

# **Discussion Paper on probable key Transitional Issues in Proposed GST Regime**



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

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Edition : June, 2015

Committee/Department : Indirect Taxes Committee

Email : [idtc@icai.in](mailto:idtc@icai.in)

Website : [www.idtc.icai.org](http://www.idtc.icai.org)

Price : ₹ /- (Including CD)

Published by : The Publication Department on behalf of the  
Institute of Chartered Accountants of India,  
ICAI Bhawan, Post Box No. 7100, Indraprastha  
Marg, New Delhi - 110 002.

Printed by : Sahitya Bhawan Publications, Hospital Road,  
Agra 282 003  
June/2015/1,000

## Preface

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India needed to implement VAT (on goods as well as services) as far back as 1976 (Jha Committee). Subsequently the Raja Chelliah Committee (1991) as well as the Kelkar Committee (2004) stressed the need to broad base tax, simplify the indirect tax structure in India and make goods and services competitive in the global market. However, for the State Governments, the fear of losing revenue as well as resistance from various economic and other sectors delayed this for several years.

In this era of liberalisation and globalization of trade and investments, emergence of trade and commerce, the identification and distinction of goods separately and services separately has given rise to unnecessary complication. This added compliance, numerous litigation, complexity in law and procedures, lack of transparency and clarity, have necessitated a new law. GST may not require hair splitting in terms of classification, difference of opinion on the basis of various postulates such as basis of charge, point of levy, claims and credits, reverse charge etc. It warranted the adoption of the globally popular and accepted Goods and Services Tax in India.

There is no certainty in the indirect tax system with compliance levels in local VAT not very encouraging. Centre and States normally pursue registered assessee/dealers who are generally tax compliant whereas efforts to ensure tax buoyancy have failed to a large extent due to manpower issues as well as complicity of a section of the tax authorities. There appears to be, a clear lack of wherewithal to deal with the unorganised transactions. The TARC Report refers to this aspect disparagingly wherein the collection of tax, whether because of the tax administration or inspite of it, is questioned!

The cascading effect of taxes, was to some extent, mitigated with the introduction of Cenvat (previously referred to as MODVAT) in the year 1986 at the Central level and further with the introduction at the State level, with a Value Added Tax (VAT) system for most part of the Country, from the year 2005 onwards.

GST would be a destination based consumption tax, which seeks to provide a simple structure of levy, collection and administration of the taxes in the Country. It also seeks to provide for seamless credit and to further reduce the cascading effect. GST also seeks to consolidate many different taxing statutes at the Central and the State level into a comprehensive tax

structure, enabling the exchequer to have a larger taxing base. The focus on administrative reforms as promised, if implemented would lead to reducing the compliance cost of the tax payer.

This research paper has been prepared after extensive research and brain storming to provide an insight on the probable transition issues and recommendations thereon.

It is fondly hoped that this research paper would help all stakeholders in smooth transition to the GST regime.

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# Introduction

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The Country is at the behest of implementing Indian Goods and Services Tax (GST), which is said to be by far the most radical reform which the Government of India would have ever implemented. The current taxation system in India is laced with complexity, multiplicity and ambiguity. The plague of cascading effect of taxes, was to some extent, mitigated with the introduction of Cenvat (was referred to previously as Modvat) in the year 1986 at the Central level and further with the introduction at the State level, with a Value Added Tax (VAT) system for most part of the Country, in the year 2005. Considering multiple taxes levied by the Centre and the State and absence of the facility to offset the incidence of one tax with another in most cases, the effect of cascading gets built into the transaction cost.

GST would be a destination based consumption tax which seeks to provide a simple structure to levy, collect and administer the taxes in the Country. GST also seeks to consolidate many and different taxing statutes at the Central and the State level into a comprehensive tax structure, enabling the exchequer to have a larger taxing base and consequently reducing the compliance cost of the assessee. To the assessee, it would enable him to take seamless credit of all taxes, eliminating cascading and better compliance with simple tax and compliance structure.

This research paper has been prepared to provide a comprehensive guide on the transitional law to conveniently subsume the current taxes into the GST regime.

# Chapter-1

## Registration

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### 1.1 Introduction

Goods and Services Tax (GST) may cause existing registered assesseees under the central excise, service tax, VAT and other legislations which would be subsumed under GST, to obtain a single state-wise centralized registration, for multiple units or branches within the State.

### 1.2 Need

Transitional provisions are required to ensure that the existing registered assesseees are automatically or conveniently registered under the GST laws with minimum hassles. Further, this will enable the Government to have a wider reach without seeking information already available with the respective Authorities.

### 1.3 Potential Concerns

Existing assesseees under various statutes should be allowed a hassle free and paperless transition into GST regime. Similarly, registration rules should cater to trouble-free entry to new assesseees in GST regime.

### 1.4 Recommendations

#### 1.4.1 GST registration number and registration formalities

One of the key components of any administration is the registration number. It is on the basis of the registration number that the assessee is identified, nature of business is tracked, returns are accepted, tax payments are made, assessments are taken up, etc.

##### 1.4.1.1 GST registration number

- PAN Based Registration No. : Linking the registration number with PAN will enable the Authorities to obtain all relevant information / details of transactions made across India. This data can then be cross-linked with information available with Income Tax Authorities. Therefore, the registration number is most likely to be PAN linked



## Registration

followed by alphabets, numerals etc. The following example will clarify the methodology:

- ✓ 10 digit PAN;
  - ✓ 2 digit State code;
  - ✓ 1 Alphabet which will indicate the nature of activities of an Assessee for the statistical purpose (for illustration, M – Manufacturer, T- Trader, I – Service provider, S – State Government undertaking, C – Central Government undertaking, A – Autonomous body of the Government, O – Others and B – Multiple businesses – say hotelier and works contractor, Manufacturer and/ or Trader and/ or Service Provider, etc.). The nature of activities may take some other pattern as desired by the Government;
  - ✓ Numerals which will indicate the number of State registration.
- State code will assist in ascertaining the source / destination of any transaction made. GST is destination based taxation, and, as a result of the State code, allocation of revenue among States can be facilitated without any conflicts between them.
  - By providing for a 1 or more digit in the registration, the Authorities can easily ascertain the number of States where Assessee is registered.
  - For example: A manufacturer will have the following registration number ABCDE1234F29M002. The registration number will indicate that the Assessee is located in Karnataka by way of the number 29, that he is a manufacturer by the letter M and that this registration is the 2<sup>nd</sup> registration of an Assessee in India.

*For the purpose of transition, it is required that the Government set right the records of the assessee in cases of incorrect information in PAN. Assessee should be required to update / correct the same at least one month before the applicability / implementation of the GST regime. In this direction, some of the states like Delhi have already started working and have issued trade notice to the traders to get their PAN details correct with the department.*

### 1.4.1.2 Application for registration under GST

- The Form for application to register must be online and should have link to existing registrations, if any.

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- The application must be affixed with the original/ digital signature of the authorized person.
- It is desired that every assessee would be having a digital signature certificate. If not, there should be a need for every Assessee/ authorized signatory to obtain digital signature before the roll out of GST.
- The documents to be submitted for registration must be uniform throughout India.

#### **1.4.1.3 Registration Fees**

- The Government is proposing to charge a fee for registration under GST. We recommend that no fee should be charged from the assesses for the same.
- Registration is a compulsory procedure to ensure implementation of Statute framed by Legislature. Charging a fee for registration is not desired. Adding a cost for registration would not serve any purpose in case of an online, paperless and self-declaratory mechanism.
- Under the pre-GST regime, States require registration fee to cater cost of physical inspection under VAT laws. However, an example could be taken from Central levies like Service tax where no physical inspection is required in law and hence no administrative costs for registration is charged.
- The concept of 'zero administrative cost registration' would also lead to involvement of larger tax base.

#### **1.4.1.4 Certificate of Registration**

- The existing Assessee must file an application for GST registration, 30 days prior to the date of implementation of GST.
- A registration number (effective from date of implementation of GST) as indicated supra must be provided immediately to the Assessee on acceptance of the online application form without any requirement of submission of hard copy as online application as the application would be authenticated by the assessee by his digital signatures.
- Registration certificates must be downloadable from the online registration portal.

## **Registration**

- The registration should be immediate, without hassle and if any physical verification is required, that may be done post issuance of registration certificate.
- In the existing regime, there is possibility of having numerous registrations linked with the same PAN. Under GST, the certificate of registration should display all the business names registered with the same PAN. This would enable the concept of one PAN one registration certificate in a State.

### **1.4.1.5 Security Deposit**

- There should not be any requirement of security deposit or surety under proposed GST regime. The GST regime should be free from the requirements of security deposits and sureties. The safeguards on revenue collection can be addressed by an appropriate system of reporting and auditing under GST regime.
- The purpose of security deposit and sureties in the pre-GST regime is to safeguard the interest of the Revenue in case of defaults etc. , and therefore security deposit already submitted in pre-GST regime should be refunded as and when its purpose is over.

### **1.4.2 Dispensation with physical inspection**

In the background of Digital India, the process of registration under GST regime should be a paperless work. Accordingly, we have recommended for 'online registration' and its linking to existing registrations. Similarly, keeping in view the hassles and inconvenience caused to assessees in obtaining registration under the pre-GST regime due to physical interactions with authorities, we believe that the process of verifications and checks involving personal visit/inspection by officers in present regime should be avoided in GST regime for existing assesses as well as new assesses. This will cater to the concept of 'ease of doing businesses'. The involvement of interaction with authorities should be restricted to verification/review only through the procedure of audit.

If the Government, however, intends to make physical inspection of the premises of assessee for registration purposes, in such case –

- An Assessee already registered need not be inspected again for issuance of registration certificate.

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- In case of new assessee in GST regime, registration may be granted based on undertaking and inspection, if any to be carried out post issuance of registration certificate.

*Registrations where amendments are in process at the time of introduction of GST regime:* Where, in the pre-GST regime, an application had been made for amendment in the registration details in case of a change in the office address or an addition of a Branch which has been physically inspected by the relevant authorities, the Assessee must apply for GST registration along-with the verification report of such authorities to avoid duplication of physical verification.

If such change in office address, addition of branch has not been physically inspected by the relevant authorities, the registration must be granted based on a declaration from the Assessee and the inspection, if any to be carried out post issuance.

### 1.4.3 One Registration for each State

Under the GST regime, each State is a separate taxable territory for all the subsumed levies. Conversely, independent units/branches of an assessee within a State should be treated as single assessee in order to avoid multiplicity of registrations. Hence, the concept of '**single state-wise centralized registration**' is to be followed.

- An assessee may be required to obtain registration in each State of operation. All additional branches / additional place of business within the State should be tagged to the principal place of business within the State. The said registration will hold good for payment of Central GST, State GST, IGST and additional tax on inter-state sale of goods etc.
- The jurisdiction will be determined on the basis of the principal place of business in the State.
- An Assessee may be required to provide details of all additional places of businesses within State, within India and outside India.

### 1.4.4 Continuation of existing registrations

- The existing registration certificates may be required to be continued for the following purposes:
  - Completion of the assessment/ appeals/ audit.
  - Filing of the periodic returns, if any.
  - Generation of the requisite Forms, if any.

## **Registration**

- Uploading the purchase/ Sale statements and audit reports, if required.
- A specified time may be provided for completion of the aforementioned requirements.

## Chapter-2

# Transfer of Credit<sup>1</sup>

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### 2.1 Introduction

Any assessee engaged in business, would in his ordinary course of business, hold tax paid or duty paid stock of raw materials, packing materials, WIP, finished goods, consumables, capital goods etc. Also, the assessee collates credit in their returns and records for their taxable input or capital goods or input services. Thus at any given date, there is a possibility of the assessee having unutilised credit.

The basic theme of successful GST lies in the concept of uninterrupted flow of credit. Since, during the transitional phase, goods and services which have suffered taxes under the pre-GST regime will be transferred and used in GST regime, appropriate mechanisms are required to carry forward or transfer the underlying credits with existing assesses as well as new assesses to GST regime and allow set off.

### 2.2 Need

Credit of various Indirect taxes lying unutilized with a registered or unregistered assessee or their agents or job-workers or at place other than the registered place under pre-GST regime is required to be transferred to GST regime. Transitional provisions will enable assessee holding stock or collated credit on the date of GST implementation and liable to pay tax on the taxable supply during the GST regime, to take appropriate credit for the tax already paid or deemed to be paid on the said stock or input or capital goods or services.

