BUDGET PROPOSALS FOR 2018-19 - INDIRECT TAX

Sr. No.	Issue	Proposal	Justification
1	<u>Section 42 of Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 69 of Central Goods and Services Tax Rules, 2017 (CGST Rules) – Matching of invoices for claiming input tax credit</u> With respect to input tax credit claimed by the recipient, following details would be matched electronically on the GSTN portal: a) GSTIN of supplier b) GSTIN of recipient c) invoice number d) date of invoice e) tax amount • The aforementioned multiple check points put additional burden on the recipient in case of mismatch of input tax credit. • Secondly, in case some fields mismatch, even if recipient is eligible to take input tax credit on such invoices he would not be able to claim such credit. Buyer would be able to claim credit only if mismatch are rectified by the supplier.	It is proposed that only following two checks should be adequate: a) GSTIN of supplier and recipient; and b) Input tax credit claimed by recipient is not exceeding output tax shown by supplier Further, if the service recipient is able to prove that he has duly paid the amount of credit to the supplier, no addition should be made to the GST liability of the recipient and the recipient should be entitled to avail such credit.	The multiple check points impose undue hardship on the recipient, especially in cases where the recipient is otherwise eligible for input tax credit.
2	<u>Section 42 of CGST Act read with Rule 71 of CGST Rules – Shorter period to correct mismatch of Input Tax Credit</u> • In case of mismatch of input tax credit claimed by the registered recipient, discrepancy would be communicated to the recipient and supplier in the month in which matching was carried out (i.e. month in which Form GSTR-3 is filed). Subsequently, if the discrepancy is not rectified, an amount to the extent of discrepancy will be added to the output tax liability of the recipient in the month succeeding the month in which discrepancy is communicated. • Thereby, the time limit granted for rectifying discrepancies is merely 2 months. This leads to substantial increase in the reconciliation efforts of rejection / subsequent allowance of credit. Hence the period for rectification should not be restricted to 2 months and credit should be disallowed only if rectification is not carried within 1 year.	It is proposed that Government should extend the time limit for rectification of mismatches up to minimum 1 year, especially during the initial few years of GST rollout and later on may review and shorten the period, once the compliance is regularized.	GST being a new tax structure, implementation currently is challenging due to new filing formats, various deadlines for payment and return filing, conditional tax viz., registered and unregistered etc. In such cases, the industry requires time to settle with the new procedures and policies.

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3	<u>Section 42(8) of CGST Act – Interest payable even where credit not utilized</u> In addition to the above, in case of non-rectification of mismatch, the recipient is liable to pay interest on input tax credit claimed from the date of availing the credit till the corresponding additions are made to output tax liability. Hence, interest is liable to be paid even where the recipient has not utilized the credit and merely availed the credit.	• It is proposed that no interest should be payable in case where the credit is only availed and not utilised. Instead, such credit should be reversed from the total credit availed by the recipient	In cases where the recipient has not utilised the credit, there would be no loss of revenue to the Government. In such case, charging interest would unnecessarily lead to loss to the recipient, especially in case where the mismatch is not on his account.
4	<u>Section 9(4) of CGST Act – reverse charge with respect to unregistered person</u> • Under GST, in case registered person procure goods or services from unregistered supplier, the recipient is liable to pay tax under reverse charge basis, issue self-invoice, payment voucher and disclose the same in return. • As per Notification 8/2017 – Central Tax (Rate) dated 28 June 2017, the Government has notified that the registered person would not be liable to pay tax under reverse charge mechanism in case it procure goods/ services from unregistered person and where the aggregate value of such supplies of goods or services from all unregistered person does not exceed INR 5,000 per day. • As per Notification 38/2017 – Central Tax (Rate) dated 13 October 2017, recipients are exempted from reverse charge liability on procurements from unregistered person (irrespective of amount) up to 31 March 2018.	• It is proposed that exemption under notification 38/2017 should not be restricted up to 31st March 2018 and should be continued beyond 31st March 2018. • Alternatively, it is proposed that the limit of INR 5,000 per day should be increased to at least INR 15,000 per day.	• Discharging liability under reverse charge on procurements from unregistered person poses huge administrative challenges and hardships on the recipient. A company incurs various expenses in a day, either directly or through its employees. In such case, it is extremely difficult to track procurement at each registration in different states on a daily basis and determine reverse charge liability. • Issuance of invoice and payment voucher and disclosure in the GST returns puts unnecessary additional administrative burden on the tax payers. Moreover, as the recipient is eligible to claim input tax credit of GST paid under reverse charge, the entire exercise becomes revenue neutral to the extent of eligible credits. • Hence, the limit of Rs. 5,000 per day is very low, even if reverse charge is proposed to be continued.

