

# **Pre - Budget Memorandum 2021 - 22**

## **Indirect Taxes - GST**



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**AMCHAM Pre-Budget Memorandum  
Recommendations for Union Budget 2021-22**

**Goods and Services Tax**

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## Goods and Services Tax ('GST')

### Intermediary services

SL. No	Area of Challenge	Issues	Recommendation
1	Disputes on classification of services of IT/ ITeS sector as "Intermediary"	<ul style="list-style-type: none"><li>• Classification of IT/ITeS provided to overseas clients has been under significant scrutiny in the GST regime. The principles of export categorisation have been challenged over a period of time since the introduction of concept of intermediary.</li><li>• In a typical IT/ITeS set up, services are provided on "own account" and by no means, fall within the scope of "Intermediary" services. The implication of treating these services as "Intermediary" is that the exports get taxed at the rate of 18 percent making Indian exports cost ineffective.</li><li>• There were very limited disputes under service tax; though the same definition prevailed at that time. However, the following challenges have increased considerably under GST:<ul style="list-style-type: none"><li>– Increase in number of cases involving denial of refunds;</li><li>– Increase in number of enquiries, audits/ investigations leading to unnecessary litigation;</li><li>– Contrary rulings/ decisions passed by Advance Ruling Authorities in various States.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Issue a notification under S. 13(13) of IGST Act for specification of place of supply for services provided by IT/ ITeS sector. This notification should specifically state "for uniform application of rules" and hence clarificatory or retrospective in nature</li><li>• Issue a revised circular, taking cognizance of the issues highlighted and clarifying that IT/ ITeS companies providing services on own account with limited or nil interaction with the ultimate customer and without providing any lead generation for further supplies are not covered within the meaning of "Intermediary". Further, it should be explicitly laid down that provision of services under subcontracting arrangements do not qualify as "Intermediary" services.</li><li>• Furthermore, clarification should also be provided for the meaning of various terms in the definition of intermediary such as "arranging", "facilitation", "on his own account" etc, so as to leave no room for legal disputes. Reference can be drawn even from the Taxation of Services: An Education Guide issued under the erstwhile service tax regime.</li></ul> <p>For exports of IT/ ITeS services, there is an urgent need to clarify on the intermediary status so as to put to rest any</p>

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		<ul style="list-style-type: none"> <li>– Central Board of Indirect Taxes and Customs (CBIC) tried clarifying the concept and its application to IT-BPM sector through a circular in July 2019. However, some of the scenarios addressed in the Circular only created more turmoil and was subsequently withdrawn. A revised Circular is still awaited.</li> <li>• Under the “intermediary” provisions, the intent of legislature is to tax only those agents, brokers or any other who are arranging or facilitating a supply, between the main supplier and the customer of such main supplier. It does not include any supply made by a person on his own account.</li> </ul> <p>This increasing trend of revenue authorities in trying to tax services provided by IT/ITeS sector is concerning. A cost of 18 percent would adversely impact the sector and render India uncompetitive in the global scene, particularly in these trying times.</p>	dispute and consequent long drawn litigation on such services.

## Input tax credit

SL. No	Area of Challenge	Issues	Recommendation
1	Applicability of interest in case of reversal due to non-payment	<ul style="list-style-type: none"> <li>• As per Second proviso to Section 16(2) of the CGST Act, 2017, input tax credit pertaining to the invoices where the payment by the recipient has not been received within 180 days will be liable to be reversed.</li> </ul>	<ul style="list-style-type: none"> <li>• It is recommended that a clarification is issued to specify that interest will not be applicable in the case where input tax credit is reversed in compliance with Second proviso to Section 16(2) of the Central GST Act, 2017. This can be done by</li> </ul>

SL. No	Area of Challenge	Issues	Recommendation
		<ul style="list-style-type: none"> <li>• Even under the erstwhile regime, a similar provision for reversal existed under the CENVAT credit Rules. However, there was no requirement of remitting undertaken along with interest.</li> <li>• The intention of the said provision is to ensure that credit is being availed correctly. However, the levy of interest would be unfair in cases where the payment are delayed due to genuine reasons such as accounting delay, negotiations etc.</li> </ul> <p>Further, the recommendations made by the GST council in the 28th GST council held on 21 July 2018, included that the liability to pay interest is done away with in the case where the recipient fails to pay the due amount to the supplier within 180 days and only reversal of liability be undertaken. However, the said provision was not notified in the Central GST Act amendments for reasons unknown.</p>	<p>way of issuance of a removal of difficulty order under Section 172 of the Central GST Act, 2017.</p> <ul style="list-style-type: none"> <li>• This is on par with the provisions under the earlier service tax regime.</li> </ul> <p>Specifically, due to COVID, this ask is pertinent to support working capital.</p>
2	Time limit for availing input tax credit and amendment in GSTR-1 for the FY 2019-20	As per Section 16(4), credit for FY 2019-20 cannot be claimed beyond September 2020. Further in terms of Section 37(3) the last date to make any edit in detail furnished in GSTR 1 pertaining to FY 2019-20 is 11 October 2020. Considering the unprecedented COVID situation in the country there is a need to relook at the above time limits.	<ul style="list-style-type: none"> <li>• Allow availment of input credit for invoices pertaining to FY 2019-20 up to the period of December 2020.</li> <li>• Similarly, allow rectification of error or omission in respect GSTR-1 for the period from April 2019 to March 2020 up to the period of December 2020.</li> <li>• This relaxation will be of immense help to the taxpayers specifically where due to fault of the supplier, the recipients have not been able to get credit.</li> </ul>

