

IAMAI Pre Budget Submission 2021 for Electronics System Design and Manufacturing (ESDM) Sector in India

The Internet and Mobile Association of India, on behalf of the ESDM sector in India, would like to express gratitude to the office of MEITY for initiating the consultation on pre-budget submission on behalf of the industry.

IAMAI would like to highlight that the ESDM sector is one of the most critical sectors for the country given the direct relevance of this industry for a vibrant digital sector in India. The importance of this sector is well recognised by the Government and the Association endorses the impetus given to promote domestic electronics manufacturing in the country.

At the same time, it too must be understood that the COVID related economic slowdown has adversely affected the industry, many of whom are presently operating at sub-optimal levels. It is imperative that the drive to push domestic manufacturing needs to be complimented with ground realities and the limitations presently under which this sector is operating.

This submission is based on the collective understanding of our members and the suggestions are expected to help this sector evolve strongly and realize its true potential.

Direct Taxes

Taxability of reimbursements of salary and other costs in respect of personnel seconded to India

Issue at hand: The Indian tax authorities often contend that reimbursement of salary cost disbursed to the personnel on behalf of the Indian entity to the overseas entity is in the nature of 'Fee for technical services' as per the provisions of section 9(1)(vii) of the Act and hence subject to withholding in India u/s 195. Courts in India have also taken divergent views on taxability of such reimbursements leading to more ambiguity. The taxability of such salary costs poses an unnecessary tax burden on the foreign companies in India despite the fact that no income actually arises in hands of such foreign companies since the entire amount is passed on by the company to the seconded personnel. Further, tax is duly deducted at source in India on the salary income of the seconded personnel.

IAMAI Suggestion:

- IAMAI requests that clarity may be provided on the tax treatment on account of secondment of expatriates. Further, it is recommended that the provisions of Section 9(1)(vii) of the Act be suitably modified to provide that in a case where: -

- the complete costs of the deputed person are effectively borne by the Indian Company and the Indian company merely reimburses the salary cost to the foreign affiliate, and
 - tax is duly paid in India on salary income of the seconded personnel the amount paid by the Indian company to the foreign affiliate towards such salary costs should not be treated as Fee for Technical Service.
- Accordingly, payment of such salary and other costs should also not attract Withholding tax provisions.

Disallowance of expenditure in case of non deduction of TDS under Section 40(a)

Issue at hand: The Finance Act, 2015 had brought an amendment in section 40(a)(ia) of the Act where in case TDS is not deducted on expenditure, such expenditure is disallowed to an extent of 30% while computing taxable income for the year. This amendment was a beneficial amendment as it reduced the disallowance from 100% to 30%. The provision is however applicable only to a situation where the payment is made to a resident assessee and has not been extended in respect of payment made to a non-resident. This has led to a situation where disallowance of expenditure is forwarded to resident assessee upto 30% in case of non-deduction of TDS but 100% in case of non-resident assessee.

IAMAI Suggestion:

- In order to align sub section (i) and (ia) of Section 40(a), it is suggested that Section 40(a)(i) of the Act should be amended to provide 30% disallowance, instead of 100% disallowance for amount paid/payable to non-residents.

Provide exemption from maintenance of Transfer Pricing documentation and compliance under section 92E of Income-tax Act ('the IT Act') to a foreign company who has only earned royalty income / fees for technical services from India from group entity

Issue at hand: Vide Finance Act 2020, section 139 the IT Act was amended to provide relief to non-residents from filing of income tax return, where their total income consisted only of income by way of royalty and/or fees for technical services, and appropriate taxes had been withheld by the Indian Payer. However, a parallel amendment has not been made to section 92D or 92E of the IT Act, so as to exempt the foreign companies from carrying out with the compliance mandated under aforesaid sections.

As the details mandated under section 92D/ 92E are already available through documents furnished by the Indian Group entity of the foreign company, no additional information/ benefit is obtained by mandating the foreign company to carry out with the compliance requirements

IAMAI Suggestion: Given above, it is requested that necessary amendments, as made to section 139, be made to section 92D/ 92E of the IT Act

TDS on Year End Provisions Entries in Books of Account

Issue at hand: Year-end provisions are made by taxpayers to follow accrual system of accounting. Very often provision for expenses at the year-end are made based on best estimates available with the taxpayer even if the supporting invoice is received subsequently.

This often leads to excess deduction and deposit of tax, disputes with the vendor and unnecessary burden casted on the payer in carrying out extensive reconciliations.

IAMAI Suggestion

- Relief from deduction of tax at source should be given to the payee on payments that are accrued but are not due and represents only a provision made for reporting purpose that are reversed on the first day of the subsequent year.
- Relief should also be given from deduction of tax at source on payments for which the payees are not identifiable.