### 2.3 Potential Concerns

Current provisions relating to input credit are different in case of central excise/ service tax and other taxes governed by different states' statutes, which would be subsuming into the GST regime.

Further, in respect of Capital goods, the provisions under certain State laws

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<sup>1</sup> Refer Appendix A

## **Transfer of Credit**

allow entire input tax credit on capital goods to be claimed in the year of purchase or when put to use or on commencement of commercial production, while certain others allow deferred credit over a period of two years and/ or allow the credit subject to fulfillment of specified conditions. Similarly under central excise, the eligible credit is deferred over two financial years. Accordingly, under the current provisions, the credit rightly available may not have been availed for the reason that all conditions for availment of credit are not fulfilled i.e. either the commercial production is yet to be commenced or in some manner, the entitlement is deferred to a period when GST is implemented.

The possible methods which the Government may adopt or a mix of them with respect to the credit transition stocks could be as under:

- (a) Fully allow deductions/ refunds/ carry forward of tax paid in a pre-GST regime at the time of procurement of goods which are lying in closing stock on the date of entry into the GST regime;
- (b) Fully deny deductions/ refunds/ carry forward of tax paid in a pre-GST regime at the time of procurement of certain specified goods (on certain demerit or restricted goods) which are lying in closing stock;
- (c) Fully deny deductions/ refunds/ carry forward of tax paid in a pre-GST regime at the time of procurement of goods which are lying in closing stock;
- (d) Permit refund on completion of respective assessments by the respective Government Authority.

The transition provisions need to provide for the manner and entitlement of deduction/ claim of the appropriate tax paid on which credit is validly available under the current provisions and are lying in stock or collated in the returns or other records of the assessee on the date of implementation of GST.

## **2.4 Recommendations**

There would be three major situations for credit transfer –

1. When a registered assessee in pre-GST regime gets converted into registered assessee in GST regime.

In this case, the assessee would be having proper credit records, underlying documents like invoices etc., and would have collated the

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credit in his tax returns or books of accounts ( in case of deferred credit like partial credit in case of capital goods).

In such cases, we recommend that the credit be transferred based on the credit amount mentioned in the tax returns /records of the assessee.

2. When an unregistered assessee in pre-GST regime gets converted into registered assessee in GST regime.

Such situation may occur because of expected lower threshold or discontinuation of a given exemption or for any other reason. In such cases, a suitable mechanism may be provided to claim input tax credit on closing stock of raw material, consumable, semi-finished goods, packing material, finished goods and capital goods lying in stock as well as un-utilized input services. The underlying principle is that - these goods and services would be used in the provision of output goods or services chargeable to tax under GST regime.

3. When on specified goods or services or transactions, input credit was not 'eligible credit' in the pre-GST regime, and such credit is considered 'eligible' in the GST regime, and such goods or services are used in taxable supply under GST.

Such situation may occur because of any of the following reasons:

- CST paid on goods lying in stock to be used in taxable supply in GST
- Credit on stock lying with the assessee who was under composition scheme in pre-GST regime and is making taxable supply in GST regime
- Service tax/Excise credit for VAT dealers or vice versa
- Credit for goods lying in stock not available in pre-GST regime because of exempt output, which becomes taxable in GST regime
- Credit ineligible in pre-GST regime becoming eligible in GST regime because of change in the definition of components constituting input credit

There also could be some other circumstances when ineligible credit in pre-GST regime on stock lying with assesses may become eligible credit.



## **Transfer of Credit**

In such cases, a suitable mechanism may be provided to claim input tax credit on closing stock of raw material, consumable, semi-finished goods, packing material, finished goods and capital goods lying in stock as well as un-utilized input services. The underlying principle is that - these goods and services would be used in the provision of output goods or services chargeable to tax under GST regime.

### **2.4.1 Transfer of credit for input goods**

- (a) Under GST, the assessee registered in the pre-GST regime must be allowed to carry forward the tax paid in the Pre-GST regime in respect of eligible inputs such as raw materials, component parts and inputs consumables, etc., whether or not lying in stock, provided the said amount was rightly availed and carried forward in the returns filed by the assessee. In this regard, the entitlement to carry forward may be subject to fulfilment of certain conditions such as transitional credit to be provided only in respect of goods that have suffered appropriate tax and in respect of which the assessee has maintained appropriate records as per the applicable legislation required under the law of the appropriate State/ Central Government.
- (b) The assessee who was not registered in the pre-GST regime but would need to get registered in GST regime should also be allowed to take credit of inventory of inputs (unprocessed or unused) that has suffered appropriate tax in pre-GST regime and which would be used for taxable supply in GST regime. An appropriate mechanism needs to be provided for identification of such inputs and transfer of the respective credit in the tax records of the assessee in GST regime. The burden of proving that such goods have suffered tax would be on the claimant. Purchase invoices along with appropriate stock records must evidence tax paid on such inventory, which must be duly certified by a Chartered Accountant.

### **2.4.2 Transfer of credit on semi-finished (processed) and finished goods lying in stock**

- (a) The assessee registered in the pre-GST regime would be collating the credit on all inputs in his tax returns and thus the credit on input goods used/consumed in semi finished or finished goods would already have been taken in the tax returns. Thus no separate exercise would be required to identify credit on inputs used in semi finished or finished goods for such assesses.

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- (b) The assessee who was not registered in the pre-GST regime but need to get registered in GST regime would require an appropriate mechanism to identify and allow the duties and taxes paid on semi-finished and finished goods, based on the records maintained.

### **2.4.3 Transfer of credit on capital goods**

- (a) Under GST, the assessee registered in the pre-GST regime must be allowed to carry forward the tax paid in the Pre-GST regime in respect of eligible capital goods lying in stock, as has been availed and carried forward in the returns filed by the assessee, and also the deferred credit lying in the books of accounts of the assessee. In this regard, the entitlement to carry forward may be subject to fulfilment of certain conditions such as transitional credit to be provided only in respect of goods that have suffered appropriate tax and in respect of which the assessee has maintained appropriate records as per the applicable legislation required under the law of the appropriate State/ Central Government.
- (b) The assessee who was not registered in the pre-GST regime but need to get registered in GST regime should also be allowed to take credit of unutilised capital goods that has suffered appropriate tax in pre-GST regime and which would be used for taxable supply in GST regime. An appropriate mechanism needs to be provided for identification of such capital goods and transfer of the respective credit for unutilized part of the goods. A formula like the one provided under Rule 3(5B) of the existing CENVAT Credit Rules, 2004 to ascertain credit with respect to remaining life of the asset may be used.

### **2.4.4 Transfer of credit of input services**

- (a) The assessee registered in the pre-GST regime would be collating the credit on input services in his tax returns. Under GST regime, the assessee must be allowed to carry forward this transitional credit.
- (b) The assessee who are not registered under pre-GST or are having ineligible credits relating to input services in pre-GST regime must be allowed to identify the utilized credit of such input services and carry forward the same to GST regime. However, prescribing a manner of ascertaining the utilized part of services would be a challenge to law makers.

### 2.4.5 Manner of transfer of credit

For the purpose of transferring the eligible credit in the GST regime, the assessee may prepare a '*statement for transition of credit*' as per the prescribed format containing credit with respect to un-utilized capital goods lying with him. In case the amount of credit in the said statement exceeds a prescribed threshold limit, such statement is to be certified by a Chartered Accountant and in other cases, the assessee may self certify such statement. Submission of the said statement should make the assessee eligible for claiming the credit certified in the statement under GST regime. A time limit may be prescribed, say six months, for submission of statement of transition of credit to the tax authorities.

### 2.5 Illustration: Regular Input Credit

Particulars	Tax Rate*	Amount	VAT	Total
<b>Month of March 2016</b>				
Opening Stock	5.50%	20,000	1,100	
Opening Stock	14.50%	50,000	7,250	8,350
Purchase of Input	5.50%	50,000	2,750	
Purchase of Input	14.50%	1,00,000	14,500	17,250
Local Sales	5.50%	60,000	3,300	
Local Sales	14.50%	80,000	11,600	14,900
<b>Excess Input Tax credit applied for transitional credit</b>				<b>10,700</b>

*\* Rates for discussion purpose only.*

**Note:**

1. The Credit of VAT/CENVAT is not required to be linked with closing stock as credit may relate to goods which have already been sold.
2. Some of States in their VAT law have provision to reverse the credit of closing stock at the year-end i.e. credit is allowed only on input used

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and/or sold during the period. In this case, credit will be taken once again.

3. In such cases, either of the following mechanism may be adopted for credit on goods in closing stock:
  - (a) Credit once allowed on purchase, is not reversed on closing stock; or
  - (b) Credit is allowed on purchase and it is reversed on closing stock. Once again credit is allowed on opening stock.

## Chapter 3

# Point of Taxation on Overlapping Transactions<sup>1</sup>

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### 3.1 Introduction

Point of taxation is referred to as the point of time when a transaction for sale of goods or provision of service or manufacture of an article is to be taxed.

Under the pre-GST regime, concept of point of taxation is differently placed under respective statutes. For instance, the point of taxation under Central Excise law is the point of removal from the place of removal. Whereas, the point of taxation under sales tax law, is issuance of invoice. Contrary to these two legislations, Service tax law has a separate mechanism for determining the point of tax.

GST law would also have its own point of taxation which may be different from the point of taxation under the laws being subsumed. Thus, the point of taxation on overlapping transactions should be determined after consideration of pre-GST law and GST law.

### 3.2 Need

Transitional provisions should avoid dual tax i.e. transaction should not be taxed under pre-GST and under GST law. The Rules should facilitate actual business transaction rather than cause hindrance or avoidance.

### 3.3 Potential Concerns

#### 3.3.1 Overlapping transactions

The permutation and combination of certain overlapping transactions pre and post GST for supply of goods and services are provided below:

- (i) Invoice is billed under pre-GST but the goods or services are supplied and consideration for the said supply made in the GST regime.
- (ii) Goods or services are supplied in the pre-GST regime but invoice for supply and consideration for supply made in the GST regime.

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<sup>1</sup> Refer Appendix B

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- (iii) Advance received during the pre-GST regime but invoice and supply made during the GST regime.
- (iv) Invoice and payment against the said invoice is received prior to GST regime but supply of goods or services is made in the GST regime.
- (v) Invoice and supply of goods or services is made during the pre-GST regime but payment for the said supply is made in the GST regime.
- (vi) Payment is received in advance and supply of goods or services is made prior to GST regime but invoice for the said supply is made during the GST regime.

### 3.4 Recommendations

#### 3.4.1 Sale of goods

It is possible that invoice for sale of goods is raised in pre-GST regime while the effective transfer of property in goods lies in GST regime. This situation could arise in case of inter-state sales/ stock transfers, sale on approval basis etc.

As a general rule, the point of taxation in above situation would lie in GST regime because we suppose that the taxable event would be 'transfer of property in goods'. In such a case, the person liable to pay tax may be liable only for the differential tax. This is illustrated as below:

Particulars	Amount	Remarks
Value of supply	100,000	
Tax paid under Pre-GST (A)	10,000	May be to the Centre or State
GST Rate	15%	
Ordinary Tax under GST (B)	15,000	
Tax payable under GST C = [A (-) B]	5,000	Appropriate Credit be given for tax already paid (Note)

Note: In case the tax under GST is lesser than tax paid in the current regime, adjustment for excess tax paid should be allowed under GST.

#### 3.4.2 Provision of services

Unlike sale of goods, a service may be an overlapping transaction in multiple terms where any of the following three events may fall in the pre-GST regime

### Point of Taxation on Overlapping Transactions

or GST regime – Completion of service; Issue of invoice for the service; and Receipt of consideration for the service.

In the present regime of service taxation, all the above three coordinates are taken into account to determine the point of taxation for a given service. In the proposed GST regime, for the purposes of transitional transactions, we propose to use only two coordinates, namely Completion of service, and Issue of invoice.

We recommend that in cases where a given service is taxable in pre-GST regime and also constitutes taxable supply in GST regime,

- Where the service is completed in pre-GST regime and its invoice is also issued before implementation of GST, in such case, POT for the service would lie in pre-GST regime.
- As a corollary, in case a service is completed in GST regime or the invoice in case of service completed in pre-GST regime is issued in GST regime, the POT for the service would lie in GST regime.