SL. No	Area of Challenge	Issues	Recommendation
			<ul style="list-style-type: none"> <li>Also, due to COVID, this ask is pertinent to support working capital.</li> </ul>
3	Section 16(2) of CGST Act: Condition for Input Tax Credit availment	<ul style="list-style-type: none"> <li>Once recipient has paid the invoice value including taxes charged thereon to the supplier, the benefit of Input Tax Credit of same should not be denied to the recipient merely on the basis that the supplier has not remitted the underlying taxes to the Government.</li> <li>The recipient has paid the taxes in good faith and the Supplier only acts as an agent of the Government for collection of taxes. The recipient cannot be made responsible for the default committed by the supplier as it is the duty of the Government to identify such tax evaders.</li> </ul>	It is recommended to amend section 16(2) of CGST Act to remove the condition of payment of tax by supplier to Government from section 16(2) of CGST Act to make the recipient entitled to claim Input Tax Credit benefit of taxes charged by supplier and duly paid to him.
4	Interest applicability from date of availment of Input Tax Credit	<ul style="list-style-type: none"> <li>Section 16 (2) Second proviso: Interest applicability from date of availment of Input Tax Credit in case of reversal / payment of Input Tax Credit availed where payment to supplier is not made within 180 days from invoice date.</li> <li>It is proposed to remove the liability to pay interest in case where the recipient has been made liable to pay an amount equal to the ITC availed in case he fails to pay to the supplier of goods or services within a period of 180 days from the date of issue of invoice by the supplier.</li> </ul> <p>Since upon payment of the due amount to the supplier subsequently, the recipient shall be eligible to re-avail</p>	<ul style="list-style-type: none"> <li>It is recommended to amend section 16(2) of CGST Act to remove interest applicability from proviso to section 16(2) requiring the recipient to pay ITC availed as output liability in case of failure to pay the supplier of goods or services within prescribed period of 180 days from invoice date; or</li> <li>Interest should be applicable only from 181st day and not from the date of availment of Input Tax Credit.</li> </ul>

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		ITC of the said amount, it is believed that liability to pay interest is too onerous and should be removed.	
5	Relax restriction on medical/ life insurance, catering and transportation	<ul style="list-style-type: none"> <li>Prohibition on availment of credit on employee related insurance, catering and transportation services is discouraging the businesses from providing the above benefits to the employees.</li> <li>These more are relevant in COVID times where employers need to provide safe working environments.</li> </ul>	<ul style="list-style-type: none"> <li>Remove restrictions under clauses (i) and (iii) of 17(5)(b) of CGST Act for availing GST credits on employee related insurance, transportation and catering services.</li> <li>COVID has pushed companies to provide better facilities keeping in mind the well-being of employees and such expenses where GST is not available is credit, add on to the working capital cost.</li> </ul>
6	Input tax credits to overseas OIDAR service providers	<ul style="list-style-type: none"> <li>As per Section 16 of the CGST Act, 2017 every registered person shall, subject to such conditions and restrictions, be entitled to take credit of input tax charged on supplies which are used or intended to be used in the course or furtherance of his business.</li> <li>There is no specific provision under the GST law to allow input tax credit to the overseas OIDAR service providers. Also, there is no specific provision which restricts the ability of overseas OIDAR service provider to claim input tax credits.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that credit eligibility is decided regardless of whether the overseas OIDAR service provider has a fixed establishment or place of business in India or not.</li> <li>These credits should be allowed to be offset against overseas OIDAR service provider's output GST liability towards OIDAR services. Further, along with the credit of GST, even the TCS credit should be allowed in the case of B2B OIDAR supplies over an e-commerce platform.</li> <li>Since, overseas OIDAR service provider are required to charge GST on the services provided to 'non-taxable online recipients' in India, they should also be allowed to claim eligible input tax credits on goods and/ or services procured on which GST has been paid.</li> </ul>

SL. No	Area of Challenge	Issues	Recommendation

## Refunds

Sl. No	Area of Challenge	Issue	Recommendation
1	Amendment to notification 96(10) disallowing export-oriented unit ('EOU') filing IGST rebate	<ul style="list-style-type: none"> <li>IGST associated with EOU and the import of capital goods is currently exempt from IGST.</li> <li>Notification No. 16/2020 Customs has extended the IGST exemption benefit on all imports made by EOU until 31st March 2021.</li> </ul> <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>	Further re-instating the IGST exemption past 31 March 2021 or provide additional clarification to avoid the unintended IGST cost to EOU.
2	Issuance of multiple Deficiency Memo's ('DMs') for the same refund claim	<p>Rule - 90(3) of CGST Rules - Issuance of Multiple Deficiency Memo's for same refund claim.</p> <p>It is submitted that these multiple DMs put unwarranted strains to assesee's resources as well as on the resources of authorities.</p>	It is recommended that a suitable clarification be issued providing that all the deficiencies in a particular refund claim may be issued only once. Once the refund claim is refiled, the jurisdictional authorities should process the refund claim in accordance with the prescribed procedure without issuing any further DM again on similar or different issues not covered in original DM.
3	Issuance of Deficiency Memo ('DM') after the prescribed period of 15 days	<p>Rule 90(2) and 90(3) of CGST Rules - Issuance of acknowledgement in Form RFD-02 or the DM in Form RFD-03</p> <p>In various cases the assessee is issued with the DM after the prescribed period of 15 days and hence again</p>	It is recommended that a suitable clarification be issued providing for deemed acceptance of the refund claim application after 15 days from the date of ARN in case no acknowledgment or DM is issued by the authorities.



