CFI PRE –BUDGET MEMORANDUM 2017-2018

CONTENTS

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I. INDIRECT TAX:

(A) SERVICE TAX - VIEWS AND SUGGESTIONS FOR CLARIFICATION:

Sr. No.	Issue	Suggestion
1	**To notify Rule 5 as Place of Provision of Service for Projects in J & K, irrespective of location of Service Provider & Service Receiver :**	
	Rule 5 of POP Rules, 2012: Location of Immovable Property – In case of services that is directly in relation to immovable property, the place of provision is where the immovable property (land or building) is located, (irrespective of where the provider or receiver is located (Page 61 Ed. Guide). **Rule 8 of POP Rules, 2012:** Place of provision of a service, where the location of the provider of the service as well as that of recipient of service is in the Taxable territory, shall be the location of the recipient of Service. **Rule 14 of POP Rules, 2012,** states that notwithstanding anything stated in any rule, where the provision of a service is prima facie determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. Therefore for a project located in Jammu & Kashmir (which is excluded from the Taxable territory) , when a service is provided for such project where both the Service provider and service receiver are located in taxable territory, there is an ambiguity that by virtue of Rule 8 read with Rule 14, such service could be taxable.	As Service Tax is consumption based, in terms of Rule 14, there could be interpretation by field formation that Rule 8 will prevail over Rule 5 and hence all input services would attract service tax which is not the spirit of the law when services are provided to Immovable property located in J & K which is excluded from taxable territory. **By virtue of Rule 13,** we request to notify Rule 5 as Place of Provision of Service for Projects in J&K irrespective of location of provider and receiver of services. **Para 5.5 of Education Guide** clearly states that "in the case of a service that is directly in relation to immovable property, the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located". In exercise of the powers conferred under rule 13 of the said rules, we request to notify Rule 5 as place of provision of service for projects located in Jammu & Kashmir, irrespective of the location of the service proper and service receiver. In any case as there is already levy of JKGST of 12.6% on most of the Services by the Government of Jammu & Kashmir, the Government should clearly spell out that Service Tax will not be applicable for the services provided to a project in the State of Jammu & Kashmir.

Sr. No.	Issue	Suggestion
2.	**Accumulated credit due to partial Reverse Charge Mechanism:**	
	As per Sr. No.1(v) of Not. No. 30/2012-St dated 20.6.2012, an unincorporated JV, being an AOP, for specified services, would be liable to pay only 50 % of its service tax liability, while the remaining 50 % has to be paid by the service recipient. However, JV could avail 100% Cenvat Credit on input services including services provided by sub-contracts. Hence, there will be huge accumulation of cenvat credit in the hands of the JV. Since JVs are formed for a specific project, utilizing the credit for any other purpose is also ruled out.	In the construction sector, two incorporated entities form AOP/JV and one of the entities provide service to the AOP/JV. Hence it is imperative that in case of AOPs/ JVs, a total exemption from Service Tax on reverse charge mechanism in place ab initio, to do away with the problem of accumulated Cenvat Credit and subsequent refund of the same through procedural hassles and blockage of cash in an already-starving construction industry. In a nut-shell, reverse charge should not be applicable if service is provided by a Company to the AOP/JV. Necessary provision may please be introduced for exclusion of AOP (JV) between Companies) as well for the purpose of non-applicability of Reverse Charge Mechanism so that Service Tax in full is deposited by AOP/JV as a service provider under normal provisions. Considering the severe impact on blockage of funds such blocked funds in the form of accumulated Credit should attract interest @15% till the AOP/JV's are excluded from reverse charge mechanism. Moreover, since every service provider is aware to discharge service tax, reverse charge mechanism which leads to lot of administrative hurdles, may be restricted only to import of services and GTA. .
3	**Service Tax exemption to services provided within SEZ:**	
	Exemption from levy of tax for services consumed wholly within the SEZ is subject to obtaining list of specified services and a declaration in Form A-1.	It has been observed that issuing of Form A-1 takes substantial time due to several procedural issues. The problem is of two folds: one time lag due to delay in issuance of Form A-1 and other is sub-contractor's exemption. Clarification be issued that Form A-1 whenever issued should be considered as retrospective i.e. considered as issued since inception of the project. Further Form A-1