The above recommendation will take care of the situation where a given service is taxable both in pre-GST and GST regime. In case where the given service was not taxable in pre-GST regime but has become taxable in GST regime or vice-versa, the only criteria to determine the POT would be the date of 'completion of the service'.

This can be explained through an illustration. 'A' being a service provider engaged in selling of space for advertisement in print media. The activity is covered in negative list of services in pre-GST regime and hence not exigible to Service tax levy. Assuming that the activity is covered under taxable supply under GST regime, the point of taxation is not applicable on such activity if it is completed prior to the date of GST implementation irrespective of the fact invoice and payment is received in GST regime.

#### 3.4.3 Works Contract or other continuing transactions

*Date of completion* of a given service is an important coordinate to determine the point of taxation of such service as per the above discussion. In case of standalone services, it is comparatively simple to ascertain the date of completion of such service. However, in case of services continuing for a longer period of time like works contract services, determination of date of completion of service may be done based on a criteria similar to the one in the Point of Taxation Rules, 2011, under the Service Tax Law.

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For the purposes of transition, we wish to place a specific recommendation, where though an assessee may have point of completion of service post the date of implementation of GST, he would have an option to raise the invoice for his service by apportioning the consideration for the part of service completed upto last date of pre-GST regime.

### **3.4.4 Manufacture of goods**

Under the Excise law, manufacture or production of goods is the taxable/dutiable event whereas point of taxation is removal of goods. The duty becomes chargeable when excisable goods are manufactured irrespective of their time of removal but become payable only when the goods are removed from the factory. If a manufacturer manufactures dutiable goods in pre-GST regime and removes them in GST regime, the point of taxation should be under GST regime.

### **3.4.5 Articles pending Customs clearance**

Similar to Sale tax law, Customs duty is levied upon crossing the customs frontier of India. Rate of duty is determined on the basis of date of filing of bill of entry in case of Imports and date of shipping bill in case of Exports.

Hence, point of taxation should be applied on transitional imports/exports based on the taxable event. Accordingly, where a bill of entry is yet to be filed or assessed on the date of implementation of GST, allow a specified period, say thirty days, from date of implementation of GST, to assess the said bill of entry under the current law. In case of export, continue considering the date of filing of shipping bill for export as the relevant date to determine application of duty.

### **3.4.6 Point of taxation of article in transit under inter-state sales**

It is possible that the goods involved in overlapping transactions, would cross check posts after implementation of GST and may be found wanting on the correctness of documentation requirement or regulations under GST. In such situation a given time period, say 30 days, may be allowed to complete the documentation and to retain the taxability under pre-GST regime.



### **3.5 Documentation**

The GST law should accept the documentation on overlapping transactions provided they were valid or considered as adequate under the current regime.

### **3.6 Exceptional scenarios**

The Government may suitably consider the following exceptional transactions by introducing appropriate rules for determining POT:

- (i) The transaction is exempt or not liable under Pre-GST but liable under GST
- (ii) The transaction is under composition scheme under Pre-GST but not under GST regime
- (iii) The assessee is liable to tax under current regime but exempted or not liable under GST

## **Chapter-4**

# **Treatment of Units under Industrial Incentives/Exemptions**

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### **4.1 Introduction**

Many large, medium or small but deserving units have been conferred with incentives under the current tax regime either based on location or based on committed capital investments. Pursuant to introduction of GST, the Government would need to safeguard the interest of the units enjoying such incentives.

### **4.2 Need**

The Units enjoying industrial incentives will be at loss if the said incentives are discontinued. The transitional provisions are designed to ensure that the impact on such units is mitigated with the introduction of GST.

### **4.3 Potential Concerns**

In case of units enjoying exemption or deferment of payment of input/ output taxes, they would have accumulated the benefits over the ordinary course of their business. Discontinuation of the said benefit may cause significant hardships, considering that they would have already invested capital or commenced operations from the said location.

There could be varied kind of benefits, the Government has granted in the current regime:

- Exemption to input taxes, output remaining taxable (e.g. exemption in case of SEZ units)
- Input taxes payable, exemption on value addition (e.g. area based exemption in north east States under Excise)
- Input taxes payable, output fully exempt (e.g. area exemption in Uttarakhand under Excise – Practically exemption on value addition only)

### **Treatment of Units under Industrial Incentives/Exemptions**

- Input taxes payable, tax to be collected and retained by supplier as subsidy or otherwise (e.g. specified exemption under VAT Laws)

The benefits need to be maintained in view of the commitment of the Government.

## **4.4 Recommendations**

### **4.4.1 Units enjoying exemption or concession on procurements**

- Input tax paid by the units must be creditable in the hand of the eligible units and the same be also refunded subject to its eligibility in terms of the respective policies. It is expected that under GST regime procedure for refund would be automatic and would ensure timely refund.
- Purchases made by exempted units may be zero rated (i.e. supply by the seller to the exempted unit would be zero rated) subject to issue of the relevant certificate by such units without restriction on input tax credit in the hands of the seller. This method would again require certificate or documentation which may not be in line with the general framework of GST regime. Thus it is required to ensure a hassle free method to substantiate the status of the exempted unit.
- Cash compensation in respect of un-availed/un-utilised portion based on a Net Present Value (NPV) method which is mutually agreeable (i.e. both the Government and the Unit).

### **4.4.2 Units enjoying exemption or concession on sales**

- In case Government seeks to exempt all the inputs / outputs taxes involved in the transactions - Zero rate output taxes chargeable by the exempted units; or
- In case Government seeks to exempt only taxes on the value addition done by a given unit, output taxes may be allowed to be collected from the customer but exempted from payment ( or refund back the duty paid from the PLA account) by the eligible units without any restrictions on the credit in the hands of the purchaser.
- Cash compensation in respect of un-availed/un-utilised portion based on a Net Present Value (NPV) method which is mutually agreeable (i.e. both the Government and the Unit).

#### **4.4.3 Units enjoying deferment in payment of State VAT**

Defer the payment of SGST or proportionate IGST.

#### **4.4.4 Comments**

Zero rating of taxes on a product or transaction is the best manner of granting an exemption in order to avoid any break in the credit chain as well as procedural complications. But zero rating can be used only when the Government seeks to grant exemption for all input/ output taxes on a given transaction. In case of Industrial exemptions discussed above where the Government seeks to grant exemption either on the input taxes or on value addition etc., the endeavour is to maintain the credit chain, keep the additional procedures to the least, satisfy the control requirements and converge the benefits assured.

#### **4.4.5 Imports by Export Oriented Units**

Export Oriented Units including STP, FTZ, EOU, etc., including public and private bonded warehouses, are allowed to import goods duty free. Duty is payable by such units on removal of the goods from the warehouse. In such units, an option may be provided to debond the goods within 30 days in case such units desire to pay duty at rates provided under the pre-GST regime or to undertake to pay duty based on the rates provided in the new law at the time when the said goods are de-bonded or removed from the warehouse.

Additional Bond as required to be executed for differential duty arising on implementation of GST

## **Chapter-5**

# **Payment of tax under Composition/ Compounded Levy Scheme<sup>1</sup>**

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### **5.1 Introduction**

Composition scheme is a special scheme allowing dealers or an Assessee to pay tax at composite rate by foregoing input tax credit or by complying with certain specified conditions.

### **5.2 Need**

Transitional provisions are required to ensure that the taxation and credit concerns connected with composition dealers are specifically addressed, considering their differential status.

### **5.3 Potential Concerns**

Taxability and credit positions in the possible scenarios that may exist as regards an assessee operating under composition scheme:

- (i) An Assessee operating under Composition Scheme in the Pre-GST regime may not be eligible to continue under similar scheme in the GST regime.
- (ii) An Assessee operating under Composition Scheme in the Pre-GST regime is continued under GST regime.
- (iii) An assessee not operating under Composition Scheme under Pre-GST regime wishing to opt for composition under GST regime.

### **5.4 Recommendations**

#### **5.4.1 When composition / compounded levy scheme is discontinued in GST regime**

##### **5.4.1.1 Tax Position**

- The assessee be required to raise an invoice for the value of goods/

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<sup>1</sup> Refer Appendix B

## **Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

services sold/rendered before implementation of GST when he was covered under composition or compounded levy scheme.

- The method prescribed under Chapter 3 titled 'point of taxation for overlapping transactions' may be followed for determining the portion taxable under GST and the portion taxable under the pre-GST regime.

### **5.4.1.2 Credit Position**

- Transitional stock credit should be allowed on tax paid on goods lying in stock, which would be allowed as deduction from the output tax payable under GST.
- However, credit should be restricted only to tax paid on goods which would be used for providing a taxable supply under GST. Thus an appropriate mechanism, as prescribed in Chapter 2, would be required to identify the related credits to be carried forward.
- No credit is allowed on purchases from unregistered dealers on which no tax is paid.

### **5.4.2 When Composition/Compounded Levy Scheme is continued in GST regime**

- Transitional stock credit would not be allowed considering similar restrictions under GST.

### **5.4.3 When composition/compounded levy scheme is opted under GST regime**

- The credit on Closing Stock of raw material, consumable, semi-finished goods, packing material, finished goods and input services in respect of output services to be rendered post implementation of GST, be not allowed or proportionately reversed.

### **5.5 Illustration : Composition dealer: Composition dealer in VAT regime, but not in GST regime. Rate-wise details are required to be given.**

Particulars	Tax Rate	Amount	VAT	Total
Month of March 2016				
Opening Stock	5.50%	20,000	1,100	

**Payment of tax under Composition/ Compounded Levy Scheme**

Opening Stock	14.50%	50,000	7,250	8,350
Purchase of Input	5.50%	50,000	2,750	
Purchase of Input	14.50%	1,00,000	14,500	17,250
Local Sales	1.00%	1,40,000	1,400	1,400
<b>Excess Input Tax credit applied for transitional credit</b>				24,200
<b>Set off against SGST/CGST/IGST should be given under the GST law though not permissible under VAT law</b>				

## Chapter-6

# Purchase Tax/Reverse Charge on Services – Rate and Carry Forward of Credit<sup>1</sup>

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### 6.1 Introduction

In the ordinary course of business, an assessee procures goods or services from unregistered dealers. In certain other cases, the person buying the goods or receiving the services may be liable to pay tax under the reverse charge mechanism.

### 6.2 Need

Transitional provisions would need to provide a clear procedure on credit availment, documentation aspects and disclosure in the returns/ forms relating to purchases effected from unregistered dealers or when the transaction is liable to tax in the hands of the buyer under the reverse charge mechanism.

### 6.3 Potential Concerns

The possible issues concerning purchases from unregistered dealers are:

- (i) Treatment of purchases from unregistered dealers during the current regime but sold under GST regime.
- (ii) Treatment of purchases from unregistered dealers during the current regime and lying in stock.
- (iii) In the context of services, where the liability to pay service tax is on payment, it may so happen that the services are rendered and billed prior to GST but payment is made after implementation of GST. Further the liability may also be dependent on whether the provider is an associated enterprise.

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<sup>1</sup> Refer Appendix B



## **6.4 Recommendations**

### **6.4.1 Rate of tax**

Purchases subjected to purchase tax under VAT levy as well as Services subjected to reverse charge under Service tax levy should be taxed as per the principal of taxability and point of taxation as discussed in Chapter 3 titled 'Point of Taxation for Overlapping Transactions'.

Provided if purchase of goods/ procurement of service are not taxable under pre-GST regime, the same would not be taxed under GST regime.

### **6.4.2 Carry forward of credit**

Eligible proportionate credits of goods and services on which tax has been paid under reverse charge, should be allowed as transitional credits in light of the principles applicable to other transitional credits.

This is for the reason that the credit of tax paid under reverse charge and tax paid under direct tax charge are equated under the pre-GST regime. Moreover, the credit pool does differentiate on eligible credits.

### **6.4.3 Purchases from unregistered dealer for subsequent sale**

- Considering that the purchases have been effected during the pre-GST regime, the provisions contained in the pre-GST regime will prevail on the payment of tax on such purchases. Certain States require the purchasing dealer to pay tax on such purchases in the month of purchase.
- The Assessee will be eligible to input tax credit as prescribed in the pre-GST regime. In the event that the credit is deferred after the implementation of GST, the same to be allowed as Transitional Credit.
- The rates applicable under GST would be applicable when the goods are sold as such or used in manufacture of other goods which are sold in the GST regime

### **6.4.4 Purchases from unregistered dealer held in stock**

- The tax paid in respect of purchases from unregistered dealer and on goods lying in stock will be carried forward into the GST regime as transitional credit.

