

IAMAI PREBUDGET SUBMISSION 2021

Indirect Taxes

The Internet and Mobile Association of India, [IAMAI] on behalf of its members would like to make the following submission for consideration of the Ministry of Finance for the Union Budget.

The submission is made in the context of the ongoing COVID crisis and associated economic meltdown. The digital services have proven to be critical during these times of crisis and are expected to play greater roles in the 'new normal' conditions. It also comes in the context when due to general economic slowdown certain digital sector services have been adversely affected. The fast-emerging tech start-up sector in India, which was seen to form the backbone for a vibrant Digital India, has taken a massive hit due to lack of funding and businesses. It is imperative that the Indian digital sector is given due consideration given the future context.

The submission, consisting of asks from the digital services sector along with mobile manufacturers, cover the entire digital ecosystem and is expected to provide impetus to the vision of Digital India.

INDIRECT TAXES (GST)

LEVEL PLAYING FIELD FOR DIGITAL SERVICES UNDER GST

Issue at hand: The GST has several provisions that adversely affect digital businesses because the present GST mechanism does not provide level playing field to digital service providers.

- TCS: TCS on e-commerce is an onerous burden, with no such imposition on offline counterparts. Mandatory registration under GST (over-riding the minimum income threshold requirement) if sellers engage in e-commerce transactions is a big deterrent for SMSEs to onboard digital platforms. If small sellers are disincentivized to on-board e-commerce platforms, small Indian e-commerce services/ start-ups will become uncompetitive.
- GST Rates: Digital services are charged flat 18% for services like Edutech or Healthtech that provide online content or access to services (eg: online study courses under Edutech or online consultations under Healthtech) while offline services are often tax free or taxed at lower rates. This not only adversely affects businesses, but also

restricts digital services from reaching their true potential for empowering the marginalized.

IAMAI Suggestion:

- TCS for e-commerce be removed. Digital aggregators like online marketplaces should be treated as intermediaries and be absolved of onerous liabilities of filing taxes on behalf of actual service providers availing the services of the digital platforms.
- Services like e-health and edutech should be taxed at par with offline counterparts.

GST PAID ON NON-RECOVERED PAYMENT OR BAD DEBTS

Issue at hand: Section 15 provides that GST shall be levied on the value of supply which is paid or payable in relation to that supply. There is no specific exclusion under Section 15 from the value of supply in respect to non-recovery of payments or bad debts.

Companies have to pay GST based on point of taxation and the tax payout precedes the receipt of consideration for the supply. Thus, companies have to pay GST when they raise the invoice or generate the bill, which often is at least a month or two before the customer pays the money. Often this leads to a situation when the supplier ends up paying the tax for which consideration is either not received or received after significant delay, thereby causing great financial and working capital issues for several service sectors.

The absence of a provision for allowing adjustment of GST paid on supplies for which recoveries are not made (bad debts) is a major challenge for businesses. It leads to a loss on account of consideration for supply not being received, coupled with an outflow of GST from their own pocket. While this has been a concern for businesses historically, in the current economically depressed times, the government should consider relief on this aspect.

IAMAI Suggestion

- GST paid on the bad debts be re-credited back.
- Consider charging GST only on realisation of payment and not issuance of invoice, or allow temporal period for filing GST on raised invoice in case payments are not realised.

GST RATE ON HEALTH INSURANCE

Issue at hand: Health Insurance is a basic & essential need for everyone at times of such crisis. Presently we have 5% and 12% rates for most of the basic and essential goods/services. So in line with that principal, rate for health insurance should be brought down so that there is reduction in medical cover cost for public at large. It will be a major relief to lower and medium income sections of the society. This reduction will also help in increasing health insurance business for the insurers and thereby increased revenue contribution to the exchequer.

IAMAI Suggestion

- GST on health insurance be reduced to 5%.

REMOVAL OF GST FOR OUTPATIENT PRODUCT/SERVICES

Issue at hand: Health care services provided by Clinical establishment/ Medical practitioner are free but the Identical service i.e. Outpatient product/services, if provided by others is taxable at Standard Rate.

Outpatient services are medical procedures or tests that can be done in a medical centre without an overnight stay. This is like normal medical cost only spend by customer. Connecting customer with medical practitioner or clinical establishment doesn't change the nature of service, hence should not be taxed or even if the tax is to be charged it should be only on value addition by aggregator/mediator.