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		putting the assessee into the re-filing of fresh refund claim.	
4	Re-filing of refund claim within original time limits.	Rule 90(3) of CGST Rules - Re-filing of refund claim in pursuant to Deficiency Memo issued by tax authority. Though law is silent on this, however as per refund circular, last date of re-filing of refund claim pursuant to DM by a claimant is same which is for first time filing of refund claim. E.g. the last for filing the refund claim for the period 2019-20 is 31 March 2021 (assuming receipt of consideration on 01 April 2019). Thus, if the DM is issued in end of March 2021, then the due date of re-filing of fresh refund claim would also be 31 March 2021 and accordingly the said refund claim may be liable for rejection due to time barring if not re-filed within 31 March 2021 i.e. the timelines for filing of original refund claims.	It is recommended that the suitable amendments may be made provided for re-filing of refund claim within 1 or 2 months from the date of issue of DM in case of time barring.
5	Simplified GST refund process on Exports	Presently, for claiming the refund from the government there is a list of documents which are scrutinized by the tax officer (copy of invoices, copy of return evidencing payment of duty, document providing that the burden of paying tax has not be passed on, any other documents as required by the government). The GSTN portal has a robust mechanism to match the vendor transactions and input credit claims final refund should be granted based on matching on GSTN portal.	Taxpayers should be granted refund for input GST based on matching of transactions on GSTN portal.

## Supplies to SEZ unit

SL. No	Area of Challenge	Issue	Recommendation
1	Issues relating to SEZ zero-rated supplies	<ul style="list-style-type: none"> <li>As per Section 16 of the Integrated GST Act, 2017 ('IGST Act') a "zero rated supply" includes supply of goods or services or both to a SEZ unit and developer which can be made on or without the payment of IGST</li> <li>Section 26 of the Special Economic Zone Act, 2005 ('SEZ Act, 2005') read with the Rule 12 of Special Economic Zone Rules, 2006 entitles the SEZ developer or the unit to procure goods and services without payment of taxes.</li> <li>Accordingly, SEZ units and developers are eligible for procurement of supplies from suppliers located in the DTA without payment of GST.</li> <li>However, the State Tax authorities are taking differing interpretations (illustrated below) for supplies made to SEZ recipients and questioning the zero rating benefit on the following grounds: <ul style="list-style-type: none"> <li>Supply of services like facility management services, other professional and technical services to SEZ recipients cannot be zero-rated as the same are not mentioned in the default list of Authorised Operations.</li> <li>Services of outdoor catering cannot be zero-rated as it is a restricted credit supply and is specifically covered by the Advance Ruling issued in the case of <b>Coffee Day Global Limited</b>. This is irrespective of the fact that outdoor catering services are covered in the uniform list of services.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Thus, it is recommended that the State Tax authorities are instructed to be aligned with the practice and intent of the GST legislature and lend support in extending the zero rating benefit to the exporters and to avoid taxes being exported.</li> <li>Further, the instruction should state that the Uniform List as approved by the Ministry of Commerce should be followed without any dispute</li> <li>Current fresh approach and disconnect to the well settled principles on this topic, will result in tax demand on the suppliers which will be recovered from the SEZ customers as GST is an indirect tax. A large portion of the SEZ service exporters are technology sector SEZ units. This flagship export sector would be severally impacted on account of this dispute that is arising.</li> </ul>

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		<ul style="list-style-type: none"> <li>At the outset, the Authorised operations only relates to the output activity of the SEZ units and not the input services eligible for “zero rated supply” status.</li> <li>The above is notwithstanding the fact that:               <ol style="list-style-type: none"> <li>Services are approved in the Uniform List approved by the Board of Approvals and as issued by the Ministry of Commerce (F No D 12/ 19/ 2018 – SEZ); and</li> <li>Services were approved by the SEZ authorities in the erstwhile regime, i.e., by way of Form A1 – basis the very same Uniform List approach. Once Form A1 was issued, corresponding Form A2s were issued by the Service tax authorities. Basis these Form A2s, industry did not face any issues of the service tax related benefit being disputed.</li> </ol> </li> <li>Further, in the context of event management services, hotel, accommodation services, consumables etc, CBIC has issued circular no 48 dated 14 June 2018 clarifies that benefit of zero rating is allowed if the supplies are received by a SEZ developer or a SEZ unit for authorised operations.</li> <li>Despite the above clear positions, the State Tax authorities are proposing to deny zero rating benefit for various services such as facility management services (under entry 33 of Uniform List), outdoor catering services (under entry 37 of Uniform List), etc. provided to SEZ unit and developers, which is burdening the</li> </ul>	