### Discussion Paper on probable key Transitional Issues in Proposed GST Regime

- To ensure that the dealer carries forward input tax credit only to the extent of tax paid, the particulars to be supported by disclosure in the returns filed in the current regime.
- Reference to Chapter 2 titled 'Transfer of Credits' is drawn for the options enabling the Assessee to carry forward and claim the said credit and to Chapter 3 titled 'Point of Taxation for Overlapping Transactions' on the point of taxation for overlapping transactions. The same may be applied to purchases from unregistered dealer.

### 6.5 Illustration : Unregistered Purchase

Particulars	Tax Rate	Amount	VAT	Total
<b>Month of March 2016</b>				
Opening Stock(URD)	5.50%	20,000		
Opening Stock	14.50%	50,000	7,250	7,250
Purchase of Input (URD)	5.50%	60,000		
Purchase of Input	14.50%	1,00,000	14,500	14, 500
URD Purchase Turnover	5.50%	60,000	3,300	
Local Sales	14.50%	80,000	11,600	14,900
<b>Output tax paid through cash (Tax payable on URD Purchases)</b>				3,300
<b>Output tax paid through eligible credit</b>				11,600
<b>Input Tax credit applied for transitional credit</b>				10,150
<b>Input Tax credit applied for transitional credit towards URD Purchase</b>				3,300
<b>Set off should be given under the GST as permissible under the VAT law</b>				

## Chapter-7

# Exempt Goods Returned After Sale<sup>1</sup>

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### 7.1 Introduction

The basic concept of sale as defined under 'Sales of Goods Act' is the transfer of property in goods from the seller to the buyer. Thus 'transfer of property' should be the governing factor to determine a supply transaction of goods under the pre-GST regime. This chapter deals only with transactions of completed sales under the pre-GST regime.

### 7.2 Need

To provide a clear procedure on the credit availment, documentation aspects, disclosure in the return forms relating to goods sold when exempt under the pre-GST regime but taxable when returned under GST regime.

### 7.3 Potential Concerns

The possible situations with respect to goods which are exempt under current regime and which would become taxable in the GST regime, requiring enabling transitional provisions are:

- (i) Treatment of goods exempted (when sold) in the current regime but returned under the GST regime.
- (ii) Treatment of goods used / intended to be used in exempt transaction in pre-GST regime, lying in stock and used towards taxable supply under GST regime.
- (iii) Treatment of sale in the course of import or in the course of interstate sale, which are initiated prior to GST but completed after implementation of GST.

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<sup>1</sup> Refer Appendix B

## **7.4 Recommendations**

### **7.4.1 Treatment of goods exempted (when sold) in the pre-GST regime but returned under the GST regime**

Exempted goods supplied during the pre-GST regime and subsequently returned in GST regime should be treated as separate transactions. Accordingly, separate taxability and point of taxation has been prescribed for supply under the pre-GST regime and returns under GST regime.

At the time of return of goods, it will be considered as taxable supply and an appropriate GST may be charged. The original seller would be entitled to the credit of GST so charged.

However, input credits which were not allowed in pre-GST regime should not be carried forward in GST regime as the first transaction of sale of exempted goods will continue to be tax free with restriction of credit in pre-GST regime.

Subsequent transaction of sales return, as discussed above, will be a taxable supply subject to GST. Accordingly, credits will be allowed under GST regime in relation to CGST and SGST or IGST as the case may be.

### **7.4.2 Treatment of tax suffered goods used in exempted transactions prior to GST**

In case of goods on which appropriate tax is paid and is lying in stock, but the credit in respect of which was not taken as the said goods were used in exempted transactions and such goods are subsequently used in taxable transactions under GST, appropriate credit for tax actually paid be allowed. In case of capital goods an appropriate mechanism may be introduced for claim of credit for the remaining life of capital goods. Reference to Chapter 2 titled 'Transfer of Credits' is drawn providing the manner to claim such credits.

### **7.4.3 Treatment of certain overlapping transactions**

Taxability of overlapping transactions is governed by the pre-GST regime while its point of taxation is to be determined considering the suggestions given in Chapter 3 titled 'Point of Taxation for Overlapping Transactions' pertaining to the point of taxation.

### **7.4.4 Additional Exemption conditions under customs**

EPCG schemes along with the other exemption schemes will continue under

### Exempt Goods Returned After Sale

GST regime. In order to avoid multiplicity of documentation and checks, the procedures and requirements of present scheme should continue to apply *mutatis mutandis* with appropriate refinements wherever applicable.

### 7.5 Illustration: Exempted goods

Particulars	Tax Rate	Amount	VAT	Total
<b>Month of March 2016</b>				
Opening Stock Exempted		20,000		
Opening Stock	14.50%	50,000	7,250	7,250
Purchase of Input Exempted		50,000		
Purchase of Input	14.50%	1,00,000	14,500	14,500
Sale of Exempted Goods		60,000		
Local Sales	14.50%	80,000	11,600	11,600
<b>Input Tax credit applied for transitional credit available for set off</b>				10,150

### Illustration : Non taxable in VAT regime and taxable in GST regime

Particulars	Tax Rate	Amount	VAT	Total
<b>Month of March 2016 and June 2016</b>				
Opening Stock Non Taxable		20,000	-	
Opening Stock	14.50%	50,000	7,250	7,250
Purchase of Input (Non Taxable)		50,000		
Purchase of Input	14.50%	1,00,000	14,500	14,500
Local Sales	14.50%	1,20,000	17,400	17,400

**Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

<b>Input Tax credit applied for transitional credit for set off against SGST/CGST/ IGST</b>				4,350
Taxable sales in GST regime	20.00%	30,000	7,500	-
<b>Note: * GST rate is assumed at 20%</b>				

**Illustration : Input Tax credit on exports**

Particulars	Tax Rate	Amount	VAT	Total
<b>Month of March 2016</b>				
Opening Stock	5.50%	20,000	1,100	
Opening Stock	14.50%	50,000	7,250	8,350
Purchase of Input	5.50%	50,000	2,750	
Purchase of Input	14.50%	1,00,000	14,500	17,250
Export		1,40,000		
Local Sales		-	-	-
<b>Set off of Input Tax credit applied for transitional credit against SGST/CGST/IGST</b>				25,600

## **Chapter-8**

# **Goods and Services Taxable at Lower Rate**

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### **8.1 Introduction**

Under GST, there may be possibility where the rate of tax applicable may be lower than those applicable under the current laws.

### **8.2 Need**

Transitional provisions are required to ensure that an assessee's right to input tax credit is protected despite that the taxes paid under the current law are higher than the tax payable under GST.

### **8.3 Potential Concerns**

The possible concerns requiring enabling transitional provisions with respect to inverted duty or tax structure are:

- (i) The goods or services are taxed at rate lower under GST than the rate of tax in the current regime.
- (ii) The goods or services which are taxed under the current regime are exempt under GST.
- (iii) The goods or services which are taxed under the current regime and exempt under GST but exported out of India.

### **8.4 Recommendations**

#### **8.4.1 Goods or services are taxed at rate lower than the rate under current regime**

- Allow transitional credit of input tax actually incurred unless the goods or services under GST are exempt.
- In case the assessee is engaged in export of exempted goods or services under GST, the input tax paid should be allowed as Transitional Credit.
- Reference to Chapter 2 titled 'Transfer of Credits' is drawn for the mechanism to avail and claim transitional credit.

## Chapter-9

# **Goods Lying at Job-Workers Premises<sup>1</sup>**

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### **9.1 Introduction**

In the ordinary course of business, goods are sent to job-worker for further processing. It is possible that on the date of implementation of GST, the goods are lying with job-worker in the form of inputs, semi-finished/finished goods or capital goods.

Under GST regime, unlike the present scenario in the Central Excise Law, transfers or supplies to job-worker and returns or sales from job-workers premises will be treated as a taxable supply.

### **9.2 Need**

Transitional provisions are required to ensure that an Assessee's right to credit of appropriate tax paid on goods lying in stock with the Job-worker is made available as Transitional Credit.

### **9.3 Potential Concerns**

The possible situations with respect to goods lying at job-worker's premises are:

- (i) The goods (after being processed) are lying at job-worker's premises on the implementation date and would be returned back to the principal.
- (ii) The goods are being used by the job-worker for further processing.
- (iii) The goods are in the nature of capital goods.

### **9.4 Recommendations**

#### **9.4.1 The goods (after being processed) are lying at job-worker's premises**

The Principal must declare the value of goods lying with the job worker(s) as on the date of transition with the jurisdictional tax officer. The said

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<sup>1</sup> Refer Appendix A



### **Goods Lying at Job-Workers Premises**

information filed by the principal must also be certified/attested by the job worker (s).

The said information would form part of the 'statement of transition of credit' to be filed by the Principal, which would need to be certified by a Chartered Accountant in case the amount of total transition credit exceeds the prescribed threshold limit.

#### **9.4.2 The goods lying at job-workers premises returned back after further processing**

- In case goods lying with the Job-worker were transferred prior to implementation of GST, are subsequently processed and returned back to the Principal within 6 months from date of initial despatch of goods by the principal to the job worker, the job worker be allowed to charge GST on his value addition.

In this regard, the Principal would have already claimed the Transitional Credit of appropriate taxes paid on stock lying with the Job-worker. The said information would form part of the 'statement of transition of credit' to be filed by the Principal, which would need to be certified by a Chartered Accountant in case the amount of total transition credit exceeds the prescribed threshold limit.

- In case goods lying with the Job-worker were transferred prior to implementation of GST, are subsequently processed and returned back to the Principal after 6 months from date of implementation of GST, the job worker be liable to charge GST on gross value (including the value of goods belonging to the Principal).

In this regard, the Principal would have already claimed Transitional Credit of appropriate taxes paid on stock lying with the Job-worker. The said information would form part of the 'statement of transition of credit' to be filed by the Principal, which would need to be certified by a Chartered Accountant in case the amount of total transition credit exceeds the prescribed threshold limit.

#### **9.4.3 Goods sent for Job-work not returned**

In the event the goods are not returned by the Job-worker to the Principal within 6 months from the date of dispatching the goods to him, whenever these goods will be returned or be sold by the job-worker directly, it will constitute a taxable supply.

## **Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

The principal should transfer the input credit on such goods to the job worker by way of mechanism similar to that of Input Service Distributor (ISD) in the as is there in the existing CENVAT Credit Rules, 2004.

### **9.4.4 Capital Goods sent to job-worker**

The Principal must be entitled to claim credit of capital goods lying with the job worker. The Principal must declare the value of capital goods with the job worker(s) as on the date of transition with the jurisdictional tax officer. The said information would form part of the 'statement of transition of credit' to be filed by the Principal, which would need to be certified by a Chartered Accountant in case the amount of total transition credit exceeds the prescribed threshold limit.

In case the Capital goods are lying with the Job-worker for a period beyond 2 years from the date of despatch of goods, whenever these goods will be returned, that transaction would be considered as a taxable supply subject to appropriate GST. The principal should transfer the input credit on such goods to the job worker by way of mechanism similar to that of Input Service Distributor (ISD) in the as is there in the existing CENVAT Credit Rules, 2004.

### **9.4.5 Where the Principal or the Job-worker is located cross border**

In case of import of goods for job-work or export of goods for job-work, the transitional credit shall lie with the person located in India being treated as separate transactions under Customs law within the meaning contained in Section 20 of the Customs Act.

- (i) In case the Principal is located in India and the Job-worker is located outside India, then the credit with respect to the stock in India will be taken by the Principal'.
- (ii) In case the Job worker is located in India and the Principal is located outside India, then the credit with respect to the stock in India will be taken by the Job-worker.
- (iii) Credit shall be allowed subject to the provisions contained in chapter 2.

Goods Lying at Job-Workers Premises

### 9.5 Illustration : Goods Sent to job worker for processing

Particulars	Tax Rate	Amount	VAT	Total
<b>Month of March 2016</b>				
Opening Stock	5.50%	20,000	1,100	
Opening Stock	14.50%	50,000	7,250	8,350
Purchase of Input	5.50%	50,000	2,750	
Purchase of Input	14.50%	1,00,000	14,500	17,250
Goods sent for Job work (local)		60,000	-	
Local Sales	14.50%	70,000	10,150	10,150
<b>Set off of Input Tax credit applied for transitional credit against SGST/CGST/IGST</b>				15,450

## **Chapter-10**

# **Goods Lying with Agents<sup>1</sup>**

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### **10.1 Introduction**

In the ordinary course of business, goods may be sent to agents for subsequent sale. It is possible that on the date of implementation of GST, the goods are lying with the said agent.