Sr. No.	Issue	Suggestion
		issued in favour of main contractor should be deemed to cover sub-contractors also. Similarly, provisions of reverse charge should not be applicable for the Developer/Main contractor of the SEZ provided the relevant services are included in the list of specified services.
4	**Inclusion of allocation/reimbursement of cost/expenditure within group companies in the Negative List:**	
	Allocation of cost to group companies at actual or reimbursement of expenditure incurred by parent company by the subsidiaries are accounting transactions to meet the business requirement. There is no activity amounting to service provided by the parent company to subsidiaries and *vice versa.* **For example**: For proper administration and cost effectiveness, Parent Company may engage Security Service meant for it and its group companies. On payment of bill to Service provider with tax, it may have to allocate the cost proportionately to group companies as well. Similar practice is imperative in case of Travelling, Manpower, Power, etc. It is clear from the above, there is no activity or element of service passing from one member to another within the group companies for any consideration except allocation of cost to group companies at actual or reimbursement of expenditure incurred by parent company by the subsidiaries.	Section 67 has been rightly amended the definition of "consideration" in the Finance Act, 2015 to include reimbursable expenditure or cost incurred by the Service Provider and charged in the course of providing taxable service as it fits in the definition of "Service" provided in Section 65B (44) of Finance Act, 1994. However, in the case of allocation of cost to group companies at actual or reimbursement of expenditure incurred by parent company by the subsidiaries, such cost or expenses have already suffered tax/duty in the hands of Service Provider/Vendor wherever applicable and allocation cost or reimbursement of expenditure is only accounting entry without any activity and consideration. The members of CFI are of the considered view that unless the same is clarified to the Trade or included in the Negative List, there could be possibility of unwarranted litigations demanding service tax on such transactions.
5	**Sr. No. 29 (sub clause h) exempts Sub-contractors providing services by way of Works contract to another contractor providing Works Contract Services for exempt services.**	
	Sr. No. 29 (sub clause h) exempts Sub-contractors providing services by way of Works contract to another contractor providing Works Contract Services for	There is ambiguity whether the Mega Exemption is available when pure services (only labour portion of a Works Contract) is provided by the sub-contractor to the main

Sr. No.	Issue	Suggestion
	exempt services.	contractor. The clarification the Mega Exemption is available is very much required in relation to pure services provided in respect of services mentioned at Sr. No.112, 13, & 14 of the Notification No..25/2012-S.T. dated 20.6.2012.

B. <u>Central Excise:</u>

Sr. No.	Issue	Suggestion
1	**Exemption to Ready Mix Concrete (Sr. No.144 of Not. No.12/2012-C.E. dated 17.03.2012) manufactured at site for use in construction work**	
	In the Finance Act, 2016, exemption from full excise duty is provided to Ready Mix Concrete (RMC) (falling under CET 3824 50 10) manufactured at the site of construction for use in construction work effective from 1.3.2016. Further clarity is provided to the definition of "site" so that even RMC manufactured at premises made available for manufacture by way of a specific mention in the contract is covered. Hitherto only Concrete Mix (MC) was exempted from Excise duty if manufactured at site.	Amendment is welcome by trade and industry. This would provide clarity and relief to Infrastructure Sector. However, being effective from 1st March, 2016 there could be some dispute in respect of those who had manufactured RMC at site on the *bona fide* belief that both RMC and CM are one and the same. To avoid possible dispute, it is requested to issue suitable Notification under **Section 11C** of the Central Excise Act, 1944 for not levying Excise duty for RMC manufactured at site prior to 01.03.2016.
2	**Amendment to Sr. No. 233 of Notification No. 12/2012-C.E. dated 17.03.2012 for Water Treatment Plant:**	
	Water Supply project consists of the following stages: 1. Water Pumping Station at the source of water. 2. Water treatment plant.	Excise duty exemption presently available only for **water treatment plant** may be extended to all stages/units of water supply project since all stages are part of a complete water supply project.