IAMA Suggestion

- Taxing of all outpatient product/services at Nil Rate irrespective of whether it is provided by any facilitator other than Clinical Establishment/Medical practitioner

CLARITY ON GST ON CO-INSURANCE

Issue at hand: This issue has been under question since the Service tax regime and continues to plague the industry even under GST. In Co-insurance arrangement, it is industry practice to collect the entire premium with applicable GST from the insured by the Leader. Follower companies only receive their respective premium without GST from leader as entire GST is deposited by leader. From revenue point there is no loss to the Government that receives due GST from the Leader. However, the industry faces major challenges from different state level GST authorities while conducting GST Audits.

IAMA Suggestion

- Co-insurance services be given due recognition under GST and a circular be issued to tax authorities so as to prevent the industry from hassles.

SECTION 17: GST CREDIT TO BE MADE AVAILABLE TO COMPANIES ON HEALTH INSURANCE FOR EMPLOYEES

Issue at hand: Currently, GST credit on health insurance to employees is barred under Section 17 of the CGST Act as they are not mandatory under any statute.

Considering the current pandemic scenario, health insurance is the need of the hour by any employer for the employees. Furthermore, it is essential for any employer irrespective of size and volume to have health insurance protection for its employees and is part of overall employee cost. Such input credit will also encourage the employers to have wider coverage for their employees and it will be beneficial for public at large.

IAMA Suggestion

- Section 17 be amended and input credit be allowed for all employee health insurance premium and related costs to all companies.

INPUT TAX CREDIT FOR CLAIMS PAID TO HOSPITALS

Issue at hand: Claims are major costs of any general insurance companies. As per current GST provisions, input tax credit mechanism has very stringent provision like raising proper tax invoices, reporting it on GSTN portal etc.

In Health Insurance any person who has taken policies may pay the medical expenditure by own and later can raise reimbursement to take the reimbursement. Further there are various hospitals who raises consolidated invoice for all taxable and non-taxable items. Hence Input Tax Credit should be allowed basis invoice only where Tax is bifurcated with base amount and tax amount.

IAMAI Suggestion:

- A provision be added to section 16 of CGST Act to allow to take credit without matching it with GST Portal and on the basis of GST charged in Hospital bills.

MULTIPLE REGISTRATION UNDER GST

Issue at hand: Digital businesses like emerging start-ups are small enterprises servicing the entire country from single location taking advantage of digital tools. It is not feasible for such businesses to operate offices or take registration in all States and Union Territories to do business in India. Multiple registration and filing compliance create undue burden on such emerging businesses and give advantage to larger enterprises with bigger organisations over emerging businesses.

IAMAI Suggestion

- Digital service providers, especially smaller start-ups be allowed single registration to service all states.
- Digital service providers be allowed to file taxes under IGST for services provided across States.

GST ON CROSS CHARGE

Issue at hand: In Companies with multiple state registrations, cross charges between two GSTN's are unavoidable. GST implications on such transactions lead to cumbersome exercise of valuation and compliances of such transactions. Such provisions invite unwarranted litigations without any contribution to Government Exchequer.

IAMAI Suggestion

- The requirement of GST on cross charge between the offices of same company having different GSTINs must be dispensed with.

INTEREST APPLICABILITY FOR REVERSAL DUE TO NON-PAYMENT TO VENDORS

Issue at hand: The intention of the Second proviso to Section 16(2) of the CGST Act, 2017, input tax credit pertaining to the invoices where the payment by the recipient has not been received within 180 days will be liable to be reversed is to ensure that credit is being availed correctly. However, the levy of interest would be unfair in cases where the payment are delayed due to genuine reasons such as accounting delay, negotiations etc.

The recommendations made by the GST council in the 28th GST council held on 21 July 2018, included that the liability to pay interest is done away and only requirement is to reverse the liability. However, the said provision was not notified in the CGST Act amendments.

IAMAI Suggestion:

- IAMAI requests a clarification is issued to specify that interest will not be applicable in the case where input tax credit is reversed in compliance with Second proviso to Section 16(2) of the Central GST Act, 2017.

CLARITY ON REQUIREMENT OF E-INVOICING

Issue at hand: The Government announced Vide notification 14/2020 – Central Tax dated 21 March 2020, that E- Invoicing will be applicable from 1st October 2020. Under the provision, sectors like Banking and Insurance have been specifically exempted from such requirements.

However, there have been ambiguity on requirement of E-invoicing for other types of transactions by such agencies besides services on banking or insurance, for instance, sale of scrap.

IAMAI Suggestion:

- IAMAI requests for a clarification on the entire system and exemption to the specified sectors including all other transactions which may be entered by them in the course of business.

INTEREST ON NET GST LIABILITY

Issue at hand: While the CGST Amendment Act, 2019 has proposed (effective date to be notified) to change interest liability from gross GST payable to net GST payable in cash, this amendment appears to be prospective in nature.