### **10.2 Need**

Transitional provisions are required to ensure that an Assessee's right to credit of appropriate tax paid on goods lying in stock with the agent is made available as Transitional Credit.

### **10.3 Potential Concerns**

The possible situations with respect to goods lying at Agent's premises are:

- (i) The goods are lying at Agent's premises on the implementation date for sale there from.
- (ii) The goods are in the nature of capital goods.

### **10.4 Recommendations**

#### **10.4.1 The processed goods are lying at Agent premises**

Where an agent is holding goods on behalf of the principal, either he will sell the goods to a customer on behalf of the principal or he will return back the goods to the principal. If either of these activities take place in GST regime, it will constitute a taxable supply.

- The Agent must be entitled to claim credit of stock lying with him and belonging to the Principal provided the said Agent is registered under GST law.
- The Agent must declare the value of goods lying with him on behalf of the Principal as on the date of transition with the jurisdictional tax

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<sup>1</sup> Refer Appendix A

### **Goods Lying with Agents**

officer. The said information filed by the Agent on behalf of the Principal must also be certified/ attested by Principal. The said information may further be certified by a Chartered Accountant to ensure correctness of the declaration.

- The agent may be entitled to take the credit of capital goods lying with him on behalf of principal for its remaining useful life.
- Reference to Chapter 2 may be drawn for the mechanism to avail and claim transitional credit by the Agent.
- The credit in relation to goods sold directly from the Agent's premises should be allowed to be transferred to the Agent through the mechanism similar to that of the Input Service Distributor (ISD) as is there in the existing CENVAT Credit Rules, 2004.

## **Chapter-11**

# **Declaration for Purchase of Goods and Services at Concessional Rate**

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### **11.1 Introduction**

The time limit for issuance of statutory forms, is time bound. Absence of submission of the form, enhances the liability of the seller and in most cases, is dependent on the buyer or occurrence of event.

### **11.2 Need**

To provide a clear procedure and time line within which an Assessee be made to comply regarding the submission of the declaration forms and similar timelines for Government for issuance of approvals, blank forms, attested forms or other compliances requiring their approval.

### **11.3 Potential Concerns**

The Assessee is required to obtain the declaration form and in most situations, is dependent on the Customer or the Government or certain other external factors.

### **11.4 Recommendations**

#### **11.4.1 Timeline for generation and submission of statutory forms for inter-state purchases**

- Strict time lines need to be put in place for the dealers within which the statutory forms should be applied for and issued by them for all previous years.
- To provide for collection and submission of the declaration forms in a time bound manner.
- The procedure to be followed for regeneration of incorrect forms must be prescribed.
- The Assessee should be permitted to revise relevant columns in the

#### **Declaration for Purchase of Goods and Services at Concessional Rate**

VAT/ CST returns filed, to allow correction pertaining to inter-state purchases/ sales and enable generation of correct statutory forms.

- In the absence of submission of statutory forms, the Assessee should be made liable to pay differential tax.
- In Customs law, certain restricted goods are allowed to be imported only upon production of approval from appropriate authority. For instance, wireless telecom networking equipments.
- Similar time lines need to be put in place for the importers within which the statutory forms should be applied for and issued by them for all previous years.

## **Chapter-12**

# **Pending Refund Claims**

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### **12.1 Introduction**

Under the current system of taxation, in case eligible input tax credit is in excess of output tax payable, the Assessee, subject to conditions, is allowed to carry forward the said excess or claim refunds. Similarly, an exporter is allowed refund of taxes paid on inputs and input services, when they are used for export of goods and services. Further, the disputed refund claim may be pending before Appellate Authority.

### **12.2 Need**

Transition provisions are required to provide a clear procedure for treatment of unutilized credit and time lines for processing pending refunds.

### **12.3 Potential Concerns**

The possible scenarios requiring enabling transitional provisions are with respect to pending refund claims.

### **12.4 Recommendations**

- In case of refund claims for taxes like VAT where for a given credit amount, an assessee could either claim credit or claim refund, and he decides to go for refund in pre-GST regime; in the GST regime, the said assessee should be given an option to withdraw the refund claim and carry forward the credit as unutilized credit for set-off against the tax payable under GST.
- All pending refund claims to be disposed-off within time bound manner.
- In case there is any dispute regarding the claim of input tax credit, such credit shall be allowed against output GST liability on the dispute attaining finality regardless of the time limits for transition of credit to GST regime.



## Chapter-13

# Sales made during Current Regime but Sales Returns/Rejections under GST<sup>1</sup>

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### 13.1 Introduction

This chapter deals with taxability and credit in the hands of Seller/ supplier/ service provider. In the ordinary course of business, there will be scenarios where an Assessee may have sold the goods or services during the current tax regime but the returns/ rejections are made or respective credit note is given during the GST regime.

### 13.2 Need

Transitional provisions are required to provide a mechanism to allow tax deduction under GST for goods subsequently returned or credit note issued in GST regime with respect to transactions undertaken during pre-GST regime.

### 13.3 Potential Concerns

Effect of transactions pertaining to Pre-GST regime but reversed during GST regime, where the taxes would have been paid under the current law but neutralizing benefit on reversal is sought under GST regime.

### 13.4 Recommendations

#### 13.4.1 Sales returns/rejections of goods

- In an event of sale (including sale on approval) in pre-GST regime, a transaction may remain incomplete on date of GST implementation for want of transfer of property in goods to the buyer. Subsequently, if the buyer rejects the goods in GST regime, practically the sale would not complete. We recommend that in such case, output VAT/CST paid in pre-GST regime by the seller should be allowed as credit to him to be used against his future GST liability.

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<sup>1</sup> Refer Appendix B

## Discussion Paper on probable key Transitional Issues in Proposed GST Regime

- On the contrary, in case of sale in pre-GST regime, where transfer of property in goods is transferred to buyer in pre-GST regime, the sale is completed and accordingly subsequent sale returns should be treated as taxable supply in GST from original buyer to original seller with flow of GST credit.

However, transactions of sale where goods are sold and property is transferred in pre-GST regime under option of return within stipulated time period prescribed by law, such sale returns should be treated as sale rejection and dealt accordingly.

*Note: For the purpose of ease of understanding, sales rejections are those transactions which are not accounted for by the buyer [but accounted for by the seller] in his books of accounts irrespective of the fact whether the goods moved under a clause of rejection in contract or not, whereas sales returns are those transactions which are accounted for by both the buyer and the seller in their books of accounts.*

*The transactions of sales returns should be treated as separate transaction to avoid credit note mechanisms and to cater the value addition theme of GST. Reference is to be made to the chapter of Exempted Goods.*

### 13.4.2 Credit note for services

- In case of service deficiency acknowledged in GST regime while service was completed in pre-GST regime, appropriate setoff of tax paid in pre-GST should be allowed to assessee through credit note mechanism similar to the one prescribed in Rule 6(3) of Service tax Rules.
- The supplier should be allowed to take credit based on the credit note/any other prescribed document issued by him and proper accounting of transaction.

*Note: Generally provision of a service is governed by the agreed terms of a contract. Whereas, point of taxation is governed by specified rules made in this regard. Prior to the introduction of Point of taxation Rules (Accrual levy) in Service tax, the concept of deficient service was adhered by taxing the receipts only.*

*With the introduction of accrual levy in Service tax, deficient service concept became prevalent as Service tax is paid on accrual basis while payments are negotiated at a later date. However, Rule 6(3) provides for the solution to this problem. Thus, in Service tax law, generally service deficiency should be equated to sales rejection and the concept of sale returns does not prevail.*

**Sales made during Current Regime but Sales Returns/Rejections under GST**

### **13.4.3 Re-import and Re-exports under customs duty**

- (i) Articles exported during the current regime, for undertaking certain specified processes outside India and imported after the implementation of GST, be subject to customs duty on the value addition made outside India.
- (ii) Articles imported during the current regime, for undertaking certain specified processes, being exported after the implementation of GST, would not be liable to customs duty.
- (iii) Refund be allowed on re-export of imported articles which are rejected and sent back, in the same manner as duty drawback in the current regime
- (iv) Appropriate drawback to be notified and allowed for export of manufactured articles with import duty content.

### **13.5 Illustration : Sales Return**

<b>Particulars</b>	<b>Tax Rate</b>	<b>Amount</b>	<b>VAT</b>	<b>Total</b>
<b>Month of March 2016</b>				
Opening Stock	5.50%	20,000	1,100	
Opening Stock	14.50%	50,000	7,250	8,350
Purchase of Input	5.50%	50,000	2,750	
Purchase of Input	14.50%	1,00,000	14,500	17,250
Local Sales	14.50%	1,20,000	17,400	
				17,400
<b>Input Tax credit applied for transitional credit / Also there is no effect of sales return</b>				8,200
<b>Sales Return in GST Regime</b>	<b>Applicable GST Rate</b>	30,000		

## Chapter-14

# Free Supplies under Works Contract for Work done Pre & Post GST

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### 14.1 Introduction

GST may tax works contract on valuation principles different from the current regime.

### 14.2 Need

Transitional provisions to provide a clear procedure, the methodology and the split for overlapping works contract on the amount chargeable to tax pre-GST and post-GST in respect of free supplies.

### 14.3 Potential Concerns

One of the major concerns connected with valuation of works contracts are treatment of free supplies

### 14.4 Recommendations

Value of free supplies made prior to implementation of GST would be included in the valuation and taxed as prescribed in the law applicable in pre-GST regime.

Transitional credit will not be available to the sub-contractor for value of free supplies made by the main contractor to the sub-contractor and lying in stock with the sub-contractor. However, the main contractor will be allowed to carry forward the transitional credit subject to eligibility under GST law. Principles of determination of eligible credits as discussed in Chapter of Closing stock to apply *mutatis mutandis*.

## **Chapter-15**

# **Tax Paid on Goods in Transit or Pending Approval<sup>1</sup>**

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### **15.1 Introduction**

This chapter deals with taxability and credits of/on transit stock (including sales pending approval) in the hands of the customer. An Assessee may have paid tax on goods in pre-GST regime which may be in transit in the course of delivery to the customer and received by the said customer post implementation of GST or may be with the customer pending his approval for completing sale.

### **15.2 Need**

Transition provisions are required to provide a clear procedure for mechanism to avail transitional credit on goods in transit or pending for approval.

### **15.3 Potential Concerns**

The possible situations on transit goods are:

- (i) The goods are in Transit.
- (ii) The goods are pending with the customer for approval before sale.

### **15.4 Recommendations**

#### **15.4.1 The goods are in transit or pending approval before sale**

- Once the goods are sold by the seller under a condition of approval from customer, sales will be accounted for by the seller. However, the customer may or may not account for the purchase.
- In case, customer accounts for the purchase in his books, the mechanism is provided to allow credit to customer. In turn, if the goods

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<sup>1</sup> Appendix B

### **Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

are returned or rejected, customer will reverse the credit while seller will account for the credit for adjustment from GST payable as per mechanism suggested in Chapter of Sale made during current regime but sale return under GST.

- In case, customer does not accounts for the purchase in his books, the question of availment of credit with his does not apply. In turn, if the goods are returned or rejected, customer will not be required to reverse the credit while seller will account for the credit for adjustment from GST payable as per mechanism suggested in Chapter of Sale made during current regime but sale return under GST.
- Reference to Chapter 2 may be drawn for the mechanism to avail and claim transitional credit by the customer.

## Chapter-16

### Price Revisions<sup>1</sup>

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#### 16.1 Introduction

In the ordinary course of business, there will be scenarios where an Assessee may have sold the goods or services during the current tax regime but makes subsequent price revisions during the GST regime.

#### 16.2 Need

Transitional provisions are required to provide a mechanism to tax price revisions under GST.

#### 16.3 Potential Concerns

The possible situations on price revisions are:

- (i) The price is enhanced
- (ii) The price is reduced

#### 16.4 Recommendations – State Levies

##### 16.4.1 Price is enhanced

- In case there is upward revision of price with respect to goods sold or service provided under current regime and such revision is provided under GST regime, the selling dealer should raise supplementary invoice at appropriate rate under pre-GST regime.
- The buying dealer will be entitled to avail credit of tax on the strength of supplementary invoice.
- The said provision should not have any restriction on time i.e. be allowed even beyond a period of six months, if the revision is in the ordinary course of business.