SL. No	Area of Challenge	Issue	Recommendation
		<p>suppliers as well as the SEZ services exporters even when the GST law and SEZ policy is very clear.</p> <ul style="list-style-type: none"> <li>The position under the SEZ law has evolved with several clear jurisprudence under service tax and guidelines for over 12-13 years now. The provisions under service tax are exactly the same and the fresh line of approach to deny the benefit would result in frivolous litigation around this. More importantly, the SEZ law remains the same.</li> </ul> <p>Specifically, vide Letter F No D 12/19/2013-SEZ dated 2 January 2018 of the Department of Commerce (SEZ Section) the Uniform List of services that existed under the erstwhile regime has been affirmed and has been continued under the GST regime as well. This was specifically issued address the issue around various State Governments not granting the benefits under section 16 to SEZs.</p>	
2	Reverse charge applicability on domestic procurement by SEZ	<ul style="list-style-type: none"> <li>Section 16(1) read with section 5(3) of IGST Act: Reverse charge applicability on domestic procurement of goods or services by SEZ units / Developer.</li> <li>Under existing provisions, the supplier does not charge IGST or charge 0 per cent IGST under forward charge on supplies made to SEZ unit or developer against LUT / Bond.</li> <li>Further SEZ unit or developer is not required to pay IGST on inward supplies of goods or services by way of import as the import of goods or services by SEZ unit</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended to exempt GST on domestic procurement of goods or services covered under reverse charge by SEZ unit or developer in line with import of goods or services, or to allow such procurement without payment of tax against LUT in line with forward charge provisions applicable to supplier.</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
		<p>or developer has been specifically made exempt vide exemption notifications under Custom / IGST Act.</p> <ul style="list-style-type: none"> <li>However, there is applicability of IGST on specified categories of domestic supplies of goods or services under reverse charge in hand of SEZ unit or developer and there is an ambiguity whether SEZ unit or developer can procure domestic goods or services covered under reverse charge without tax against LUT.</li> </ul>	

### Tax collected at source ('TCS')

SL. No	Area of Challenge	Issue	Recommendation
1	Exemption for 1 per cent TCS for Exports transactions on e-commerce marketplaces	<p>Indian GST registered sellers exporting through eCommerce platforms suffer Tax Collection at Source ('TCS') of 1 percent under GST laws, since GST laws do not exclude zero rated export supply from TCS levy affecting their working capital. The Government should incentivize exports from India by providing necessary clarifications to exclude levy of TCS under GST laws on zero rated export sales made by online sellers.</p>	<p>Clarifying that an e-commerce operator is not obliged to hold back TCS on goods exported by seller through the ECO would reduce the compliance burden and improve working capital of sellers and thereby incentivizing exports from India.</p> <p>E-commerce plays an integral role in growing exports from India, and marketplace TCS on exports will add to the working capital burden of the Indian businesses, reducing their competitiveness vis-à-vis sellers of other countries.</p>
2	Refund of accumulated TCS credits lying in	<ul style="list-style-type: none"> <li>In terms of section 51(7) of the CGST Act, 2017, the TCS remitted by the electronic commerce operator</li> </ul>	<ul style="list-style-type: none"> <li>Given the clear legal provisions, which provide for a refund, it is recommended that a clarification be issued, specifying the mechanism for sellers to claim refund of</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
	Electronic Cash Ledger	<p>is credited to the electronic cash ledger of the concerned supplier.</p> <ul style="list-style-type: none"> <li>Section 49(6) of the CGST Act, 2017 read with proviso to section 54(1) allows a registered person to claim refund of the balance in electronic cash ledger in the return prescribed under Section 39 of the CGST Act, 2017.</li> <li>Due to margins of sellers being low, the TCS is merely an asset in books and balance in the electronic cash ledger keeps accumulating.</li> <li>Given that the requirement to file the return prescribed under Section 39 is GSTR-3 has been delayed and GSTR-3B does not provide for any option to claim refund, the sellers are claiming refund via the RFD-01 route.</li> </ul> <p>While the law clearly provides for refund of balance in electronic cash ledger, practically, the authorities are rejecting the refund applications of sellers owing to absence of an express provision regarding the same and GSTR-3B not providing any refund option, causing working capital blockages for the sellers on e-commerce platforms.</p>	<p>the TCS balance in the electronic cash ledger, with specific instructions to the authorities to disburse such amounts as it merely is an amount retained by the e-commerce operator ('ECO') and remitted to Government.</p> <ul style="list-style-type: none"> <li>It may be recalled that the key apprehension of TCS was that there would be several scenarios of excess net balance in the electronic cash ledger which would give rise to the requirement of refund and to reduce working capital blockage and to help small sellers in particular quick refund will be issued to sellers.</li> </ul>
3	Inclusion of overseas OIDAR supplies in GSTR-8	<ul style="list-style-type: none"> <li>An ECO is required to collect and deposit TCS in each state where the supplier listed on its portal and furnish supplier wise TCS details in FORM GSTR-8 every month. Further, the deposit of TCS is linked to the GSTIN of the supplier making the supplies over the ECO platform.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that a clarification be issued and system design is updated to allow the inclusion of supplies by the OIDAR service providers in the GSTR-8 which will be in interest of both the ECO and the suppliers of OIDAR services.</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
		<ul style="list-style-type: none"> <li>• Certain ECOs have offshore suppliers of digital content listed on Indian marketplaces whose services are classifiable as Online Information Database Access and Retrieval Services ('OIDAR services'). Such services are taxable in the hands of the overseas suppliers when supplied to 'non-taxable online recipients.</li> <li>• As tax at source is being collected by ECO in respect of their supplies, such suppliers are treated on par with the domestic suppliers as far as the ECO is concerned.</li> <li>• Given the design of the GST portal, the ECOs cannot disclose the supplies made by such OIDAR service providers in the GSTR-8 for TCS purposes.</li> <li>• This leads to a situation where ECOs are unable to file returns for the TCS withheld for such suppliers and suppliers are unable to view their TCS credits.</li> </ul>	<ul style="list-style-type: none"> <li>• Such TCS should be allowed to be used by the overseas OIDAR service suppliers while they discharge their tax liabilities.</li> <li>• Further, an appropriate extension for filing of GSTR-8 should be provided along with the waiver of interest and penalties owing to the above issue.</li> <li>• Unlike the erstwhile VAT/ ST regime, the GST law provides for Tax Collection at Source, (TCS) by ECOs in respect of the taxable supplies made through it by sellers. This requires the ECO to register in each of the states in which sellers are located to be able to remit and report the TCS in the respective states and file GSTR-8.</li> <li>• Additionally, the ECO is already responsible for providing visibility on all business related activities carried out by the seller on the platform.</li> <li>• This provides the ability for OIDAR supplies to be eligible for credit in electronic cash ledger and provides parity with domestic suppliers.</li> </ul>