	3. Water storage facility 4. Pipeline for delivery of water	It may be noted that "Water supply projects" are exempted from payment of Service Tax.
3	**Duty Exemption to goods supplied for setting up of Sewerage Projects:**	
	Sewerage Projects being of national importance are on Government's high priority due to Public Health & Pollution in the country. There is no specific notification providing exemption to goods used for setting up of Sewerage Projects.	It is suggested that being a Sewerage Project, all excisable goods to be supplied for setting up of a Sewerage project including manufacturing of Pre-Cast RCC Pipes, Pre – Cast RCC Manhole Slab & other materials to be supplied for civil construction need to be exempted from payment of excise duty by way of a notification to so that the project becomes viable and cost effective.
4.	**Withdrawal of CVD exemption and SAD on specified construction equipment:**	
	S. No. 368 under list 16 of customs notification 12/12, specified equipment for construction of roads were given CVD exemption and now it has been withdrawn..	Several road projects are in the execution stage and currently there are two lists i.e 16 and 16 A wherein specified equipment are allowed for import for construction of roads as per S. No. 368 and 368 A of customs Notification. Prior to Interim budget all these equipment were allowed under nil rate now after interim budget and in current budget, for all these equipment CVD is leviable. Once CVD is leviable Spl duty of customs also would be charged. Considering the large numbers of road projects in the country, it is suggested to restore the CVD exemption.

C. CUSTOMS DUTY:

Sr. No.	Issue	Justification
1.	**Clarification required on Custom Circular No. 49/2011 dated 4th November, 2011 issued under F. No. 528/14/2008-Cus (TU):**	
	Condition No. 4 of Circular No. 49/2011 dated 4.11.2011 issued by the CBE&C clarifies that construction equipments imported under CTH 98.01 under Project Import may be permitted to be transferred to other registered project under CTH	As of date Construction Industry is not clear on the circular. They are in a dilemma whether to consider duty exemption accrued to be passed on to the project authority or not. If Industry gets clear picture on this, all the benefit accrued may be passed on to the project authority and cost of

Sr. No.	Issue	Justification
	98.01 after completion of its intended use, on recommendations of sponsoring authority. However, in the case of Toyo Engg. India Ltd. vs. CC, Mumbai referred in the circular, the Apex Court has made it clear that "mere possibility of its being used subsequently for other project would not debar the respondent from availing facility of project imports" which means the equipment can be transferred to any project not necessarily registered under Project Import. In condition No.5 of the said circular it is also clarified that Plant Site verification Certificate is required to be submitted for finalization of project as per circular Nol.14/2006-Cus. F. No.528/9/w006-Cus. (TU) shall also incorporate the details of construction equipments imported and used for the project to ensure proper utilization of goods imported. This certificate is required in the case of embedded equipments which will remain at project site permanently.	the projects initiated by the Government may drastically come down. We suggest that since the contractor is allowed to import and use the auxiliary equipment for a particular project, the Contractor may be allowed to withdraw the equipment from the site on production of project completion certificate from the Project Authority and the contractor should be free to utilize such equipment in any other projects. If above suggestion is not acceptable, the contractor may be allowed to pay customs duty on the depreciated value of the goods to be calculated @5% on straight line method for each completed quarter starting from the date of importation of the goods till the date of withdrawal from the project. Construction equipment will have to be withdrawn from site after completion of its use and hence suggest that instead of Plant Site Verification Certificate, contractor may be allowed to provide a certificate from the project authority.
2	**BCD increased from Nil to 10% for plans, design, drawings:**	
	Drawings , design , plans falls under CTH 4906	In EPC business, this increase is going to be very steep . Most of the jobs are either through consortium or technical collaboration, request for restoration of the exemption.
3.	**Substantial increase basic customs duty of machinery/equipment falling under CTH.84 &85:**	