IAMAI Suggestion:

- IAMAI requests the amendments be notified with retrospective effect.

DOUBLE TAXATION ON FREIGHT COMPONENT OF THE ASSESSABLE VALUE OF THE GOODS IMPORTED

Issue at hand: The transportation of services by vessel from a place outside India up to the customs station of clearance in India are liable to GST on reverse charge basis in the hands of the importer. Further Rule 10(2) of Customs Valuation (Determination of value of imported goods) Rules, 2007 provides for inclusion of the cost of transport of the imported goods to the place of importation.

The above mentioned provisions lead to double taxation of freight components.

IAMAI Suggestion:

- In order to avoid dual taxation under Customs as well as GST, the said transportation services should be included within the exemption list by issuing respective notifications under the IGST Act, 2017, CGST Act, 2017 and the state GST Acts.

APPLICABILITY OF INTEREST IN CASE OF REVERSAL DUE TO NON-PAYMENT TO VENDORS

Issue at Hand: The intention of the Second proviso to Section 16(2) of the CGST Act, 2017, input tax credit pertaining to the invoices where the payment by the recipient has not been received within 180 days will be liable to be reversed is to ensure that credit is being availed correctly. However, the levy of interest would be unfair in cases where the payment are delayed due to genuine reasons such as accounting delay, negotiations etc.

Even under the erstwhile regime CENVAT credit rules a similar provision for reversal. However, there was no requirement of interest. Further, the recommendations made by the GST council in the 28th GST council held on 21 July 2018, included that the liability to pay interest is done away and only requirement is to reverse the liability. However, the said provision was not notified in the CGST Act amendments for reasons unknown.

IAMAI Suggestion:

- It is recommended that a clarification be issued to specify that interest will not be applicable in the case where input tax credit is reversed in compliance with Second proviso to Section 16(2) of the Central GST Act, 2017. This can be done by way of issuance of a removal of difficulty order under Section 172 of the Central GST Act, 2017.

REFUND OF ACCUMULATED CREDITS

Issue at hand: The Central Goods and Services Tax Act, 2017 provides for refund of GST in case of inverted duty structure i.e., the act provides for refund in a scenario where the credit has been accumulated on account of rate of tax on inputs being higher than rate of tax on outputs. However, the law does not cover a scenario where the rate of tax on input services is higher than the output rate of goods. In this regard, we wish to highlight that mobiles phones were covered at the rate of 12% till 31st March 2020 whereas the input services are taxed at 18%.

Given this, mobile industry which has thin margins is facing issue of accumulated GST credits which also adds to the cost of capital and it is requested that the law is amended suitably for allowing refund of input tax credit.

IAMAI Submission:

- It is requested that the law is amended suitably to give refund for inverted duty refund for services.
- Consider the release of atleast 50% of the accumulated credit as on 31/3/2020 as cash refund.
- For the balance accumulated credit, Provide an opportunity to the importer to pay the accumulated IGST credit for payment of IGST against the imports so that Industry will be in a better position to address the working capital problems.
- Allow businesses to pay RCM using accumulated credits.

RCM PAYMENT TO BE ALLOWED BY WAY OF CREDIT

Issue at hand: Companies with high input tax credit need some relief from payment of RCM by way of cash since this is leading to further accumulation of credit and working capital issue. Given such businesses already have due tax credits accumulated in the books, it would help to adjust RCM payments via credits to help balance books while at the same time address critical cash flow problems.

IAMAI Suggestion:

- Allow RCM payment with GST credits.

ALIGNMENT OF HSN CODES AND APPROPRIATE GST RATES

Issue at hand: Presently, mobile manufacturers are facing numerous challenges over alignment of HSN codes and appropriate customs/GST rates applicable for them. This leads to difference in rates filed and claimed by authorities, anomalies in ITC and final tax settlement issues.

IAMAI Suggestion:

- Request for clarification whether power bank GST rate was 18% or 28% for the period July 2018 to Dec 2018.
- The government issues certain guidelines, so that the classification and the HSN codes are aligned with the global practices to avoid classification disputes at the time of assessments of imports.

CLARITY ON GST LIABILITY ON RE-INSURANCE COMMISSION

Issue at hand: The erstwhile Service tax law specifically clarified vide Circular No.120(a)/2/2010 – ST dated 14 May 2010 that Service tax was not applicable on the reinsurance commission as insurance company does not provide any service to reinsurance company.

Insurance companies already discharge GST liability on 100% reinsurance premium amount and reinsurance commission is part of that transaction value. So from revenue point of view also, there should not be further liability if on 100% value including reinsurance commission, GST liability is paid.