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<sup>1</sup> Appendix B

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### 16.4.2 Price is reduced

- The supplier of goods / provider of service should be allowed to take credit based on the credit note issued by the supplier and proper accounting of transaction.
- The credit of tax (based on the tax paid in the current regime) should be allowed as appropriate credit under GST.
- The benefit should be allowed provided the credit note is issued within stipulated period.

**Note:** The system of Credit note is required in automation process under GST regime which should be linked with return to account for increase and decrease in prices.



## **Chapter-17**

### **Branch Transfers<sup>1</sup>**

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#### **17.1 Introduction**

In the ordinary course of business, goods may be stock transferred from unit or branch or warehouse of the Company to another, within or outside the State.

#### **17.2 Need**

Transitional provisions are required to ensure that an Assessee's right to credit of appropriate tax paid on goods lying in stock at any unit, branch, warehouse or such other place of the Assessee is made available as Transitional Credit.

#### **17.3 Potential Concerns**

The dispatching location of the Assessee may have reversed some amount of input tax credit on stock transfer or branch transfer (ordinarily referred to as burn out). Further, the duty paying documents or the purchase invoice in respect of the goods may be in the originating location, while the goods may be lying at another location in another State.

#### **17.4 Recommendations**

##### **17.4.1 Branch transfers are taxable supplies in GST regime**

In the GST regime, any inter-state branch transfer of goods would be considered as taxable supply. However, intra-state branch transfer would not constitute taxable supply.

For illustration, goods which were stock transferred during the pre-GST regime from say Location A to Location B, these were not taxable. On subsequent supply of the same goods from Location B to Location A during the GST regime, the transaction should be taxed or dealt with in the manner provided under GST.

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<sup>1</sup> Appendix A

#### **17.4.2 Transfer of credit to branch holding goods**

- In the transitional scenario, there would be possibility of goods already transferred by head office or one unit of an entity to another unit or branch.
- In pre-GST regime , as the stock transfer is not taxable under VAT as well central excise law subject to certain conditions, no tax would have been paid at the time of stock transfer, and the unit or HO which transferred the goods would have claimed credit for the goods so transferred barring some part of the credit reversed (commonly referred as burn out tax).
- In the GST regime, as the Branch holding the stock would be ultimately making the taxable supply of those goods, it should be entitled to credit of appropriate taxes, irrespective of the fact that the goods were purchased at another location and the invoices are available at the said location.
- In order to avail transitional credit, the Branch holding the goods must declare the said stock as on the date of transition with the jurisdictional tax officer. The said information filed by the Branch holding the Stock must also be certified/ attested by Head Office and also stating that no credit is availed by the Head Office. The said information may further be certified by a Chartered Accountant to ensure correctness of the declaration.
- Transitional credit transfer from unit or head office having the duty or tax paid documents would be done by way of appropriate invoice/challans as per the prescribed procedure. For this, we recommend that a procedure similar to that of Input Service Distributor (ISD) in the CENVAT Credit Rules, 2004 may be adopted.
- As the Branch would be considered as an independent assessee in GST regime, it, shall furnish the 'statement of transitional credits' in the prescribed form within the prescribed time and in case the tax credit claimed is in excess of prescribed monetary limit, the statement shall be accompanied by a certificate signed by a Chartered Accountant.

#### **17.4.3 Credit Distribution under service tax by ISD**

- In cases where services are provided prior to implementation of GST to a branch or an office but the invoice thereof is raised after the

### Branch Transfers

implementation of GST on the head office, the head office must be allowed distribution of credit to the respective branch or office.

- The input tax credit lying as undistributed as an input service distributor as on the date of implementation of GST must be allowed to be carried forward as a credit pertaining to the respective Branch or Office.

### Illustration 1: Interstate purchase

Particulars	Tax Rate	Amount	VAT / CST	Total
<b>Month of March 2016</b>				
Opening Stock (Inter State)	2.00%	20,000	400	
Opening Stock	14.50%	50,000	7,250	7,250
Purchase of Input (Inter State)	2.00%	50,000	1,000	
Purchase of Input	14.50%	1,00,000	14,500	14,500
Local Sales	14.50%	1,20,000	17,400	17,400
<b>Input Tax credit applied for transitional credit against SGST/IGST though stock includes Interstate purchases</b>				4,350

### Illustration 2: Stock transfer

Particulars	Tax Rate	Amount	VAT	Total
<b>Month of March 2016</b>				
Opening Stock	5.50%	20,000	1,100	
Opening Stock	14.50%	50,000	7,250	8,350
Purchase of Input	5.50%	50,000	2,750	

**Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

Purchase of Input	14.50%	1,00,000	14,500	17,250
Local Sales	14.50%	1,20,000	17,400	
Stock transfer (Outside State – Input Tax reversed @ 2 %		30,000	-	17,400
<b>Input Tax credit applied for transitional credit net of restrictions for set off against SGST/CGST/ IGST to HO</b>				7,600

## Chapter-18

# Accounting Guide

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### 18.1 Introduction

The transition into GST will have accounting implications arising from transactions such as recognition of duties and taxes on stock, transfer of credits, etc.

### 18.2 Need

To ensure that the accounting treatment provided by the Assessee is correct and to ensure that the audit trails are sufficiently maintained, a need for providing the appropriate accounting guide is considered necessary.

### 18.3 Potential Concerns

Different Assesseees may treat the same or similar transactions differently in their books of accounts.

### 18.4 Recommendations

#### 18.4.1 Transfer of credits from the current law to GST

Respective State GST Credit Account	Dr	With credit available as SGST
CGST Credit Account	Dr	With credit available as CGST
CENVAT Credit Account	Cr	
Account Current (also referred as PLA)	Cr	
Respective State Input Tax Credit Account	Cr	
Education Cess Account	Cr	
SHE Cess Account	Cr	

This entry would be required to be passed on the date of implementation of GST.

### Discussion Paper on probable key Transitional Issues in Proposed GST Regime

**Note:** Proper rules/guideline should be framed by Government for carrying forward various credits available under different law under present regime in the new GST regime. It should be clearly spelt out that credit available of a particular tax under present regime would be transferred as CGST or SGST under GST regime.

#### 18.4.2 Withdrawal of Refunds

Respective State GST Credit Account	Dr	With credit available as SGST
CGST Credit Account	Dr	With credit available as CGST
Central Tax Refund Claim Account	Cr	
Respective State Tax Refund Claim A/c.	Cr	

This entry would be required to be passed on the date of withdrawal of the claim

**Note:** The amount of refund under litigation in the present regime may not be allowed to be transferred/carried forward in the GST regime.

#### 18.4.3 Reversal of credits

GST Transition Credit Account (P&L)	Dr	
CENVAT Credit Account	Cr	
Respective State Input Tax Credit Account	Cr	
Education Cess Account	Cr	
SHE Cess Account	Cr	

The above entry is required to be passed with the amount of credit which has been carried forward under the present regime, but has become bad and therefore required to be set off through profit and loss account.

#### 18.4.4 Credit on closing stock including capital goods

Respective State GST Credit Account	Dr	With credit available as SGST
CGST Credit Account	Dr	With credit available as CGST

### Accounting Guide

Purchase Account	Cr	Excise Duty, ACD, SAD, CST and ST
Purchase Account	Cr	VAT and Entry Tax
Fixed Assets	Cr	Excise Duty, ACD, SAD, CST and ST
Fixed Assets	Cr	VAT and Entry Tax
Expense	Cr	Excise Duty, ACD, SAD, CST and ST
Expense	Cr	VAT and Entry Tax

This entry would be required to be passed on the date of implementation of GST

#### 18.4.5 Precautions

- Reconciliation of credits carried forward and disclosed in the returns filed under the current tax returns with the books of accounts.
- Credits taken in books or taxes shown as eligible for refund have not been collected or the incidence thereon has not been passed on to another.
- The benefit of depreciation and credit is not claimed together for all taxes paid on eligible capital goods.

## **Chapter-19**

# **Pending Litigations**

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### **19.1 Introduction**

In the ordinary course of business, there may be transactions which are disputed and pending at various appellate levels for matters connected with current law and the decision in respect of which may be provided or its finality thereon may arise in the GST regime.

### **19.2 Need**

Transitional provisions are required to protect the right of the Assessee for matters pending in litigation and the said right should not be taken away or its benefit reduced merely consequent to introduction of GST.

### **19.3 Potential Concerns**

The matters under litigation may ultimately be decided in favour of the Assessee or in favour of the Revenue.

### **19.4 Recommendations – State Levies**

#### **19.4.1 Pending litigation**

- Where on the date of commencement of the GST, a dispute under the existing Acts has been pending before an appropriate authority, the dispute should be disposed off within a time bound manner.
- In case the credit under present regime is in dispute and is not carried forwarded to GST regime, then after the decision in favour of assessee, credit should be allowed regardless of the time taken in finalisation of the dispute.
- If the final decision enhances the liability of assessee or confirms the disputed tax relating to output, the same would be regarded a cost.



## Chapter-20

# Assessments

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### 20.1 Introduction

The assessment of tax under the current regime may be pending on the date of implementation of GST.

### 20.2 Need

Transitional provisions are required to provide the manner in which adjustments carried out for taxes payable under pre-GST regime would be given when the order for adjustment is issued during the GST regime.

### 20.3 Potential Concerns

The possible situations arising on assessment are:

- (i) The liability is enhanced or the eligible credit is reduced e.g. Assessee claimed Input Tax Credit on certain goods whereas after assessment, credit is disallowed. Or an activity presumed to be exempt from current levy held to be taxable on assessment. .
- (ii) The liability is reduced or the eligible credit is enhanced e.g. Assessee forget to claim credit of input tax on certain purchase bill which he claimed during the course of assessment.

### 20.4 Recommendations

- Pursuant to assessment, if the liability is enhanced or the eligible credit is reduced, which is accepted by the Assessee, the differential tax would be regarded as a cost.
- Pursuant to assessment, if the liability is reduced or the eligible credit is enhanced, the Assessee should be given refund in a time bound manner or be provided with an Order allowing adjustment of tax with GST liability.
- The assessment should be completed in time bound manner.

## **Chapter-21**

### **Revised Return**

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#### **21.1 Introduction**

Current law provides for filing of revised return under certain statutes and/ or in certain States

#### **21.2 Need**

Transitional provisions are required for the manner of correction of information.

#### **21.3 Potential Concerns**

Transitional credit is dependent on the correctness of the information as regards credit lying in the last return under the current Statute, the particulars of transactions requiring submission of statutory forms, details of sales, purchases and particulars of eligible and ineligible credits, etc. Any revision of the said information may have an impact on the transitional claim.

#### **21.4 Recommendations**

##### **21.4.1 Revised return/statement**

If an assessee has to revise the return for any reason in respect of a transaction/ disclosure under the pre-GST regime, the same should be allowed to be revised as per the law in pre-GST regime. Such revision should not be part of return to be submitted under GST regime. Further, credit should be allowed to be taken in GST regime based on revised return/statement filed as per pre-GST regime.

## **Chapter-22**

# **Matters pertaining to Public Sector Undertakings ('PSU')**

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### **22.1 Introduction**

While the impact of the GST law is uniform to all forms of business enterprises, issues pertaining to Public Sector Undertakings are of particular interest given the financial impact. The impact of transition credit in other Chapters of this booklet is equally applicable to PSUs. However, matters relating to PSUs are discussed in this chapter.

PSUs undertake transactions that are remarkably dissimilar to businesses that need to be provided for in the transitional provisions:

- (i) Commodities with inverted tax structure –where the input taxes are higher than output taxes;
- (ii) Commodities with tax neutralization benefits –where all input taxes are reimbursed;
- (iii) Subsidized Commodities –where 'loss' is received from State apart from price paid by buyer;
- (iv) Commodities with 'end-user'Exemption–where taxable commodities are supplied to exempt buyers;
- (v) Cost of infrastructure established for providing public utility services or for facilitating procurement or distribution of food, grain, fertilizer, transportation and any other non-sovereign functions (which may be covered under the ambit of GST regime).

These types of transactions even when undertaken by private enterprise should also be permitted to avail the transitional relief (viz., PPP, BOOT, BOLT, BOT etc.,)

### **22.2 Potential Concerns**

Activities funded by budgetary allocation or grants for specific Government objectives may not be extended specific exemptions but may be brought within the general operation of the GST regime. As such, the incidence of

### **Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

GST would be incremental and hence claim for reimbursements from appropriate authority is to be provided.

