

CA. Manoj Fadnis

President



**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA**

(Set up by an Act of Parliament)

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ICAI/IDTC/2015-16/Rep/5

3rd July, 2015

Shri Bhupender Yadav
Chairman
Select Committee on the Constitution
(122nd Amendment) Bill, 2014
Room No. 111-A, Third Floor,
Rajya Sabha Secretariat
Parliament House Annexe
New Delhi - 110 001

Subject: Suggestions on 122nd Constitution Amendment (GST) Bill, 2014

Respected Sir,

As you may be aware, the Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 which regulates the profession of Chartered Accountancy in India. During more than six decades of its existence, ICAI has always been at the service of the Government as a part of its role in aiding towards better governance.

We refer to our correspondence dated 26th November 2014 with Ref. No. ICAI/ IDTC/2014-15/Rep/Cir-21 to Hon'ble Finance Minister vide which we had provided our suggestions on proposed GST Constitutional Amendment Bill. Few of our suggestions were duly incorporated in the 122nd Constitution Amendment Bill, 2014. The Copy of the same has been enclosed as **Annexure-I**.

We are submitting herewith suggestions on the 122nd Constitution Amendment (GST) Bill, 2014, as passed by Lok Sabha on 6th May 2015, for your consideration. The Institute of Chartered Accountants of India would like to offer its assistance in this Government initiative and is desirous of lending its support in smooth implementation of GST in India.

Further, we look forward to a personal meeting with your good self to illustrate the points made by us. Should you require any further clarification/explanation in the matter, we shall be pleased to furnish the same.

Thanking you.

Yours faithfully,

Manoj Fadnis

CA. Manoj Fadnis
President, ICAI

Copy to:
Sh. A. K Singh, Joint Secretary,
Room No. 525 Rajya Sabha Secretariat
Parliament House Annexe
New Delhi

Bahadur Singh
7-7-2015
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Additional Suggestions on Constitution (One Hundred and Twenty- second Amendment) Bill, 2014

INDIRECT TAXES COMMITTEE

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA





Additional Suggestions on Constitution (One Hundred and Twenty-second Amendment) Bill, 2014

1. Suggestion on insertion to Proposed Article 246 A

The Constitutional (GST) 122nd amendment Bill proposed to insert the following after article 246 of the Constitution.

Special provisions with respect to goods and services tax.

"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.-The provisions of this article, shall, in respect of goods and services tax referred to in clause (5), of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

Suggestion

It is suggested that Clause (2) of the said Article be revised as follows:

*(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce **or in the course of import of goods or services into or the export of goods or services out of the territory of India.***

This will empower the Parliament to impose IGST on the import and export of goods and services and will complement Article 286.



2. Amendment to Article 286-Restrictions as to imposition of tax

Article 286 proposed to replace the word “the sale or purchase of goods where such sale or purchase takes place” with the word “the supply of goods or of services or both, where such supply takes place”.

Suggestion

It is suggested that Clause (1) in Article 286 be amended as follows:

“No law of State shall impose, or authorise the imposition of, a tax on the **Sale or Purchase** or Supply of goods and services or both, where such sale or purchase or supply takes place-

(a) outside the State: or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Alternatively, definition of ‘supply of goods or of services’ be inserted to include sale/purchase of goods as well.

Otherwise State may on a later day say that there is restriction on imposing tax on supply of goods and services and they have the power to levy tax on sale and/or purchase of inter-state trade/import and export.

3. Amendment to Article 279A- GST Council

Newly inserted Article 279A proposed to empower GST Council only to make recommendation to the Union and States. It means they will have option to accept or reject any/all recommendation. The Parliament as well as the State Legislatures will be free to exercise their power in case of all issues recommended by the Council.

Suggestion

It is suggested that decisions taken by GST Council be binding in nature as every decision shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting.

Accordingly, the word “recommendations” mentioned under clause (4) of Article 279A be substituted appropriately and an additional clause may be inserted in Article 279A to provide that the decision taken by the Council in terms of Clause (9) shall be binding on the Union and the States.



4. Amendment to Article 366(29A)- Definition of “Tax on sale or purchase of goods”

It is suggested that clause 29A of Article 366 which deals with deemed sale be rescinded on enactment of the Constitution Amendment Bill as Goods and services would be mutually exclusive.

5. Amendment to Arrangement for assignment of additional tax on supply of goods to States for two years or such other period recommended by the Council.

There should not be any additional tax on inter-state supplies. The Government can surely explore other ways of compensating the States, such as slightly increasing the CGST rate which can then be apportioned between states.

Additional tax of 1% on interstate supply of good is non cenvatable and will lead to Cascading of taxes which is not the intention of the Government.

Alternatively, the Maximum period of levy of additional tax be fixed at “two year” and the word “or such other period” be omitted.

6. Suggestion to Subsume Stamp duty under GST Regime

It is suggested that Entry 91(Union List) and Entry 63(State List) along with Article 268 be deleted such that levy of stamp duties is subsumed within GST. This will facilitate availability of credit on transactions specified in Entry 91 and Entry 63.