Sr. No.	Issue	Justification
	Rate of Basic customs duty have been increased from 7.5% to 10% on specified tariff lines falling in Chapter 84 and 85. Mechanical and Electrical Machineries, Components thereof are covered under these chapters respectively	Substation requirements, gas Insulated Switchgear equipment and various other items are being imported frequently. Prior to this budget total customs duty applicable was 26.428%. From this budget for these equipment, total custom duty leviable would be 29.441. Considering the need for power distribution, 2.5% in basic rate is a steep increase. Similarly there are various cranes, and piling equipment which are being imported and increase of 2.5% in basic is very high. Considering the magnitude need of large infrastructure projects, it is suggested to at least restore the previous Basic rate of 7.5%.

II. SUGGESTIONS / RECOMMENDATIONS ON MODEL GST LAW :

CFI has recently submitted suggestions for modification / clarification on the Model GST Law. Once again the points are enclosed vide **Annexure** for review and issuance of suitable clarification on the various issues.

CONSTRUCTION FEDERATION OF INDIA

Annexure

CFI REPRESENTATION / SUGGESTIONS

DRAFT MODEL GST LAW

Sr. No	Issue	Suggestion
1	**Transitional provisions – key issues requiring clarification**	
	It is mentioned that a registered Taxable person shall be allowed to take credit of the amount of Cenvat credit carried forward in a return, provided that such credit was admissible as Cenvat credit under the earlier law and is also admissible as input tax credit on the appointed day under the GST Act. Clarification is required regarding treatment of the following transitional issues post GST : a) Status of Tax credit on purchases under current indirect tax law but recorded by the buyer after appointed day of GST and also where goods are despatched pre-GST but received Post-GST. b) Treatment of Service Tax paid on advances before appointed date, but corresponding services delayed or not rendered after the appointed date. c) Further as per Section 143, amount of Cenvat credit / VAT credit carried forward in a return is allowable as Input credit in the Electronic Credit Ledger. It is provided that credit shall not be allowable unless Cenvat credit / VAT credit was admissible under earlier law and is also admissible under GST.	As a registered taxable person should not be denied the benefit of Cenvat credit correctly availed under the earlier Tax system, suitable mechanism may be put in place for refund of such credits already availed. CFI also requests that necessary clarifications may be issued on all these transitional issues. Further, the Industry is of the view that since the existing laws (prior to GST) allows for availing Cenvat credit, a period of 1 year from the date of invoice, GST cannot bar the assessee's legitimate right to avail Cenvat credit for a period of 1 year from the date of invoice for transactions pertaining to pre-GST era.
2	**Clarity required on Branch Transfer of goods / services**	
	Presently Stock Transfer of goods is outside the ambit (except retention of Input Tax credit under State VAT Acts). Also presently there is no concept of Taxing Stock transfer of services. But there is paradigm shift of taxable event which is "supply". Consequently GST would	In the construction industry, it is a common practice of transferring construction materials from one project site to another as many a time all materials are not available at all sites. Clarity is required on the following – 1) The methodology for determining the Transactional Value in case of Transfer of