### **22.3 Recommendations**

- Taxes paid on inputs and capital goods—Refer Chapter 2 (Closing Stock)
- Refund/reimbursement claims for tax or subsidy:
- Disbursement of entitlements to claims for net-tax or subsidy by way of refund / reimbursement from State be processed and paid within the time allowed in the pre GST in respect of claims:
  - (i) made pre GST but not approved;
  - (ii) accrued but yet to be made before implementation of GST;
  - (iii) paid in advance pending approval of claims; and
  - (iv) yet to accrue but awaiting fulfilment of some procedural conditions
- Tax paid on infrastructure—Refer Chapter 2- Transfer of Credits.

## Chapter 23

# Matters pertaining to Exclusive Zones

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### 23.1 Introduction

Operations carried out in high-seas of India have been brought within the taxing provisions by specifically extending the applicability of law by notifying those areas in the territorial waters, continental shelf and exclusive economic zone defined under the Act of 1976. Transition to GST requires a review of the approach in the light of such supervening legislative extension of the pre GST tax laws.

While the GST legislations apply to the whole of India, the authority to levy tax outside the land mass of the coastal States is within the exclusive domain of the Union. Goods and services involved in the activities carried out in the exclusive zone require to be considered for efficient transition into GST.

### 23.2 Potential Concerns

GST would be made applicable to exclusive zone. Accordingly, GST would be applicable given the nature of these operations. Concerns in this regard are:

- (i) Credit of taxes paid pre GST
- (ii) Exemptions allowed with actual-user condition for continued use of goods in these sites.

### 23.3 Recommendations

Taxes paid on inputs and capital goods—Refer Chapter 2- Transfer of Credits

### 23.4 Recommendations – Exemptions

Refer Chapter 7- Exempt Goods returned of the sale.

## Chapter 24

# Matters pertaining to Natural Resources

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### 24.1 Introduction

Natural resources range from minerals to air-waves. Impact of GST will not elude these industries. Transitional provisions must address the same with respect to specific aspects that are uniquely applicable in relation to natural resources.

Transitional provisions do not apply where the tax is not subsumed within the GST regime such as taxes on petroleum products, electricity etc.

Natural resource-based industries compulsorily contribute towards establishment of social infrastructure in the course of their business operations as well as commit funds for determining viability of sites by prospecting or exploration. These capital commitments are riddled with incidence of variety of taxes and duties currently. GST widens the tax base while streamlining cascading of taxes. This commitment of GST is best fulfilled by permitting liberal transitional provisions where post GST activities would be carried out with pre GST costs committed.

### 24.2 Potential Concerns

Large amount of capital commitments in the form of:

- (i) licensing fee (linked to estimate of future revenue);
- (ii) active / passive infrastructure used exclusively by assessee;
- (iii) evacuation (of the natural resource) infrastructure that is ceded to the State / State-utility at pithead or sub-station, etc.;
- (iv) compulsory establishment of allied social infrastructure like housing, reforestation, etc.;
- (v) sale of unbundled accessories providing end-use / access for the resources; and
- (vi) costs associated in prospecting and exploration on unviable sites.

## **24.3 Recommendations**

### **24.3.1 License fee and other similar payments**

License fee and other similar amounts paid to the Union being regarded as a sovereign function has not been subject to tax (for eg: a provision has been made by the union government to levy service tax on services provided by Government to Business entity from a date to be notified). Where any taxes are paid on entitlements for prospecting and exploration and lying unamortized (pro-rata on time basis or revenue basis) as on the transition date to be included in the transition declaration and credit allowed to this extent. This credit to be permitted for offset against IGST or CGST / SGST, as applicable.

### **24.3.2 Taxes paid on inputs and capital goods**

Refer Chapter 2“Transfer of Credits”

#### **24.3.2.1 Transitional credit of tax / duty paid on ineligible inputs / capital goods in current law**

Segregation of the business operations based on commodities whether covered by GST or not, must be permitted on ‘most relevant cost driver’ basis and notionally determined based on the application of GST on that segment to which GST is applicable. Transitional declaration must contain a segmentation wise statement of the business. Credit on such inputs and capital goods relatable to this segment is to be allowed as if it represented the whole of the business operations.

### **24.3.3 Recommendations**

Tax paid on infrastructure - Refer Chapter 2 – Transfer of Credits

### **24.3.4 Recommendations - Conditional exemption**

Refer - Chapter 7 : Exempt Goods returned of the sale.

## Chapter-25

# Training / Education of Stakeholders

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### 25.1 Introduction

The stakeholders to GST are: Tax paying dealers/ service providers, Tax administrators, Professionals who advise/ assist dealers, and the consumers of goods and services. All these stakeholders have their own perceptions and concerns and need to be made aware of the Goods and Services Tax. The dealers, tax administrators and the professionals need to be specifically trained and skilled in the law and technology whereas the consumers are to be made aware of the impending legislation. The concepts of GST focused on the transitional challenges discussed in this research paper needs to be shared. The clear and simple solutions for each of the challenges would go a long way in acceptance of the new GST law.

### 25.2 Need

The success of GST is linked to the point of awareness of the stakeholders as well as acceptability to the assesseees. The consumer needs to understand the benefits of this regime to himself and the country. The tax authorities, professionals and assesseees need to unlearn and relearn the law and practice of GST.

### 25.3 Potential Concerns

(i) The concerns of the various stakeholders which need to be addressed in the awareness and training are as follows:

(a) Concern of State

Inflow from the SGST part of the service revenue would accrue to the State. Further, the additional duties of customs at the time of import in the form of IGST would devolve to them along with specific percentages.

(b) Concern for Service Sector

Increase in the service provider's tax rate to the RNR could be offset by the input tax credit. Further, when supplying to the organized sector



## **Training / Education of Stakeholders**

which accounts for 80% of the GDP who would not resist as they would also avail the Input Tax Credit (ITC).

(c) **Concern of Manufacturing Industries**

The increase in tax liability for manufacturers/ dealers of hitherto exempted goods, declared goods or merit rated goods could be offset by ITC as in b) above.

(d) **The assurance by the Central/ State Government that the transaction cost of compliance would be lower for assesseees.**

(e) **The resistance to change, loss of control and discretion to some extent, increased responsibility and accountability in GST by the tax administration at State and Centre.**

(f) **The concern of the consumer that prices would rise in an uncontrolled manner under GST, leading to public outcry.**

## **25.4 Recommendations**

### **25.4.1 General Awareness across India**

- Create awareness of the benefits of GST to all stakeholders in transparent and open manner. The possible effect in short term on increase in prices of goods and more specifically for services, and over a period of time reduction in transparent manner.
- Bring out the difference between the current system and GST and explain how they can play a more responsible role.
- Disseminate knowledge of the applicable tax rates for goods and services.
- Make aware products for which exemptions are available in different States as per their needs.

### **25.4.2 Assesseees (Manufacturers, Traders, Service Providers etc)**

- The advantage of the new law to the dealers is to be publicized widely, especially in all regional languages and in all towns/ villages across India. The basic principles, issues are to be explained in simple manner. The common doubts which are a result of the past experience while introducing VAT needs to be allayed.

## **Discussion Paper on probable key Transitional Issues in Proposed GST Regime**

**The specific areas which need to be focused on education/ training of the assesseees are:**

- (a) Industry-wise analysis of impact on business, cost, prices and profitability;
- (b) Credit availability and optimisation of tax credit;
- (c) Importance of use of GSTN;
- (d) Operational modes and methods of the GST systems - Dos/ Don'ts;
- (e) Transitional Issues and their adherence/mitigation;
- (f) Compliance issues;
- (g) Correct usage of invoices;
- (h) Filing of returns – online demonstration;
- (i) Audit & Investigation provisions;
- (j) Interest and penal provisions;
- (k) Upgradation of software and hardware;
- (l) Review of supply chain, location of business and business models;
- (m) Review of contracts;
- (n) Review of accounting policies and procedures;
- (o) Review of pending litigation;

The specific awareness and training could be through Trade & Industry Associations, professional institutes, tax administrators, consumer forums, print and electronic media, newsletters, handouts, user manuals, FAQs, etc., in addition to the general awareness discussed later.

### **25.4.3 Central & State Tax Administrators:**

Have a special purpose vehicle [SPV] under the auspices of GST Council which would undertake the change management by imparting training and education. Trainers are to be selected across the country from NACENs, State Training Institutes, Professional bodies like ICAI, bar councils and others, trade bodies etc. SPV to have mission like – *eliminate all preventable ills by adopting global best practices in next 5 years.*

A GST training leader of India + additional Regional / State leaders are also to form part of this SPV.

### **Training / Education of Stakeholders**

Advisory board to this SPV to include eminent academicians and professionals. This group would be responsible among others for the following:

- (a) Finalise the structure and process to change management/ education/ training.
- (b) The use of technology in teaching and for reference purposes [ online FAQs/ presentation in modular format]
- (c) Performance management and evaluation of progress including extent of achieving the desired objectives.
- (d) Tax administrators to be motivated as regards the fact that they are part of biggest radical tax reform.
- (e) Identify through feedback and questionnaire the tax administrators who are amenable to the change and report at end of the exercise.
- (f) Start the training top-down; The Commissioners [State + Central] across the country- trained in nearby local centre.
- (g) In the general training modules a cross section of higher level officers to attend and to stress the importance of this training.

#### **25.4.4 Professionals, Advisors, Tax Preparers**

This set of persons would require to be trained keeping the assessee's requirements as stated above, answering the FAQs, maintaining records, availment of tax credits, awareness of procedural provisions, method of filing returns and importance of uploading verified data.

#### **25.4.5 Methods of creating awareness/ imparting training**

The choice of methodology for each of the stakeholders could be different and the one which is most effective may be considered.

- (a) Organised communication campaign through print and electronic media. Location specific and trade specific articles in newspapers/ magazines/ Radio, TV talk shows and road shows.
- (b) The Chambers of Trade & Industry as well as professional bodies could organize weekly and monthly workshops and seminars on the basic concepts.
- (c) Spreading awareness through various bodies like ICAI, Bar Councils,

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IIMs, University, educational institutes, who would include subject as part of course offered.

- (d) The trade and industry associations should invite queries and represent their concerns to the SPV.
- (e) GST impact seminars and material to small and medium enterprises, through the Apex body representing each industry sector.
- (f) The seminars/ talks could cover:
  - Introduction to the GST and Registration Options;
  - GST and Your Systems and Records; and
  - Frequently Asked Questions
- (g) In addition, the details of GST could be hosted in websites. Providing GST updates and FAQs about the tax system through online media.
- (h) Posting queries in online GST forums.

While the education and training of stakeholders would be a continuing and ongoing process, what we have considered here is what we think is appropriate. However, the stakeholders may consider any other mode or method in creating mass awareness campaigns. The education and training as perceived in this chapter would broadly address the organized sector, professionals and the tax administrators. However, such training and awareness needs to be reached to every consumer at the grass root level which is cumbersome and a time consuming exercise. The Government may devise appropriate method and provide adequate time to train every single stakeholder.

## Chapter-26

# Recommendation for Establishing of GST Monitoring Cell as part of Transition to GST

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The introduction of GST in India is expected to streamline several taxes governed by many statutes into a single levy both at the Central and State level. Further, it is also expected that the prices of the products/services will come down in the long-run even though there is a possibility that initially the prices of certain products and services may increase when GST is introduced.

The prices of goods/services are expected to reduce due to the following reasons:

- The current incidence of all Central and State Indirect taxes is more than 30% of the selling price of the goods/services. However, under the GST regime, the overall incidence of GST is expected to be in the range of 18 to 22% of the selling price of the goods / services;
- Cascading effect of tax on tax will not be there or will stand mitigated to a large extent under the GST regime;
- Credit will be allowed for inter-state supplies of goods and services;
- The service providers will be able to avail credit of GST paid on goods / services; likewise the traders will also avail credit on services which are presently not permissible under the respective service tax and State VAT laws.

The introduction of GST should result in tangible gains over a period of time in the form of reduction in prices to the end consumer across goods and services. Further, the prices of goods and services should by and large be uniform across the country. It should also result in Indian goods and services becoming internationally competitive thereby increasing India's share in world trade and India becoming an important link in the global supply-chain.

