Credit to the ledger will be through input tax credit claimed as per GSTR-02 (inward return)
3.	Refund for excess balance in the cash ledger can be applied through GSTR-03 (monthly returns)	Refund for excess balance in credit ledger may be refunded only through the forms specified

Q 7. Is there any order in which liability of a person shall be discharged or it can be appropriated as per the convenience of the tax payer?

Ans. No, every taxable person shall discharge his tax and other dues in the following order:

- self-assessed tax, and other dues related to returns of previous tax periods;
- self-assessed tax, and other dues related to return of current tax period;
- any other amount payable under the Act or the rules made thereunder including the demand determined under section 66 or 67.

Note 1: "tax dues" means the tax payable under this Act and does not include interest, fee and penalty.

Note 2: "other dues" means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder

Q 8. What is the due date for payment of tax under GST?

Ans. As per Section 37 (7), every registered taxable person, who is required to furnish a return shall pay to the account of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return. Therefore, the due date for payment of tax shall be the due date for filing of returns.

Q 9. Will the Electronic credit ledger be debited only with matched input tax credit?

Ans. No, the Electronic credit ledger be debited with matched, unmatched and also provisional input tax credit.

ICAI'S CONTRIBUTION FOR SMOOTH IMPLEMENTATION OF GST AS PARTNER IN NATION BUILDING

1. Setting up of GST Sahayata Desks

ICAI has set up GST Sahayata desks at its various branches across the country to help resolve the GST related issues of traders, industry and public at large. At present there are more than 100 desks functioning wherein GST experts resolve generic GST queries.

2. Interactive Programme on GST for trade associations

The committee is proactively involved in co-ordinating with the trade associations for organising open house Interactive Programme on GST. In addition to earlier organised 18 programme, 1 more programme has been organised by the committee at Chennai for Alkali Manufacturers Association of India on 23rd June, 2017 as part of its initiatives for partner in nation building. Further, few more interactive programmes on GST have been scheduled.

3. 10 Days Certificate Course on GST

The Committee launched a Certificate Course on Goods and Services Tax (GST) at more than 40 locations all over India with a view to facilitate members in industry as well as in practice with specialized and updated knowledge of GST in a systematic manner which could enable them to take up various professional opportunities offered in this area. The course is much appreciated and well received by the members.

4. Recent Publications on GST:

The Institute has recently released the following publications which have been updated with recent changes:

- Background Material on GST Act(s) and Draft Rule(s), 2017 – June 2017
- FAQs and MCQs on GST, June 2017
- Bare Law on GST Act(s) and Draft Rule(s) – June 2017
- Simplified GST Guide for Manufacturer, Feb-2017
- Study Paper on Taxation of E-Commerce under GST, Feb-2017
- Study Paper on Unjust Enrichment, Feb-2017

These publications can be downloaded at <http://idtc.icaai.org/publications.php> and can be ordered online at <https://icaionlinestore.org/indirect-taxes-committee>

5. Suggestions on GST Act

ICAI has submitted its suggestions (Part-I) on the GST Acts to the Government on 30th May, 2017, which can be downloaded from the website <http://idtc.icaai.org/>. Comprehensive suggestions would be submitted by the first week of July, 2017.

6. Short video on GST

Committee has recorded a short video on lectures on process of migration into GST and its benefits, which can be viewed at <https://youtu.be/Cc9UgEIKdFg>. Further, recording of short video on majority of the topics of GST based on GST Act is going on and would be hosted shortly.

7. Training Programme on GST for Service tax Commissionerate

The Committee organised three training programmes on

Goods and Services Tax for the officials of Hapur, Ghaziabad and Dehradun Commissionerate.

8. Outreach Programme on GST in Association with Service Tax Commissionerate

The Committee has organised 4 outreach programmes on GST as knowledge partner in association with Kolkata, Delhi Commissionerate (twice) and Ahmedabad.

9. A Study Report to enable smooth Transition from Pre-GST to Post-GST Regime:

With a view to facilitate the Government in smooth transition from Pre-GST to Post-GST Regime, the report prepared and submitted by ICAI and it can be downloaded from <http://idtc.icaai.org/budget-memorandum.html>

10. A Study Report on Impact of GST on Jammu & Kashmir Taxation System:

With a view to facilitate the Government of Jammu & Kashmir in understanding the impact of GST on Jammu & Kashmir Taxation System, the ICAI submitted a Study Report to the Government of Jammu & Kashmir. The reports submitted by ICAI can be downloaded from <http://idtc.icaai.org/publications.php>

11. Impact of GST Regime on Finances & Economy in Delhi

With a view to facilitate the Government of Delhi in understanding the impact of GST on Delhi Taxation System, the Indirect Taxes Committee has submitted a Study Report to the Delhi Government. The report entails the impact of GST implementation on Delhi economy, provides a comparative report on revenue under the present and GST regime etc.

12. Nomination at the Advisory Committee constituted by Goods and Services Tax Network (GSTN):

Considering the expertise of members of ICAI, Goods and Services Tax Network requested ICAI to nominate its member at the Advisory Committee constituted by Goods and Services Tax Network. Accordingly, ICAI has nominated members at the said advisory Committee.

13. Support extended to Goods and Services Tax Network (GSTN):

Based on the request from GSTN, following supports have been provided:

- Sharing of data of ICAI's members for online validation by GSTN.
- Nominating members for providing feedback on the software module of GST developed by GSTN.
- List of IT Firm provided to GSTN for providing training so that IT Firm may make necessary changes compatible with GST.

14. Formation of Study Group for helping State Government in smooth implementation of GST:

The Institute has already formed twenty (20) State level Study Group for extending its support to the State Government in smooth implementation of GST.

15. Identification and Training of new speakers on GST:

500 new speakers have been identified and trained in Model GST Law making the expert pool of over 700 faculties across India.

16. Workshops, Seminars and Conferences:

More than 1500 workshops, seminars and conferences on GST have been organised across the country since January, 2017.



Workshop on GST at Hubli



Certificate Course on GST at Bhopal



Certificate Course on GST at Jorhat



Certificate Course on GST at Madhurai



Seminar on GST at Bareilly



Seminar on GST at Faridabad



Workshop on GST at Cuttack



Workshop on GST at Tinsukia