Time Limitation for closure of Administrative Responses (Remand Report/ Rectification Application)

Issue at hand: Delays at ITBA or CPC results in indefinite delays in responses to rectification applications filed by businesses. The functionality of passing manual order is done away due to which the jurisdictional AO is not able to grant the pending tax refunds along with Interest. This leads to major challenges for businesses and leads to piling up on disputed tax claims that affect both the exchequer as well as the cash flows of businesses.

IAMAI Suggestion

- Define the time limit for the authorities for closure of applications filed by the assesses and stipulate time period within which the tax authorities have to release the refund amount.

Higher Deduction Limits under Section 80D

Issue at hand: Due to increase in the health care services and the ongoing COVID pandemic, customers today want to take higher medical covers from the insurers. At the same time, given the present levels of healthcare needs, there has been an increase in average premium being paid for health-related insurance policies. In such a scenario, it is imperative that the tax deduction allowed under Section 80D be expanded to provide relief to the citizens of India and to promote better healthcare for the country.

IAMAI Suggestion

- Deduction of health insurance premium up to INR 1,00,000/- per Individual for self and dependent family including senior citizen parents.

Indirect taxes

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.

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.

IAMAI Suggestion

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

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.

IAMA 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.

IAMA 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.

IAMA Suggestion:

- 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.

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 requests 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.

Clarification on non-applicability of receipt voucher on advance received against supply of goods

Issue at Hand: GST liability generally arise on the date of invoice or date of receipt of payment whichever is earlier. In situation where the GST liability is linked to advance payment, in order to track and report the GST payment, document called 'receipt voucher' is prescribed in section 31 (3) (d) of the Central Goods and Service Tax Act, 2017.

Vide notification no. 66/2017 – Central Tax dated 15th November, 2017, specific exemption from the payment of GST on advance receipt has been granted to the supplier of goods.

However, similar relaxation is not provided for issuing the 'receipt voucher'. In the absence of such amendment, supplier of goods who receive advance payment for goods are currently required to issue receipt voucher as per section 31(3)(d) of the CGST Act, 2017 even though GST payment is not linked to the same.

IAMAI Suggestion:

- Request for suitable amendment to section 31 (3) (d) of CGST Act, 20217 to clarify the non-applicability of receipt voucher on advance received against supply of goods.

Relaxation for taxpayers already complying with digital payments from the proposed B2C Quick Response (QR) code

Issue at Hand: As per notification 14/2020-Central Tax dated 21 March 2020, invoice issued by certain classes of registered person to an unregistered person, is required to have a Dynamic Quick Response (QR) code.

IAMAI Suggestion:

- Considering the objective of QR code is to facilitate the digital payment, request is to exclude the tax payer, who are already transacting by digital means (net banking, credit card, debit card, UPI, wallet etc) for substantial amount of transaction (say more than 50%), from the requirement of additionally providing a QR code on the invoices.

Scope of free of cost import of services as per Schedule I of the CGST Act, 2017 should restrict to transaction where recipient is not eligible for full Input tax credit

Issue at Hand: As per entry no 4 of the Schedule I of the CGST Act, 2017, import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business is deemed as supply of services even if the transaction is carried out without any consideration.

This entry has created a lot of confusion in the industry especially with regard to the scope and also with regard to the assignment of value for such services. In almost all the cases, the recipient is eligible to claim an input credit for such GST paid on free of cost services, thereby making the GST payment a revenue neutral transaction for the exchequer.

IAMAI Suggestion:

- Request to limit the applicability of entry number 4 of Schedule I of the CGST Act, 2017, to only those cases where the recipient is ineligible to claim input credit for such GST paid on reverse charge basis.

Input tax credit restriction on goods disposed as “gift” or “free sample” should not be extended to genuine business arrangement

Issue at Hand: Business expenditures beyond the contractual obligation to the customer are commonplace today. Such expenditures are legitimate, effective and essential to the furtherment of business.

IAMAI Suggestion:

- IAMAI requests to issue suitable clarification to keep these transactions outside the scope of “gift” or “free sample” as per section 17 (5) (h) of the CGST Act, 2017. IAMAI firmly believes in the effectiveness of such expenditures as tools to further business, and its importance as a tool to maximise entrepreneurial efficiency.

Concept of payment “under protest” to be brought back to GST regime

Issue at Hand: Considering the fact that GST law is evolving and keeping in mind the divergent advance rulings, concept like payment “under protest” is an extremely important necessity for the taxpayer. While GST evolves into an optimal version of itself, it is essential to provide tax payers with an avenue to express grievance or dissent without becoming non-compliant.

IAMAI Suggestion:

- Given the crucial nature of tax payments, 'under protest' payments allow for stakeholders to continue compliance while having their grievances redressed. Not only this allow the taxpayer to better exercise their rights, but also expedite the evolution of the GST by allowing for more compliant discourse.
- Therefore, we request you to make necessary amendment to the GST law to bring the concept of payment "under protest.