Based on past experience, there is no guarantee that the businesses would pass on the benefit of price reduction to the consumers of goods and

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services. It is expected / believed that market forces will ultimately ensure reduction in prices of goods / services. Considering that GST should ultimately benefit the average consumer in terms of overall tax rationalisation and reduction in prices, it is recommended that, as part of transition to GST, the Government constitute a GST Monitoring Cell or a Special Purpose Vehicle in order to specifically monitor the impact of GST on inflation and other economic indicators such as growth in GDP, GST yield productivity, etc.

For this purpose, it is imperative that movement of prices for the end consumer should be closely monitored across major industries on a periodic basis once the GST is introduced. Such monitoring should be done keeping in mind that over a period of time, there should be an overall reduction in the prices of goods and services as compared to the present scenario.

In case, of few sectors where there is no reduction in prices, the reasons for the same should be ascertained by the monitoring cell and suitable recommendations should be made to the Government or the GST Council to take remedial or corrective action in order to bring down the prices of goods or services. It may be possible that a particular section of industry or trade may represent that on account of the GST regime, the resultant net tax would result in a higher product or a service cost. Such issues need to be addressed by the GST Council must act within a specific timeframe of say 30 days.

While, the entire mechanism suggested in the above paras is good for the trade and industry which will ultimately benefit the consumer and result in buoyancy of tax, it is strongly believed that the GST Monitoring Cell/GST Council will not enter into the domain of pricing structure of the product or services. In any event, market forces will come into operation which will ultimately determine the price of product or service.

# Conclusion

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## **Specific to VAT/ CST**

The present VAT/CST laws do not provide for set off of tax paid on certain inputs and CST paid on Interstate purchases which are used in the course of business. The traders are not getting the credit for central excise or additional duties of customs. Under the proposed GST regime, these issues should be enabled as the rate of tax for goods would include that duty. The taxation of deemed sales are prevalent in many sectors such as leasing, construction, hospitality, clubs etc., who may be located in different States and have been following special provisions, which would undergo change.

All assesseees should get the benefit of carry forward of transitional credit, which are available in pre-GST regime. This should be automatically available. In no case it should be delayed or denied, because it would consume lot of working capital.

The State incentives of exemption from tax as well as the deferment are a cause of concern which should be resolved by providing optional schemes which should be integrated into GST.

## **Specific to Service Tax**

The present service tax provisions do not allow setoff of service tax, special additional duties or excise duty in many instances. They also do not allow credit on VAT/ CST. The differential tax for service providers in GST could be higher than the present rate. Going forward, the trade and industry strongly believes that the Government would reduce the tax rate, if there is tax buoyancy. As in the case of VAT/CST above, the credits should not be hampered in the initial stages.

The place of supply rules must be in line with the international norms. This will facilitate substantive trade from India with Foreign Countries and is expected to increase with Make In India campaign taking off.

## **Specific to Central Excise**

The present law allows for a threshold of Rs. 150 Lakhs. The reduction to Rs. 25 Lakhs would bring in a large number of manufacturers and job workers

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into GST. The existence of such industries maybe jeopardised unless they are educated well in advance of the impact.

The credit of goods in stock as on date of transition would be available. The capturing of the quantities of goods in the various units, with the job worker, in depots and consignment agents premises would be a challenge which could be mitigated with a simple declaration accompanied by the Chartered Accountants certificate.

### **Specific to Customs**

The present law on assessment on filing of bill of entry or in case of advance bill of entry the date of entry into the Territorial water maybe continued. The goods already imported and bonded may also be assessed only on filing of Bill of entry.

The goods proposed to be procured based on end use license/ certificate maybe allowed to be imported and certificate already obtained used. This would ease business, where re-applying may jeopardise business.

### **General**

The implementation of GST is in its early stages though the Government plans to pass the Constitution Amendment Bill in the monsoon Budget session itself. It is imperative that the Government provides a model GST legislation immediately thereafter, for the stakeholders to understand, debate and learn the nuances of the new legislation. A new legislation which proposes radical changes ought to be in the public domain at least one year before its implementation.

Investment by way of procuring as well as rental in respect of building where production / offices / warehousing facilities are located by a well distributed manufacturer/ Retailers are stupendous. The magnitude of impact of the GST regime on industry and trade is substantial.

It will be a huge challenge for trade and industry to comply with the GST laws as there would be various locations situated in multiple States. The GST law needs to look into broader aspects of business which should be built into the law to the extent possible.

The transition provision should lead to simplifications of the existing challenges, and should ensure smooth transition into the new GST laws. The objective of seamless credit under GST envisages that ALL credits of



## **Training / Education of Stakeholders**

equipment/ capital goods, inputs & traded goods in stock are to be available without restriction.

The overlapping transactions of manufacture, sale, service ought to be clear and need robust method to determine the time of supply. This would ensure that transactions liable for tax under the present law and those which need to be covered under the GST are clearly demarcated. The Point of Taxation Rules providing for 2 out of 3 criterion dealt with in this research paper may be adopted.

The refunds under indirect taxes except those relating to direct export of goods has been a lost cause under VAT, central excise and service tax. Similarly CST reimbursements for SEZ as well as exporters are also difficult to come by. The option to withdraw them and carry forward under GST law may be provided which could provide much needed relief to those who are able to utilise the same under GST.

Time is to be provided to industry/ trade to make necessary correction in business structuring, planning and policies. The current indirect tax laws have been litigated mainly due to the fact that they are not understood and complied by some sectors.

It is optimistic to implement GST from April 2016 after getting the bill passed in at least 50% of the States. Further, to have the information technology infrastructure in place, impart large scale education and training are among other challenges.

## **Final Word**

In this research research paper, care has been taken to examine all major issues as well a number of other issues which could arise under each of the present indirect tax laws. It may be noted that there could be certain State specific provisions which might not have been dealt with adequately in this research paper. Such issues could be brought to the notice of the Indirect Taxes Committee who could be reached at [itdc@icai.in](mailto:itdc@icai.in). Attempt has been made by the research group to look at every conceivable situation in the process of transition to the new legislation, assumptions made have been appropriately dealt with in each of the Chapters. The research group has also attempted to draft the transition provisions and the relevant forms. Lastly, this research paper may be viewed as a book, which would open up the deliberations, and activate the thought process which would aid in conceiving the new legislation.

## Appendix-A

# Suggested Transitional Provisions for Transfer of Credit

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### Transfer of credit

1. A registered assessee under pre-GST regime transforming into a registered assessee in GST regime shall be:

- (1) Allowed to carry forward the credit, taken or deferred, of inputs, whether or not lying in stock, semi-finished or finished goods and capital goods lying in stock or in premises of a job-worker or an agent or any person by whatever name called entitled to hold stock on behalf of the principle assessee under pre-GST regime; or at a place other than the registered premise of the principle assessee under pre-GST regime or in transit; and remaining unutilized on the date of GST implementation; to GST regime and be allowed to be utilized in accordance with credit rules in GST.
- (2) Allowed to carry forward the credit of eligible inputs services remaining unutilized on the date of GST implementation; to GST regime and be allowed to be utilized in accordance with credit rules in GST.

Provided that the credit shall be allowed subject to maintenance of appropriate records of inventory of goods and evidence of tax or duty paid on goods and services, which may be duly certified by a chartered accountant.

Provided further that the credit shall be allowed only to the extent of utilization of goods and services in taxable supply under GST.

Provided further that the registered assessee who opts for exemption under GST, otherwise by way of Exports or specified operations taxed at zero rate under GST with no restrictions on credit, or whose taxable supply in GST is taxed at concessional rate with restrictions on credit; shall be required to reverse the amount of transitional credit carried forward under (1) and (2) above

#### **Appendix-A: Suggested Transitional Provisions for Transfer of Credit**

Provided further if the inputs, semi-finished or finished goods are subsequently removed as such in GST regime, the registered assessee in GST regime shall be required to reverse the credit.

2. An unregistered person and a registered assessee with ineligible credit under pre-GST regime transforming into a registered assessee in GST regime shall be:
  - (1) Allowed to carry forward the credit of inputs, whether or not lying in stock, semi-finished or finished goods and capital goods lying in stock or in premises of a job-worker or an agent or any person by whatever name called entitled to hold stock on behalf of the principle under pre-GST regime; or at a place other than the premise of the principle under pre-GST regime or in transit; and subsumed into cost in pre-GST regime; to GST regime and be allowed to be utilized in accordance with credit rules in GST.
  - (2) Not allowed to carry forward the credit of inputs services remaining unutilized on the date of GST implementation and subsumed into cost in pre-GST regime; to GST regime and be allowed to be utilized in accordance with credit rules in GST except:
    - (i) Where invoice or payment or both for input services is made prior to GST implementation whereas services are rendered after GST implementation

Provided that the credit shall be allowed subject to maintenance of appropriate records of inventory of goods and evidence of tax or duty paid on goods and services, which may be duly certified by an accountant.

Provided further that the unregistered person and registered assessee has reversed the cost relating to credit in goods and services on the penultimate date of GST implementation. The accounting entries to this effect are made in books within 90 days of GST implementation and duly certified by a chartered accountant.

Provided further that the credit shall be allowed only to the extent of utilization of goods and services in taxable supply under GST.

Provided further that the registered assessee who opts for exemption under GST, otherwise by way of Exports or specified operations taxed at zero rate under GST with no restrictions on credit, or whose taxable

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supply in GST is taxed at concessional rate with restrictions on credit; shall not be allowed to carry forward under (1) and (2) above.

Provided further if the inputs, semi-finished or finished goods are subsequently removed as such in GST regime, the registered assessee in GST regime shall be required to reverse the credit.

### **Distribution of transferred credit**

3. Credit transferred under Rule 1 and 2 shall be allowed to be distributed by registered assessee under GST regime, in case of:
  - (1) Credit carrying goods lying with job-worker for more than the period specified in pre-GST regime; or
  - (2) Credit carrying goods are sold after processing by job-worker from its premises; or
  - (3) Credit carrying goods are sold by registered branch of registered assessee, outside the State of its registration; or
  - (4) Credit carrying goods are sold by registered agent of registered assessee; or
  - (5) Services relating to branch are received in pre-GST regime by registered assessee but are accounted for in GST regime

## **Appendix-B**

# **Suggested Transitional Provisions for Point of Taxation**

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### **Point of tax**

1. A transaction where property in goods has been transferred or the service has been completed in pre-GST regime, the registered assessee along with unregistered person shall raise an invoice on or before the penultimate date of GST implementation. The appropriate tax or duty as per the pre-GST regime would be charged.
2. In case of continuing contracts, the registered assessee along with unregistered assessee shall have an option to raise invoice for the portion of work completed upto the date of GST implementation. The appropriate tax or duty as per the pre-GST regime would be charged.

Provided that in case the invoice is not raised within the time prescribed in 1 above, the point of taxation shall be date of invoice.

Provided further that where there is revision in price leading to flow of additional consideration in GST regime, the appropriate tax or duty as per the GST regime would be charged.

Provided further that where the assessable value is not ascertainable, the registered assessee can raise provisional invoice.

Provided further that nothing contained in this provision shall be applicable to a transaction which is exempt from levy or outside the preview of levy under pre-GST regime.

3. Where in a transaction, property in goods has been transferred or the service has been completed in GST regime, the transaction would be taxable under GST regime. The appropriate tax or duty as per the GST regime would be charged.
4. A transaction where property in goods has been transferred or the service has been completed in pre-GST regime, the registered assessee liable to pay tax as buyer or under reverse charge shall pay tax on or before the penultimate date of GST implementation. The appropriate tax or duty as per the pre-GST regime would be charged.

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Provided that in case the invoice is not raised within the time prescribed in 1 above, the point of taxation shall be date of payment of tax.

### **Adjustment of tax paid in excess in pre-GST regime**

1. Where property in goods has been transferred with option to return within prescribed time frame given in pre-GST regime and are subsequently returned in GST regime; or
2. Where possession of goods has been transferred to job-worker to return within prescribed time frame given in pre-GST regime and are subsequently returned in GST regime; or
3. Where goods are sold on approval basis in pre-GST regime and goods are subsequently rejected in GST regime; or
4. Where service provided in pre-GST regime is subsequently declared deficient in GST regime; or
5. Where tax is paid in excess for any other reason

The registered assessee in pre-GST regime will be allowed to adjust the excess tax or duty paid in pre-GST regime on the strength of the credit note raised to the buyer of goods or receiver of service in GST regime.