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5	Section 16(4) and Section 34 of CGST Act – Time limit for issuing credit notes A registered taxable person cannot adjust credit/debit notes on expiry of (a) September of the succeeding financial year in which the supply is made; or (b) the date of filing the annual return, whichever is earlier. There could be various reasons for issuing debit/credit notes and such reasons may vary from industry to industry. For example, in the Mutual Fund sector, the agents/distributors are paid commission for mobilising investments from investors. If an investor withdraws investment before certain period (which varies from 6 months to 3 years depending on the scheme), the proportionate commission is '***clawed-back***' (recovered) from the concerned distributor. Hence, in such a case, it is possible that the agent/distributor may be required to issue credit notes, even after the prescribed time limit.	It is proposed that the time restriction on adjustment of credit/debit notes may please be deleted.	As long as GST is discharged in excess of the actual GST liability on taxable value of supply, adjustment thereof should be allowed against future liabilities. In view thereof, it would not be viable to cap the period for issuing credit/debit notes.
6	Section 16(2) – possession of invoice as condition for claiming credit • One of the conditions for availing tax credit is that the recipient should be in possession of a tax invoice issued by supplier or such other prescribed document. Currently, in respect of commission paid to Mutual Fund agents and distributors, the periodic commission statements generated by Registrar & Transfer Agents (RTA) of the Mutual Funds are used for recording/ accounting of these transactions. • Further, under GST regime, the supplier is required to issue credit notes for any deficiency of services supplied and the details of such credit notes along with original invoice details are required to be submitted in the periodic returns for availing credit of the deficient service amount.	It is proposed that Mutual Funds be exempted from the requirement of receipt of invoice from each MF agent/ distributor for claiming credit to the extent of credit on commission paid. Instead, the periodic commission statements generated by the Mutual Fund or their RTAs be treated/ accepted as the invoice for the purposes of the GST rules, and the Mutual Fund be allowed to avail credits based on the commission statements generated by the MF-RTAs. It is also proposed that the mandatory requirement of original invoice reference with respect to credit notes should be relaxed for the first year of GST rollout. This will give time to the Mutual Fund industry to evaluate how the commission model could be re-structured to overcome this challenge.	• Mutual Funds have a large no. of small scale individual agents/ distributors, spread across India. If under GST, credit is made available on pre-condition of receipt of invoice, it will impose enormous compliance burden for the MF industry, as, each MF will have to ensure compliance by thousands of distributors, spread all over India for claiming the input tax credit. • With respect to commission clawed-back, the MF distributors will have to issue credit notes for each of such adjustments. This will again pose a huge challenge and hardship to the AMCs in terms of reconciling the amounts, ensuring that the distributors have filed proper returns and for availment of correct credit.