## Rate rationalisation

SL. No	Area of Challenge	Issue	Recommendation
1	Rationalisation of GST rate on medical devices	<p>Presently GST rate on medical devices varies from 5 per cent to 28 per cent based on varied HSN codes.</p> <p>As patients are non-GST entity, the burden of GST passes directly to the patient.</p>	<p>Now that we have a clear definition of medical devices- requesting to put all Medical devices under one HSN code – and have a universal GST of 5 per cent. Healthcare is mainly an out -of -pocket expenditure. This will help increase patient affordability.</p>
2	Rationalization of GST rates for e-books	<p>Printed books sold in India are presently NIL rated. E-books where a printed version exists (sold by OIDAR supplier) to Indian customers is chargeable to 5 percent GST, whereas, on e-books where print version is not available and Audible books (whether or not a printed version exists) to India customers is chargeable to 18 percent GST.</p>	<ul style="list-style-type: none"> <li>• We recommend a complete GST exemption should be extended to all digital products including audio books and platforms instead extending only to e-books for which print version is available. This will also bring in parity for e-books and printed books.</li> <li>• <b>Alternatively</b>, it is recommended that all the other digital products including audio books and platforms which are currently taxed at the rate of 18 percent should be reduced to 5 percent GST which is at par with e-books for which print version is available.</li> <li>• Higher costs lead to fewer universities and their faculty and students being able to purchase the materials, fewer students pursuing these career opportunities and in the long run, serves as a deterrent to economic growth. Also, the GST has</li> </ul>



			negatively impacted Indian trade with outside publishers.
3	IGST on import of Aircraft parts, accessories and components	<ul style="list-style-type: none"> <li>Currently the Government provides for a 5 per cent lower GST rate on import of aircraft parts covered under Chapter Heading 8803.</li> </ul> <p>There are still lingering issues on classification and credits that should be addressed.</p>	<ul style="list-style-type: none"> <li>Harmonization of the 5 per cent lower GST rate entry to include all parts, components and accessories of aircrafts.</li> </ul>
4	Maintenance, Repair and Overhaul (MRO) services provided by Indian Companies	Effectively 1 April 2020 GST rate is reduced to 5 per cent in MRO services related to Aircraft – which is welcomed.	<ul style="list-style-type: none"> <li>The reduced 5 per cent rate for MRO is welcomed – further reduction to Zero Rate recommended to make it even more comparable and Indian MRO companies competitive with foreign MRO companies.</li> </ul>

## Exemptions

SL. No	Area of Challenge	Issue	Recommendation
1	Extension of GST exemption benefit provided to Government borne training services across the supply chain	<ul style="list-style-type: none"> <li>Per Notification No. 12/2017 Serial Number 72 – Union Territory Tax (Rate) dated 28 June 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.</li> <li>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.)</li> </ul>	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 to boost business in India.

SL. No	Area of Challenge	Issue	Recommendation
		As result – this appears to inadvertently – disallow input tax credits within the supply chain, resulting into cascading of taxes.	
2	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 defense and commercial airports should be re-introduced under the GST regime.

## Dispute resolution

SL. No	Area of Challenge	Issue	Recommendation
1	Non- availability of effective dispute resolution forum	<ul style="list-style-type: none"> <li>Currently there are no effective dispute resolution bodies to address the litigation and issues relating to GST.</li> <li>The GST law prescribes that the advance ruling authority will handle cases relating to clarity relating to the GST law while dispute resolution will be undertaken by the Tribunal.</li> <li>While the cabinet has approved creation of national bench of Goods and Services Tax Appellate Tribunal, a quasi-judicial body that will mediate in indirect tax disputes between states and Centre, the same has not been made functional.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that an effective Dispute resolution body is set up at the earliest so that open GST issues can be addressed on fast track basis.</li> </ul> <p>This will help address existing pending litigation at the earliest.</p>
2	Setting up of MSME focused tax committee	<ul style="list-style-type: none"> <li>MSMEs face several tax challenges especially in terms of tax compliance requirements in the early years of commencement of business.</li> <li>However, there is no forum that the MSME can approach with regard to the issues faced, clarity required under the laws.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that a MSME focused tax committee is formed so as to addresses direct and indirect tax issues faced by MSMEs on a fast track basis.</li> <li>Given the renewed focus of the GOI on MSMEs and Aatmanirbhar Bharat initiative,</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
			a focused committee would help in growth of business of MSMEs.