IAMAI Suggestion:

- Clarification should be provided in GST to uphold validity of Service Tax circular issued on the exemption of taxability on reinsurance commission. Reinsurance commission is not a separate value transaction and only represent reimbursement of expenses.

ABOLITION OF RESTRICTION ON AVAILMENT OF ITC UNDER RULE 36(4)

Issue at hand: As per the new sub-rule (4) inserted in Rule 36 of the CGST Rules, 2017, a taxpayer filing GSTR-3B can claim provisional ITC only to the extent of 10% of the eligible credit available in GSTR-2A.

Considering the pandemic, there has been a relaxation in the said Rule for few months. However, this Rule further restricts the credit availing capacity of Companies who have been complying with all the other requirements for availing Credit. This has created a lot of problems for the tax payers, on the score that it effects a bonafide purchaser who has made a legitimate purchase, being denied the benefit of input tax credit despite having paid the consideration in full.

IAMAI Suggestion:

- The present rule maybe abolished or kept in abeyance indefinitely given the ongoing crisis.

GST ON STEWARDSHIP SERVICE INCLUDING SALARY COST

Issue at Hand: In order to prepare location P&L for Sec 10AA claim for SEZ, IT companies having multi state/division operation, apportion HO employee salary cost (e.g. CEO, CFO Etc.) to respective units/ states/ division is difficult. Moreover, HO is not providing any services to respective units.

In a recent advance ruling application (filed by *M/s Columbia Asia Hospitals Private Limited* before the Karnataka Advance Ruling Authority which has been confirmed by the Appellate authority) it was held that the activities undertaken by the employees of corporate office to other units will qualify as "supply" in terms of Entry 2 of Schedule I of CGST Act.

Salary cost should not be considered as expenses taxable under GST. This only unnecessarily adds to cash outflow of companies leading to working capital blockage.

IAMAI Suggestion:

- IAMAI request a clarification be issued that there would not be GST on stewardship by HO to branches and GST must not be charged on salary cost by deeming them as supplies to other units.

TAXATION ON DIGITAL GAMING

Issue at hand: Digital Gaming is one of the fastest emerging services. Few Online Fantasy Sports Gaming (OFSG) operators are already in the 'Large Taxpayer' category and if the Government provides conducive policies for the upcoming new age industry, the industry has the potential to generate a cumulative revenue of Rs. 10000 Crores in the next 5 years to the exchequer.

Some State Tax Authorities are questioning whether GST should be applicable on the entire 'Contest Entry Amount', which includes users' contribution to 'Prize Pool'. In this regard, OFSG industry has also sought clarification from GST Council on the applicability of tax.

The industry pays 18% GST on platform fees collected (consideration amount against the supply of services by the Online Fantasy Sports operators which is the subject matter of levy of tax under the GST Law).

It is important to note here that Worldwide the levy of VAT or GST is confined to the net earnings (Gross Gaming Revenue: GGR) of the platform owners. GST on Gross Gaming Revenue (“GGR”) tax encourages operators with a degree of price setting ability to pursue a low margin, high turnover strategy, as this lowers the amount of tax paid as a proportion of the entire amount paid by the users. In contrast, a tax on contest entry-amount encourages operators to pursue a high margin, low turnover strategy, as operators with pricing power are unlikely to cut prices (reduce takeout percentage) because this increases tax as a proportion of the price paid by customers, and lowers the operator margin.

IAMAI Suggestion

- Treating the players’ contribution towards the winners’ kitty should not qualify as an actionable claim and, taxing the entire amount is unwarranted, unjust and beyond the provisions of Rule 31A(3).
- Tax on GGR would closely align the interests of government and operators to put India at par with prevalent practices in numerous other countries like United Kingdom, Australia, Belgium, Italy, Estonia, Greece, USA, Sweden, Spain, etc

REDUCE THE RATE OF GST ON REMITTANCE /BUSINESS CORRESPONDENTS SERVICES

Issue at hand: Domestic remittance service is provided to the bottom of pyramid customers and is part of the financial inclusion drive of the Govt of India. Off late the cash deposit charges for the cash collected by Business Correspondents agents has also increased – almost doubling in some banks. The competition is quite intense, and stakeholders are struggling to make reasonable income from the service. The banks can only get 50% input credit and hence effective GST that is paid to the Govt of India is around 27%, broken as: 9% by the Bank (assuming it gets 50% input credit) and 18% by the corporate Business Correspondents which gets its commission from the bank.

IAMAI Suggestion

- Since this is a service to the nation’s poor society and essentially a financial inclusion service, the GST rates should be reduced from the current 18% to a lower rate of 12% with a continuation of 50% input credit facility for the banks.