Sr. No	Issue	Suggestion
	be levied on all inter-state stock transfer (supply). Further, Rule 3 of the GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016 provides that in case of goods transferred from one place of business to another place of the same business, the value of such supply shall be the "Transactional Value".	goods by an entity to its branch. 2) It is suggested that in the case of interstate branch transfer of Equipments / Capital Goods GST should not be applicable and such transaction should be revenue neutral as the same is not for any consideration. Therefore, Industry suggests that there should be simplicity and concept of revenue neutrality should be maintained in case of interstate transfer of .Contractor's equipments.
3	**Definition of capital goods to be more broad based:**	
	As per Section 2(20) capital goods means : A the following goods, namely : (i) all goods falling within Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like…….. The above definition is similar to the existing definition as per rule 2(a) of Cenvat Credit Rules, 2004	Presently excise duty is applicable on manufacture of goods and therefore credit on capital goods is restricted to Capital goods used in relation to manufacturing operations. However, since GST is broad based and applicable to all business transactions of supply of goods and services, such restriction is not justified. This is against GST principles of availability of seamless credit at all levels and avoidance of cascading effect. The industry suggests that the definition of Capital goods should be broad enough to include all the goods which are used in or in furtherance of business.
4	**Treatment and Valuation of Works Contract Services**	
	Under Finance Act, 1994 for Works Contract Service, tax is discharged on service portion and VAT is paid on the transfer of property in the execution of the contract as per Service Tax Valuation Rules, 2006 amended from time to time. Under Model GST Law, it appears that the Works Contract service shall be treated as service. However, clarity is required on: a) Valuation of works contract (continuous	Considering the complexity of Works Contract Services provided by Infrastructure industry, it is essential that detailed guidelines are provided in law for smooth operations.

Sr. No	Issue	Suggestion
	supply of services) for GST: b) Taxation of completion of services provided/to be provider as per milestone. c) Method for apportionment of value of single works contract when carried out in more than one state d) Exemption to movement of Contractor's equipment intrastate and interstate from project to project and vice versa without levy of GST	
5	**GST on construction of Complex – Suggestions**	
	Present scenario of leviability of tax on Construction of Complex: in the case of sale of under-construction properties prior to issuance of completion certificate: It is the transfer of ownership rights from the developer to the buyer in the form of sale agreement and the tax is governed by the "works contract" as under: a) **State VAT**: Though the provisions differ from State to State, VAT is levied on the transfer of property in goods involved in the execution of the contract (as deemed sale) and discharged in any of the following manners – 1) **Option 1** – From the agreement value , the value of land is deducted along with deductions on account of labour, designing fees, hire charges etc. The Tax is computed after deducting the tax paid on building materials. 2) **Option 2** – From the agreement value, the value of land is deducted. The taxable value is computed by further taking a standard deduction @ 30 per cent (this may vary from State to State) towards labour etc and Tax discharged. 3) **Option 3** – VAT is discharged at a flat rate under composition scheme on the full value (1 percent in Maharashtra). b) **Service Tax**: Service Tax is levied (as	Sr. No.5 (b) of Schedule II of Model GST Law states that construction of a complex intended for sale to a buyer, prior to issuance of completion certificate shall be treated as "supply of service". In this context, following issues need to be addressed: b) Valuation provision to arrive at net taxable value (provision for deduction of land cost or discharge of GST under abatement or composition scheme etc.) c) Section 16(9) imposes following restrictions: 1) No input credit of goods and/or services acquired by the principal in the execution of works contract for construction. In brief no credit on goods supplied by principal to contractor). 2) No input credit of goods acquired by the principal, the property in which is not transferred (whether in goods or in some other form) to any other person, which are used in construction. (The above restrictions means that there may not be any credit available either to the contractor or the developer involved in construction of immovable property whether sold as under construction property or leased which will have significant adverse impact on real estate and hence