## Registration requirements

SL. No	Area of Challenge	Issue	Recommendation
1	Requirement for mandatory registration for small sellers selling on online marketplaces	<ul style="list-style-type: none"> <li>In terms of section 24 (ix) of the CGST Act, every supplier who is supplying goods through an ECO is required to mandatorily obtain a registration irrespective of the turnover achieved.</li> <li>In general, intra-state suppliers are eligible for a threshold exemption of INR 40 lakhs after the GST Council's decision.</li> <li>Also, while suppliers of services have been granted a leeway vide exemption notification no. 65/ 2017 – Central Tax dated 15 November 2017, to the extent of a specified turnover threshold of INR 20 lakh and INR 10 lakh for specified states, the said benefit is not available to a supplier of goods.</li> <li>The requirement for suppliers of goods through an ECO to take registration mandatorily, irrespective of the turnover achieved is resulting in an increased compliance burden on such sellers and penalizes small sellers who want to increase their business. The lack of a level playing field for small sellers is arbitrary and negatively impact SMEs.</li> <li>Further, most of these suppliers are usually small and if not for the fact that they are on the e-commerce</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that the benefit of a turnover threshold be extended for intra-state suppliers of goods who makes their supplies through an e-commerce platform in order to enable that they are treated equitably.</li> </ul> <p>It will enable small sellers to get market visibility and sell online, hence increasing their turnover. This also sets right the distortion in the offline vs online channel and services vs goods.</p>

