

Post - Budget Memorandum 2020 - 21

Indirect Taxes



American Chamber of Commerce in India

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016

Tel: 91-11-26525201 Fax: 91-11-26525203 Email: amcham@amchamindia.com

www.amchamindia.com

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Goods and Services Tax (“GST”)

S. No.	Area of Challenge	Issue	Recommendation
1.	Removal of GST ‘intermediary’ definition.	<p>The GST legislation re-introduces the definition of ‘intermediary’ services previously included in service tax legislation (this definition makes supplies that would normally be treated as an export free of GST be subject to GST and as such adds costs).</p> <p>As a result of the inclusion, services provided by Indian subsidiaries are liable to GST which used to qualify as exports prior to 1st October 2014.</p> <p>This results in significant tax costs for the group and is considered to be a barrier to business in India.</p>	<p>Re-instatement of export benefits for intermediary services under the GST regime.</p> <p>These provisions are out of step with Global Best Practice (e.g. EU VAT)</p>
2.	Relationship between employer and employee	Employer and employee are related person as per the explanation given vide Section 15 of the CGST Act 2017. All the transactions, even without consideration with related person is deemed to be a supply chargeable to GST as per Schedule I of the CSGT Act 2017. It is suggested that the transaction between employer and employee should be removed from Schedule 1.	Employer and employee are related person as per the explanation given vide Section 15 of the CGST Act 2017. All the transactions, even without consideration with related person is deemed to be a supply chargeable to GST as per Schedule I of the CSGT Act 2017. It is suggested that the transaction between employer and employee should be removed from Schedule 1.
3.	API Access to be provided	Finance Minister during the Union Budget speech reiterated the implementation of e-invoicing mechanism along with other features like dynamic QR code for consumer invoice capturing GST parameters, However, government yet to provide API access and it becomes important for business to test the tool with large data and make recommendation to Government for suitable consideration. Also, Large corporates and	It is recommended to provide the API access at the earliest, which enables large entities to have a feel of new returns with large data, which will definite put off the fear factor of encountering IT glitches. Also, clarity required on dynamic QR code for pre-paid invoices.

		<p>global entities who work on global tools for accounting and invoices needs reasonable time to do the set up the e-invoicing schema, considering the volume of transaction.</p> <p>Also on the e-invoice to consumer, government intent invoice with dynamic QR code feature. However in large corporates, transaction with consumers are basically on prepaid mode, where the consumer makes the payment well in advance, in such case the feature of dynamic QR code has no relevance.</p>	
4.	Clarity required for applicability of E-invoice schema on invoices raised by SEZ for sale of goods from SEZ under the cover of Bill of Entry	<p>The E-invoice schema nowhere clarifies what should be the treatment for B2B invoices raised by SEZ for outward supply of goods from SEZ under the cover of BOE. The ANX-1 or GSTR-1 format prescribes such transactions not to be reported while filing GST returns by SEZ unit as GST is already paid as part of Customs clearance.</p> <p>GST being paid basis Bill of Entry filed against invoice raised by SEZ unit for supply of goods with customer as importer on record. This exception will create lot of confusion in the Industry and impacts the ease of doing manufacturing or trading business for SEZ units. Customer IT systems also need to implement with or without IRN against invoices from SEZ unit.</p>	<p>It is recommended to issue clarification that:</p> <p>Either E-invoicing is not required for supply of goods from SEZ unit under the cover of Bill of Entry with customer as importer on record. Goods to move basis Bill of Entry and E-way bill to be generated by customer</p> <p>Or</p> <p>E-invoicing is required for supply of goods from SEZ unit even though they are under the cover of Bill of Entry with customer as importer on record. However, these should not create any additional GST liabilities for the SEZ unit to discharge basis auto reporting to Anx-1/ GSTR-1. This will help in</p> <ul style="list-style-type: none"> - Bringing GST compliances at par for goods or services except the RET-1 to allow GST payment liability to be discharged by giving reference of BOE for supply of goods so that there is no duplicate tax payout. - Online reporting will enable reconciliation with the GST paid at the time of clearance from SEZ under BOE.