Duty Deferment: Payment Timeline

Issue at Hand: The present provision is to pay deferred duty on the 17th of any month for all clearances which are made from the 1st to the 15th of the said month and on the 3rd for the duties deferred from the 15th till the 30th / 31st of any month. If this is not done, the repercussion is in term of interest and also does have an impact on the status (like AEO status). The constraint is that 2 days is not sufficient enough time for trade to reconcile the accurate duty deferment availed and pay the deferred payment.

IAMAI Suggestion:

- IAMAI requests that there should be a timeline of at least 7 days from the 15th for industry to make the deferred payment. This would enable industry to validate all the duties to be paid accurately and also would have sufficient breather to make the payment well within the stipulated timelines.

Penalty on re-export

Issue at Hand: Due to oversight or errors at origin, goods imported are required to be re-exported, presently penalty are levied on the premise of mis-declaration. In these kinds of genuine errors, industry does request customs to permit re-export.

IAMAI Suggestion:

- In such cases where there is a voluntary request for re-export, no penalties should be imposed.

Re-Import Timeline Extension in line with life of Exported Product:

Issue at Hand: As per Customs Notification 158/95- dated 14.11.1995 as amended by 34/10, 60/12, re-importation is permitted only for a period of 3 years from the date of exports. Warranties are essential to the potential international customers decision to purchase an Indian good, acting as an accountability mechanism for foreign entities. Furthermore, extended warranties have become an industry standard which companies need to align themselves to stay competitive. Goods are also required to be re-exported within a period of 1 Year (extended period). The issue on the ground is that not all products can be repaired as replacement in some cases are far more feasible. The mandate

to re-export leaves the manufacturers with no option but to pay duties and penalties and bear this loss.

IAMAI Suggestion:

- Extension of re-importation period to 8-10 years, creating the policy infrastructure for Indian entities to offer extended warranties and compete globally.
- IAMAI also suggests a relaxation on the re-export mandates as well as in cases of replacement, allowing Indian companies to remain competitive abroad by mitigating tax burden.
- Manufacturers should also be allowed to dispose of products in accordance with the Hazardous waste management rules in cases of replacement. This will allow the company to retrieve value from the machine while ensuring environmentally sustainable disposal.

Import of Second-hand Capital Goods (Used Machinery) under EPCG:

Issue at Hand: Capital goods can be imported duty free under this scheme, if the capital goods are deployed for manufacturing products meant to be exported out of India. Used capital goods/machinery were disallowed under the EPCG scheme in the year 2016-2017 due to concerns raised by the Ministry of Environment, Forests and Climate Change (MoEFFC). However, in June 2018, MoEFFC allowed the import of used machinery subject to clearance by a Chartered Engineer ensuring 5 years of residual life. This change however, has not been extended to the EPCG, effectively outlawing the import of used capital goods.

IAMAI Suggestion:

- Amend the EPCG to accommodate capital goods which satisfy the criteria set forth by the MoEFFC. This step is critical to shaping India as a manufacturing hub of the future, as firms would like to mitigate their costs if migrating to India. This will also allow existing Indian entities to produce more competitively.

Value Addition Criteria for Advance Licence:

Issue at Hand: Most mobile manufacturers operate out of DTAs(Domestic Tariff Area), and for them to export finished products and components from India to various geographies it is imperative that export promotion schemes be customised to the market realities of the sector. As per Para 4.09 of the Foreign Trade Policy the minimum value addition to be achieved under Advance License is 15%. It is critical to note that under various other export schemes (viz., SEZ, 100% EOU) the criteria applied is Net Foreign Exchange positive which leads to only positive value addition, while advance licensing stipulates 15% as value addition. There are several companies intending to export from India however, they mainly operate in DTAs. Advance Licensing is an important instrument of exports for Electronics manufacturers operating in the Domestic Tariff Area to use the same production lines for domestic sales as well as exports

IAMAI Suggestion:

- To ease doing business and to encourage exports, the Value addition norm of 15% need to be replaced with Net Foreign Exchange positive in the case of advance licenses keeping it in line with other export promotion schemes. Such sector specific applications would also allow for a net foreign exchange positive scenario by enabling Indian firms to maximise competitiveness.

Repair and Re-Export: A new manufacturing opportunity emerging

Issue at Hand: As the global warranty services market grows rapidly, India loses the opportunity to become a leader in fixing and re-exporting used goods. While the Foreign trade policy prohibits the importation of used goods not manufactured in India, there is some room to reimport Indian made goods as mentioned above. Though this is presently allowed under the SEZ scheme, it is not allowed for any unit located within a Domestic Tariff Area.

IAMAI Suggestion:

- IAMAI suggests relaxing the rules around the import of used products for the purposes of repairing and reselling. This is a key step to capitalizing on this market opportunity. In tandem with the amendments to the rules around re-import and re-export, this change would create the policy infrastructure required for India to become an industry leader.
- The SEZ policy needs to be extended to units situated in the domestic tariff area as well and a document-based control be introduced to ensure that these products are not cleared for domestic consumption.