SL. No	Area of Challenge	Issue	Recommendation
		<p>platform, they would not have been required to obtain a registration under the GST laws, on account of the lower turnover threshold limits. This also adversely impacts small businesses, specifically homemakers who earn their livelihoods and are trying to improve their standard of living by selling their products online.</p> <ul style="list-style-type: none"> <li>There is also disparity in the benefit on the threshold exemption for service providers when compared with the supplier of goods on an e-commerce platform.</li> </ul>	
2	Restriction on Composition scheme sellers from selling through ECO	<ul style="list-style-type: none"> <li>As per the provisions of Section 10(2)(d) of the CGST Act, 2017, a person making supplies of goods through an electronic commerce operator liable to collect tax at source, is not eligible to opt for composition scheme.</li> <li>Due to the limitation imposed <i>vide</i> the provisions of Section 10(2)(d), a supplier registered under the composition scheme will not be allowed to supply online through an ECO liable for TCS.</li> <li>The intention of the composition scheme is to reduce the burden of taxes and compliance. However, the effect of the above section is limiting the composition scheme dealers to only effect intrastate transactions and being barred from effecting any other supplies.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that the suppliers registered under the composition scheme be allowed to effect sales through an ECO which will benefit the dealers and general trade overall.</li> <li>The intention of the composition scheme is to ease compliances for the small suppliers and not to limit the business that can be undertaken by them.</li> <li>It will enable small sellers to get market visibility and sell online, hence increasing their turnover. This also sets right the distortion in the offline vs online channel and services vs goods.</li> </ul>
3	Registration of the warehouses, as additional places of business by the Sellers	<ul style="list-style-type: none"> <li>The GST laws require a supplier to obtain registration from each place of business from where the supplier makes taxable supplies.</li> </ul>	<ul style="list-style-type: none"> <li>We suggest the following cumulative recommendations: <ul style="list-style-type: none"> <li><b>Recommendation 1</b> - ECOs, on obtaining an authorization from the</li> </ul> </li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
		<ul style="list-style-type: none"> <li>In the e-commerce ecosystem, a seller listed on the e-commerce platform may be undertaking taxable supplies from various warehouses that are owned and/or operated by an ECO and since the supplies are being made from these warehouses, the sellers are required to add the respective warehouses as additional places of business under their existing registration.</li> <li>This is done by a process of amendment of “core fields” to their original registration. The following steps have to be followed for the same: <ol style="list-style-type: none"> <li>Filing application for additional place of business by providing the following documents: <ol style="list-style-type: none"> <li>Rent/Lease Agreement;</li> <li>Electricity Bill;</li> <li>Recent property tax payment receipt;</li> <li>NOC from landlord;</li> <li>NOC from the ECO who owns the warehouse; and</li> <li>A copy of the service agreement with the ECO</li> </ol> </li> <li>Thereafter, in case the jurisdictional officer has any queries, further responses have to be provided to the officer for closure. Once all outstanding items have been clarified the additional place of business registration is approved by the officer.</li> </ol> </li> <li>While the registration process is entirely digitized and is on an online platform, 3-4 week time lag between the time of filing an application for the addition to the date of grant of amendment by the authorities.</li> </ul>	<p>sellers, (currently registered in different states due to TCS requirements) should be enabled with the option of intimating addition/deletion of APOB of sellers operating on the marketplace.</p> <ul style="list-style-type: none"> <li><b>Recommendation 2</b> - In other cases, the self-declaration by the E-Commerce platform shall be deemed to be full proof of additional place of business on behalf of the seller.</li> <li>These recommendations help in improving the ease of doing business and achieve the following goals: <ul style="list-style-type: none"> <li>Timely reporting of amendments in the additional place of business resulting in accurate information being provided to GST authorities in a timely manner resulting in better controls for the GST authorities; and</li> <li>Simplified approval/notification process for jurisdictional GST officers handling multiple seller amendment requests including managing documentation/E-commerce business model related questions etc.</li> <li>Simplified registration process and reduced costs for sellers and administrative costs for the government</li> </ul> </li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
		<ul style="list-style-type: none"> <li>The tax officials often raise queries on the rental agreement being entered into with the ECO and not the property owner. As a result, sellers have to hire tax consultants who clear these queries by making a physical representation at the tax office.</li> <li>Sellers incur professional charges of a chartered accountant which also consumes a lot of time and significant efforts to get clearance from tax office, increasing both the compliance burden and cost in the hands of the sellers.</li> </ul>	<ul style="list-style-type: none"> <li>This can be done by inserting a new Rule in Chapter III of the CGST Rules, 2017 to enable e-commerce platforms to undertake reporting/ amendment process, on behalf of sellers on such e-commerce platforms in a state, by obtaining an authorization from the sellers.</li> <li>Small sellers are driven away from e-commerce platforms thereby restricting them from a pan India market opportunity, due to additional cost and time involved in getting registration for additional place of business. A simpler process will go a long way in supporting their growth.</li> </ul>
4	Simplification of the registration process for additional place of business	<ul style="list-style-type: none"> <li>The GST laws require a supplier to obtain registration for each place of business from where the supplier makes taxable supplies.</li> <li>Based on the business requirement, the supplier is also required to obtain additional place of business registration in a State where the supplier already has an existing registration. This additional place of business registration may be sought at a location that is not leased or rented to the supplier.</li> <li>The application for registration provides for a submission of the following proof for registration where the premises are not rented or leased: “(c) For premises not covered in (a) and (b) above</li> </ul>	<ul style="list-style-type: none"> <li>A clarification should be issued to state that in a State where a supplier already has an existing registration, no documents should be required to be submitted for registration of an additional place of business in that State.</li> <li>Easing the registration process by reducing the additional cost and time involved in getting registration will go a long way in supporting their growth of businesses, especially when the Aadhar verification is already proposed.</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
		<p><i>A copy of the Consent Letter with any document in support of the ownership of the premises of the Consenter like Municipal Khata copy or Electricity Bill copy. For shared properties also, the same documents may be uploaded“</i></p> <ul style="list-style-type: none"> <li>• However, more often than not, tax officials raise queries on the rental agreement and seek other documents for registration.</li> <li>• Further, the GOI has also enabled for Aadhar based verification which will help in achieving overall compliance and ensuring protection of revenue reporting.</li> </ul>	
5	Simplify the entire Principle place of business ('PPoB') requirement especially for online sellers by making it digital and not requiring physical presence to expand their reach outside their home state	<ul style="list-style-type: none"> <li>• MSMEs are required to have their own physical presence and obtain a PPoB registration in every state (maintain accounting books, records and related compliances), as a condition to sell in that state – this is a significant friction for online sellers, especially SMBs to scale and sell across states apart from the PPoB constraints noted above including financial cost of yearly rentals which is a big burden for small sellers.</li> </ul>	<ul style="list-style-type: none"> <li>• Simplification of PPoB process (i.e. replacing physical PPoB with a “place of communication” in the State, simplifying the existing 12 documents required for registration.</li> <li>• GOI has also enabled Aadhar based PPoB verification which will help in achieving overall compliance and ensuring protection of revenue reporting.</li> <li>• Eliminating the need for state specific PPoB requirement will facilitate sellers to get state level GST's on a single national place of business. This will enable quick onboarding of sellers selling through e-commerce marketplace using e-commerce operator warehouse services and scale their reach to</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
			customers, thereby increasing sales and also contributing more GST revenues to the Government.

## Invoices and Credit Notes

SL. No	Area of Challenge	Issue	Recommendation
1	Simplifying requirements for movement of goods and removal of requirement to carry a physical invoice	<ul style="list-style-type: none"> <li>In terms of section 31 of the Central Goods and Service Act, 2017 ('CGST Act, 2017'), a tax invoice must be raised for every taxable supply made. In this regard;               <ol style="list-style-type: none"> <li>Where a supplier is involved with the movement of goods with the consignment value exceeding INR 50,000, an e-way bill should be furnished along with the invoice.</li> <li>Where the consignment value is less than INR 50,000 and in other cases where no e-way bill is required, the tax invoice has to mandatorily accompany the goods and the person in-charge of the conveyance should have a copy of the same (Rule 55A of the CGST Rules, 2017).</li> </ol> </li> <li>The provisions mandate:               <ol style="list-style-type: none"> <li>A transporter's copy of tax invoice to be generated by the supplier of goods; and</li> <li>Person in-charge of the conveyance to carry a copy of the tax invoice during movement of goods.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>In light of the Government's initiative in promoting digital economy, it is recommended a clarification be issued that a digital copy of the invoice will be sufficient for compliance with the rules to carry an invoice.</li> <li>In light of the "Go Green" initiative, the industry should move towards a paperless digital economy, and hence, we recommend that Rule 55A and Rule 138A are amended to clarify that digital copies of invoices along with e-way bills would satisfy the provisions of the GST laws.</li> <li>A repository of all digital copies of the invoices would be emailed to the customers and also be kept as a repository for GST audit &amp; assessments.</li> <li>The above Rules can be amended by inserting a proviso or explanation, to clarify that digital copies of invoice carried on a handheld device will also be sufficient compliance. Should there be any concern on this, it could be examined that e-waybill be made optional for all values of shipments and that would</li> </ul>