			<ul style="list-style-type: none"> - Reconcile GST credit availed by customer basis BOE based on matching concept will reduce the risk of excess or incorrect credit availed. - Part A will also be reported online through E-invoice schema and can be generated by SEZ unit against the invoice giving reference of BOE. - This will also facilitate digital reporting and scanning of invoices from SEZ unit.
5.	Clarity required for applicability of E-invoice schema on self-supply invoices raised for payment of Reverse charge transactions	<p>The E-invoice schema states any other document required under the GST law need to be reported for E-invoice schema by supplier. The intent is to avoid fake invoices between supplier and customer and avoid any mis credit being taken of GST which is not paid at all to Government. The word “any other document” nowhere clarifies what should exactly be covered.</p> <p>There is no clarity as to which invoice need to be reported under E-invoice schema</p> <ul style="list-style-type: none"> - Supplier who is raising invoice under reverse charge or - Self-supply invoice which is created to discharge the GST liability under reverse charge by recipient. 	<p>It is recommended to issue clarification that:</p> <p>E-invoice schema to cover only supplier invoice under reverse charge so that recipient can discharge GST liabilities upon receipt of services by filing GST Anx-1 giving reference to the supplier E-invoice. Considering, this will not serve any control to bring them under E-invoice schema, it is recommended to out scope Self-supply invoice raised by recipient from E-invoice schema as they are:</p> <ul style="list-style-type: none"> - Created by recipient itself with customer as self against the expenses incurred - Reported in Anx-1 as reverse charge by recipient itself - GST paid and credit availed are both carried by recipient themselves. <p>Reporting of self-supply invoices under E-invoice schema will be just duplication of efforts and increases the compliance burden on the tax payers. Also, there will no other taxpayer to do any matching concept against such self-supply invoices. If Descopes, it will certainly bring reduction in cost of Implementation (moving from AR module to AP modules), ease of compliances</p>

			and better understanding for ease of doing business in India.
6.	Deferral of implementation of E-invoicing	<p>The proposed e-invoicing system is a welcome move which will make GSTR filing and input credit claims simpler and will also provide good trail and authentication to the business transactions. However, this will need lot of changes in the IT/ERP systems of taxpayers.</p> <p>As per discussions with internal stakeholders within organisation viz. order management, sales operations, revenue accounting, collections, the new process needs substantive changes in existing billing and accounting systems. The kind of data and details which are required to prepare the JSON for sending the details of invoice to IRP for validation and authentication and again bringing the IRN and QR code back to taxpayer's ERP for inclusion in tax invoice is a major IT change. The details of proposed schema was made available only in last week of December 2019. Further, only 6 APIs are made available in January 2020 and there are multiple queries and clarifications relating to E-invoicing which are still to be addressed.</p> <p>Given these circumstances, it seems difficult for tax payers to implement and comply with E-invoicing requirements effective 1st April 2020. As per discussions with IT teams of tax payers, the general feedback is that changes would at least need 6 months to make taxpayers' invoicing and accounting systems compliant with E-invoicing requirements.</p>	It is requested to consider deferment of the implementation by 6 months i.e. to 1st October 2020.
7.	Treatment of fraudulent credit availment as	'Fraudulent availment' of input tax credit without an invoice or bill is now proposed to be	Specific guidelines should be issued for exercise of the power of arrest by GST officers.