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<tr><th>Sr. No.</th><th>Issue</th><th>Proposal</th><th>Justification</th></tr>
<tr><td>7</td><td><u>Section 16(2) of CGST Act - condition of payment to vendor for claiming credit</u>
A vendor has to be paid the consideration within 180 days, in the absence of which the credit availed would have to be reversed.
In numerous situations, either the credit period could be more than 180 days or due to any dispute, the consideration is not paid. However, the provision mandates payment to avail credit.</td><td>It is proposed that the condition that the consideration should also be paid within 180 days to be eligible to retain the credit should be deleted.</td><td>Since the vendor would have already paid the GST to the Government on accrual basis, the credit should also be allowed to the recipient.</td></tr>
<tr><td>8</td><td><u>Section 7 of CGST Act read with Schedule I and Rule 32(7) of CGST Rules - transactions between branches and HO of Asset Management Company (AMC) of a Mutual Fund should not be treated as “supply”.</u>
GST is payable on supply of goods/services between related parties and distinct person even if without consideration. As per Section 25(4), registration of a person in one State shall be considered as distinct from registration of the same person in another state. Thereby, the HO of a company and its branch in different State would be considered as distinct person. This implies that supplies between HO and branch would be liable to GST <u>even if made without consideration</u>.</td><td>It is proposed that –
a. A branch office should not be treated as a separate person for payment of GST, unless taxable supplies are being made by such branch.
b. The credits accumulated at the branches should be available to the HO of the AMC for set-off against AMC’s output GST liability.
c. Rule 32(7) of CGST Rules empowers the Central Government to notify certain class of service providers, on the recommendation of the GST Council, to make the value of taxable service between distinct persons as NIL.
d. Considering the hardship and subjectivity on valuation that could arise for activities between the HO and branches, it is humbly requested that the activities between the HO and the branches of the AMCs to be covered within this rule and at the same time the credit of the taxes paid is made available to the HO.</td><td>It may be noted that in the Mutual Fund industry, the branches undertake sales & marketing of MF schemes, maintain relationship with investors and distributors, which are only auxiliary to the <u>core</u> investment management services provided by an AMC. The branches do not undertake any supply of investment management service which is the core activity of a Mutual Fund AMC and hence they may not be required to be registered under the GST law.
Determining the transaction value of such activity/ supplies would be difficult. This aspect would be further complicated with the fact of how to divide a common expense between all branches.
The HO and branches inter-act and coordinate with each other as one person/ single entity and in numerous cases goods and services are exchanged freely as a single entity /one person.</td></tr>
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9	Section 17 of CGST Act read with Rule 42 of CGST Rules - reversal of credit on account of interest income • Input tax credit is required to be reversed every month to the extent it is attributable to non- taxable or exempt income. In case of MF sector, most of the income of are non-taxable as they are generated from the underlying Security which is outside the purview of GST. Due to this, we are unable to claim the full input tax credit against the GST output liability. This is because taxable component amount is meager compared to non-taxable portion. • The above results in cascading effect of tax on tax. We would like to state that basic purpose of introducing GST law was to remove the cascading effect and ensure seamless flow of Input tax credits which will benefit investors of MF Schemes. In the current methodology of calculation, the expenses debited to the Scheme is increased by virtue of cascading effect of Taxation.	Similar to explanation I (e) of Rule 6(3D) of the erstwhile CENVAT Credit Rules, 2004, it is proposed that interest income should be excluded from the calculation of exempt income for the purpose of reversal of input tax credit.	The basic goal of implementing GST was to remove cascading effect of taxation on final consumer such that he avails maximum benefit by lower taxation. However, Mutual Fund AMCs are not eligible to claim full set off of input credit resulting in higher expense ratio to the MF Scheme and cascading of taxes.
10	Eligibility of credit with respect to spill-over of expenses from MF to AMC • As per SEBI regulations, the management fees as well as other expenses of a MF cannot exceed a specified percentage of the net value of the assets of the MF plus service tax on the management fee. Therefore, in case the expenses of the MF exceed the specified percentage, such incremental expenses are borne by the AMC. Thereby, the MF recovers incremental expenses from AMC. Such recovery is customarily termed as “spill-over”. • In this regard, since the vendors would have issued invoices to the MF, the AMC would not get input tax credit with respect to expenses borne by it.	It is suggested that suitable mechanism be introduced for transfer of credit from MF to AMC to the extent of spill over.	Since the expenses would be borne by AMC in its course of business, AMC should be allowed to claim input tax credit thereof. Eligible credit should not be denied on account of procedural inefficiencies.

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11	Availability of input tax credit against Exit Load levied by Mutual Funds Clarification is required on whether input tax credit with respect to various expenses incurred by Mutual Fund, i.e. brokerage paid on trading of securities, investment management fees paid to AMC, reimbursement of expenses to AMC and other expenses, can be claimed by the Mutual Fund. For instance, Mutual Funds typically levy Exit load to discourage and deter unit holders from prematurely withdrawing from mutual funds. As per SEBI Mutual Funds Regulations, Exit load recovered, if any, has to be mandatorily credited to the concerned MF scheme. Thus, Exit Load income is not a business income and is in the nature of penalty. However, currently Mutual Funds collect GST on Exit Load from investors.	It is proposed that Input tax credit with respect to various expenses incurred by Mutual Fund should be allowed to be utilized against GST liability on exit load.	Exit load is levied to discourage and deter unit holders from prematurely withdrawing from mutual funds. As per SEBI Mutual Funds Regulations, Exit load recovered, if any, is credited to the concerned mutual fund scheme mandatorily. Thus, Exit Load recovery is not a business income and is in the nature of a deterrent levy. Thus, input tax credit should be allowed for paying GST on exit load.