SL. No	Area of Challenge	Issue	Recommendation
		<ul style="list-style-type: none"> <li>Further, the CGST Act, 2017 permits electronic records to be maintained which includes electronically generated invoices as well. However, the Authorities at the check posts or at the time of interception demand a physical copy of the tax invoice.</li> </ul>	<ul style="list-style-type: none"> <li>absolve the seller from the requirement of a physical invoice.</li> <li>On a separate note, the Government had constituted a committee and in October 2019, proposed e-invoicing for B2B segment which is tracked for implementation from 1 October 2020 and we understand that paperless movement would be allowed for e-invoice use cases.</li> <li>Consider the option of extending the facility of e-invoicing for the B2C segment also by enabling this for selective industry. E.g.: e-commerce industry where ECO systems support sellers in generating invoices on seller behalf.</li> <li>The Government has taken significant steps for a “Go Green” environment. Even in tax law related compliances, the Government has taken steps towards electronic filing of returns, e-assessments, etc.</li> <li>This will also mitigate the carbon impact of having printed invoices being a requirement to be carried along with shipments.</li> </ul>
2	Issuance of credit notes in cases of bad debts	<ul style="list-style-type: none"> <li>A debt becomes a bad debt when a reasonably prudent commercial person would conclude that there is no reasonable likelihood that the debt will be paid in whole or in part by the debtor or by anyone else. In such an instance, the Company writes off the debt in the books of account.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that a provision be included in Section 34(1) of the CGST Act, allowing the re-claim of credit in relation to bad debts written off by the Company.</li> <li>This can be done by amending Section 34(1) of the CGST Act in the following manner:</li> </ul>

SL. No	Area of Challenge	Issue	Recommendation
		<ul style="list-style-type: none"> <li>There is no provision in GST laws for providing any relief with regard to GST paid on transactions which turn out to be bad debts (non-payment of consideration by the recipient of goods/services). Hence, GST already paid on bad debts cannot be adjusted and becomes a cost to the service provider.</li> <li>In the current scenario, where the entire industry has been hit by COVID and there are increasing cases of non-recoveries, the instances of bad debts have increased multi-fold and the tax-payers are forced to take major hit in their cash flow.</li> <li>At this juncture, we wish to highlight that various countries have already provided for credit reversal/ adjustment in case of bad debts as follows: <ul style="list-style-type: none"> <li><b>New Zealand:</b> The GST law allows a person to deduct that portion of the amount of tax charged in relation to that supply as the amount written off as a bad debt bears to the total consideration for the supply on satisfaction of conditions relating to return furnishing and writing off of bad debts</li> <li><b>Australia:</b> The Australian GST laws provide for payment of GST in the case of write-off of debt on satisfaction of conditions in relation to period of non-recovery of debt and accounting system</li> </ul> </li> </ul>	<p>“34. (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, <u>or where the taxable value and/ or tax charged is not recovered by the supplier and is treated as bad-debts in the books of account of the supplier</u>, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.”</p> <ul style="list-style-type: none"> <li>In light of the COVID 19 pandemic, the business are writing off substantial sums of money due to bad debts. The non-reversal of credit in this regard adds to the financial strain on the Companies.</li> </ul>

## Place of supply

SL. No	Area of Challenge	Issue	Recommendation
1	Parity /zero-rated GST on Air Courier mode for exports	The current GST laws have an incidence of 18 percent IGST on air courier / express mode of shipment. Sellers can claim refund of this post realisation of export proceeds, but this increases MSMEs working capital costs. Further, to address key international logistics challenge for Indian MSMEs, where foreign entity will invoice Indian sellers. In this model, the logistics cost is increased to the extent of the GST component charged by Indian logistics entity to foreign entity. This is impacting the cost competitiveness of MSME Exporters from India.	<ul style="list-style-type: none"> <li>It is recommended that a clarification be issued stating that the place of supply for courier service of export shipments shall be recipient based (and not performance based), in line with the FAQs on place of supply for transportation of goods services. This will bring in parity in place of supply for services of transportation of goods and courier services for export shipments.</li> <li>Having courier service charges being zero rated will ensure that cross border shipping costs remain competitive for India Sellers thus providing a boost to exports from India.</li> </ul>

## Time of supply

SL. No	Area of Challenge	Issue	Recommendation
1	"Time of Supply" for supply of goods or services under reverse charge	<ul style="list-style-type: none"> <li>Sec 12 and 13 of CGST Act: Rationalization of time limit in case of time of supply of goods and services under reverse charge mechanism.</li> </ul> <p>Per existing provisions, the time period for payment of tax under reverse charge mechanism within 30/60 days from the date of issue of invoice by the supplier is quite short, considering the time taken for submitting the invoice, taking various internal approvals and processing of invoice, which</p>	It is recommended that the time limit (time of supply) prescribed in case of supply of goods and services under reverse charge mechanism is increased to at least 90 - 120 days from 30 / 60 days, as was prescribed in the erstwhile service tax law.

SL. No	Area of Challenge	Issue	Recommendation
		creates unnecessary interest liability if invoice payment is not made within 30 or 60 days.	