	cognizable and non-bailable offence	<p>covered as a cognizable and non-bailable offence (in case the amount of disputed credit exceeds INR 5 crores) by way of amendment in Section 132(c) and (e) of CGST Act, 2017. Corresponding amendment in CGST Rules, 2017 (Rule 86A) reads as under – “The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible.”</p> <p>The ‘reasons to believe’ leeway under the new Rule 86A has been grossly misused and thousands of taxpayers have suffered blockage of input credit by way of similarly worded notices from GST authorities. This may lead to rise in unnecessary GST litigations in the coming tax periods, as pressure mounts for increase in GST collections. There is no reason for making arrest provisions more stringent in case of tax statutes.</p>	
8.	Removal of payment condition for Input Tax Credit Availment	<p>As per section 16(2) of CGST Act, one of the conditions to avail ITC by recipient is that the Supplier should have remitted the taxes charged from the recipient to the Government.</p> <p>On the other hand, recipient has paid the invoice value including taxes charged thereon to the supplier in good faith.</p> <p>The benefit of ITC should not be denied to the recipient merely on account of defaulting supplier who has failed to deposit the taxes to the government as collected from the customers.</p>	Hence, it is recommended that Section 16(2) of CGST Act should be amended to exclude such condition for credit purposes for cases where customer have duly paid the tax amount to the suppliers.

9.	Input tax credit on free samples, marketing material etc	<p>For any new product launch or expanding business into new markets , regions – industries issue free samples through various product launch programs or issue free goods to its distribution network.</p> <p>The above expenditures are done in the furtherance of business and are normal business expenditure incurred without which the several Industry can't function.</p>	Input tax credit shall be allowed to be retained on all such promotions or schemes.
10.	Extension of GST exemption benefit provided to Government borne training services across the supply chain	<p>Per Notification No. 12/2017 Serial Number 72 – Union Territory Tax (Rate) dated June 28th, 2017 services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, or union territory administration are treated as GST exempt.</p> <p>The notification provides that the benefit of the exemption is available only to the main contracting party with the Government and not to the entire supply chain down the line (sub-contractors etc.)</p> <p>As result – this appears to inadvertently – disallow input tax credits within the supply chain, resulting into cascading of taxes.</p>	It is recommended that the GST exemption benefit provided to Government borne training services is extended across the supply chain and should not be restricted only to the main contractor level.
11.	Introduction of GST Exemption for the construction of military and commercial Airports	Exemption in relation to the construction of Airports which existed under the Service tax law has not been applied within the GST legislation.	Re-instatement of blanket exemption for the construction of both defence and commercial airports should be re-introduced under the GST regime.
12.	Exemption on IGST paid on capital goods by Software Technology	Post March 31, 2020, option to claim IGST exemption by EOU will no longer be available if the date is not extended. This would put undue	The following is recommended :

	Parks of India (STPI)/ Export oriented units (EOU)	strain on finances of units engaged in 100% exports as these companies incur substantial capital expenditure. Not extending upfront exemption to EOU/ STPI units, where there is a large representation of Micro, Small & Medium Enterprises (MSME) too would result in significant burden to such service export units.	<ul style="list-style-type: none"> - Upfront exemption in respect of import of capital goods should be extended without any time limit. - The benefit should be extended for domestic procurement as well. In absence of this, STPI units would resort to imports for availing upfront exemption, which will be against “Make in India” campaign. - Where upfront exemption is not extended, refund of input credits on capital goods should be permitted by way of an amendment to the provision, in the year of purchase itself. - Further, where it is felt that refund cannot be allowed on capital goods in the year of purchase itself it may be allowed in a staggered manner.
13.	Amendment to notification 96(10) disallowing export oriented unit (EOU) filing IGST rebate.	<p>IGST associated with EOU and the import of capital goods is currently exempt from IGST.</p> <p>Recent amendment on the 4th September 2018 disallows an EOU from filing a rebate claim retrospectively provided where exemption of customs duty and IGST is claimed at the time of import. This restriction also applies to the purchase of domestic capital goods.</p> <p>Once the exemption from IGST is removed there appears to be an unintended cost associated with the IGST paid on the purchase of capital goods. It is noted – IGST is not a cost within the Domestic Tariff Area and any IGST is reclaimed as an input tax credit or rebate.</p>	Re-instate the IGST exemption or provide additional clarification to avoid the unintended IGST cost to EOU.
14.	IGST on import of Aircraft parts, accessories and components	Currently the Government provides for a 5% lower GST rate on import of aircraft parts covered under Chapter Heading 8803.	Harmonization of the 5% lower GST rate entry to include all parts, components and accessories of aircrafts.

		However, recently the tax Authorities have alleged wrong classification of accessories, parts, components etc of aircraft imported and cleared at 5% lower GST rate by the aerospace and defence firms, IAF etc. The Authorities have issued demand notices to allege higher GST rate basis classification of such goods.	
15.	Maintenance, Repair and Overhaul (MRO) services provided by Indian Companies	The MRO services under GST (being treated as composite supply of services) are chargeable at 18% GST rate – Even when such service includes material etc. which may be chargeable at a lower rate of 5%/12%	Zero Rate or Standard rate of 5% on MRO services to make it comparable with foreign MRO companies
16.	Time of supply of services – under reverse charge mechanism – sec 13 (3)	Organized, large and process driven corporates experience that RCM Invoices may not get processed within 60 days, which is resulting into additional interest burden. Invoices may not get processed within 60 days as it has to pass through various clearance process. RCM is not a straight transaction and it requires additional accounting entries to be posted to create GST payable in the books of accounts.	The time limit of 60 days should be enhanced to at least 6 months.
17.	IGST on ocean freight	Ocean freight amount is already getting included in the value of imported goods for the purpose of payment of customs duty and IGST is already paid on the same.	In order to avoid this double taxation it is suggested that ocean freight should be exempted from levy of GST as a supply of service when it is in relation to transportation of imported goods.
18.	Deliberation on GST rate structure to address issue of inverted duty structure for goods only	Currently, the issue of inverted duty structure is addressed only for goods. By deliberating the GST rate structure for resolving inverted duty structure issue for services too, the issue of blockage of working capital on account of accumulated input tax credit will be resolved and this can be one of the solutions for the challenge of liquidity crunch in the business. This would also facilitate ease of doing business.	It is recommended to deliberate GST rate structure for resolving issue of inverted duty structure for services too.

19.	Denial of carry forward of transitional credit of service tax (Krishi Kalyan Cess and Education Cess	Vide CGST Amendment Act, 2018 dated 29.08.2018, Section 140(1) of CGST Act has been retrospectively amended to disallow carry forward of Cenvat credit pertaining to cesses balances as on 30.06.2017 such as KKC, EC & SHEC under GST regime.	It is recommended to deliberate GST rate structure for resolving issue of inverted duty structure for services too.
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Customs and Customs Tariff

S. No.	Area of Challenge	Issue	Recommendation
1.	The import of specified goods by the Ministry of Defence have been exempted from customs duty and import GST.	The announced customs duty exemptions for specific defence products imported by the Ministry of Defence, which has been expanded to include imports by defence and other public sector units is welcomed.	We would continue to support a GST zero rate on imports of ALL types of defence goods or harmonisation of rate irrespective of classification.
2.	Imposition of Health Cess	<p>As per the TRU letter dated 1st February issued by Mr. G.D. Lohani D.O.F. No 334/2/2020-TRU :</p> <p><u>IV. Other legislative changes in Finance Bill, 2020:</u></p> <p>a) <i>Vide</i> clause of the Finance Bill, 2020, Health Cess is being imposed on the import of medical devices falling under headings 9018 to 9022, at the rate of 5% ad valorem on the import value of such goods as determined under Section 14 of the Customs Act, 1962. This Health Cess shall be a duty of Customs. Health Cess shall not be imposed</p>	<p>It is proposed that the Govt may consider to revoke the decision to impose the Health Cess in the best interest of the patient and to ensure affordable healthcare for all – as per the visions of National Health Mission 2017.</p> <p>This is justified as below :</p> <ul style="list-style-type: none"> - Presently 80 % of the high technology dependent but low volume , life- saving, critical mass of medical devices like implants, equipment, high end catheters are imported under the mentioned HSN codes- 9018 to 9022. - Whereas, most of the local manufacturing of medical devices, in India, is

			<p>concentrated in the segment of high volume – low end devices ,like - syringes, needles, urine bags, catheter, low end lenses. For, most of the high-technology, low volume segment there are hardly any credible local manufacturers, with any significant market share or even production capability. Further, other than 23 categories of devices most of the devices are unregulated. As a result the quality of the very few categories devices which are manufactured / assembled by local manufacturers have not faced much of a scrutiny and hence lacks market credibility.</p> <p>- In this prevailing situation any tariff increment by 5 %, will not shift the market share to the local manufacturers. Rather, the cost of the life saving devices will pass on to the patients eventually, decreasing patient affordability. The global companies importing and distributing these devices are already reeling under the pressure of inflation and price control, will not be able to invest further on market development, capacity and skill building of health care professionals- a task performed by the global healthcare companies in India for several years.</p>
3.	Existing customs notification (50/2017): please refer to serial number 243 at page 17 where concessional BCD rate	On India Budget 2020-21, please refer to page 16 for Chapter 35 where the above entry has been omitted resulting in hike of customs duty to 30%.	This change (omission proposed for Chapter 35) and increase in duty to 30% should be reversed so that local manufacturing of finished goods remains economically competitive.

	of 10% is prescribed for ISP (Isolated Soya Protein)		<ul style="list-style-type: none"> - Concessional BCD was given to this isolated soy protein (min. 90 % protein) because it is needed in this country where 70 % of the population is protein deficient. - Indian population is facing severe malnutrition challenges and such a steep hike in duty will only result in soy protein which is used as an ingredient, becoming unaffordable to masses. - ISP is mainly used in making products suitable for clinical indications like Diabetes and Heart Disease, and this may result in a negative impact on patient's healthcare as well. - This ingredient is used by Indian food industry in making their finished products (such as high protein biscuits, dry beverages, Nutrition bars, Dietary supplements, Infant nutrition products) in India. Hence any hike in the duty for such product will actually hurt make in India objective of the government. - This will also make importing finished product (compared to locally manufacturing it) more competitive, as they will not face huge increase in raw material costs. This will result in actually hurting local manufacturing of finished products and providing advantage to imported finished products.
4.	Increase in Basic Customs Duty (BCD) rate on Palladium, Rhodium, Platinum used for manufacture of Catalytic Converters	The Government has increased the BCD rate on Palladium, Rhodium, Platinum used for manufacturing of Catalytic Converters, from 5% to 10%.	BCD rate on elements - Palladium, Rhodium, Platinum - used in the manufacture of Catalytic Convertors and their parts should be continued at 5% only

		<p>Business Impact These elements - Palladium, Rhodium, Platinum - are used in the automobile industry during the manufacture of component-Catalytic Converters which is used to remove the harmful gases from vehicle exhaust emission.</p> <p>The Government has already mandated implementation of the BS-VI emission norms, from 1st April 2020 for all the vehicles and auto industry is already working on the same. The quantity requirement of above elements gets increased while manufacturing Catalytic Converters for BS-VI vehicles as compared to the BS-IV vehicles. Due to the increase in requirement/ demand, the international prices for these elements have already gone up and are adding to the cost for automobile industry.</p> <p>At such time, an increase in BCD rate on these elements will put additional cost burden on the automobile industry, which is otherwise also going through a tough phase.</p>	
5.	BCD exemption available on copper rods when used in manufacturing of specified electronic goods [S.No. 39 of the Notification No. 24/2005- Customs dated 01-03-2005 & S.No. 33 of Notification No. 25/2005- Customs dated 01-03-2005]	Withdrawal of exemption on copper rods [which is a major raw material for the manufacturing of data cables] would lead to increase in the cost of finished products.	It is suggested to reinstate the exemption provided for duty payments on the import of copper rods.

	<p>(falling under Chapter 74) has been withdrawn.</p> <p>[Ref: Notification No. 6/2020-Customs & Notification No. 7/2020-Customs dated 02-02-2020]</p>		
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Others

S. No.	Area of Challenge	Issue	Recommendation
1.	FAQs and tweets issued by CBIC	There is no legal validity on clarifications issued by FAQs or tweets by CBIC.	Such clarifications to FAQs and by tweets should be translated into circulars immediately, wherever not done. This will help avoiding many litigations in times to come.