Sr. No	Issue	Suggestion
	deemed service) on labour portion or on abated value of contract or under composition scheme as per option available.	needs to be reconsidered). d) In order to ensure GST tax incidence is lower than the current regime following requests may be considered: 1. Lower GST rate for real estate sector 2. Deduction of value of land, etc. from transaction value and no tax is levied on FOC supply and the same should be revenue neutral. 3. Liberal credit regime on goods/services acquired by contractor and/or developer
6	**Negative List of Services & Mega Exemptions under the present Service Tax provisions – Clarity required on the status in the GST regime**	
	Presently services listed in the Negative list are outside the purview of Service Tax. Also items listed in the Mega Exemption list are not subject to Service Tax.	Clarity is required on priority on services that would be under Negative list and exempt under GST to enable the Industry to plan and organize suitably. Services included in the Negative List and supplies to Exempted projects / States / Regions should be Zero rated.
7	**Status of applicability of GST in case of supply of Service in Jammu & Kashmir**	
	Presently under the Service Tax laws, Jammu & Kashmir is outside the ambit of Service Tax. Though as per Section 1, the GST Act extends to the whole of India / State's name, it is not clear whether Jammu & Kashmir would be outside the purview of GST or any exemption is proposed to be given to Jammu & Kashmir.	In case it is decided that GST will be applicable in Jammu & Kashmir also, clarity is required on availment of input credit on the taxes paid on capital goods, input and input services used in the projects in J & K which are exempted/non-taxable on the appointed day.
8	**Status of supply to SEZ developers / EOU units**	
	Presently, Supply of goods and services to SEZ / EOU units enjoy Tax concessions / benefits. The model GST law is silent on Zero rating of supply of goods/ services to developers / units in SEZ / EOU.	Considering the importance of SEZ/ EOU units and supplies to them are treated as Exports, the industry requests that GST law should allow for Zero rating such supplies.

Sr. No	Issue	Suggestion
9	**Goods defined to include securities [Section 2 (48)]**	
	Section 2(48) defines goods so as to also include securities.	Stocks, shares, securities are currently not taxed as 'Goods'. Further, Securities Transaction Tax (STT) is being charged on securities traded through stock exchange. Industry suggests that securities to be continued to be outside the purview of GST.
10	**Valuation of imported goods for purpose of discharging IGST liability – Clarity required**	
	How to value imported goods? Whether GST valuation rules would override customs valuation rules? Whether IGST on imported goods to be paid at the time of import along with Customs duty or can the same be as per due dates of CGST/SGST payments? .	Presently, under existing laws CBD & SAD are applicable as per the customs valuation rules. However, as per model GST law transaction value is prescribed for valuation The Industry suggests that reference to additional duty of Customs in Sec.29(2) to be deleted, as CVD & SAD are to be subsumed in GST. Also the value prescribed under Customs Valuation and GST valuation, should be uniform, in case of imported goods.
11	**Time of Supply of Goods as defined under Section 12(2)(c) – Advance received against supply of goods subject to GST.**	
	As per Section 12 (2) (c) – The *time of supply of goods* shall be the earliest of the following dates, namely – (a)(i) the date on which the goods are removed by the supplier for supply to the recipient, in a case where the goods are required to be removed or (ii) the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed; or (b) the date on which the supplier issues the invoice with respect to the supply; or (c) the date on which the supplier receives the payment with respect to the supply; or (d) the date on which the recipient shows the receipt of the goods in his books of account.	Presently advance against supply of goods is not taxable Tax liability cannot be fixed on future goods as advance collected even before goods are manufactured or made available in stock for supply. As advance payment is collected only as a measure committing the contract wherein the goods may be manufactured and supplied at a later date. The industry suggests that in case GST is payable on Advance in respect of supply of goods, the person making payment of GST should be able to set off the same against output GST.

Sr. No	Issue	Suggestion
13	**Job Work under Model GST Law – Clarifications required**	
	Presently "Job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly (As per CENVAT Credit Rules). Accordingly conditions have been laid down for sending materials to job work and bringing back the goods after job work. As per Model GST Law, "Job work" means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression "job worker" shall be construed accordingly. Section 43A of Model GST Law provides special procedure for removal of goods for job work and return after completion of job Work.	Clarity required on the following issues: 1) Whether all the materials should be supplied by the "Principal" or the concept of job work includes materials added by the job worker. In case of material supplied by the job worker, clarity is required on the treatment to be given. 2) Whether provisions relating to "supply" and procedure for job work apply to both intra-state and inter-state are at par. 3) Whether the input tax credit in respect of input, input services, capital goods received by job work is eligible in the hands of job worker or principal. 4) In cases where the job worker uses consumables or procures goods on behalf of Principal to carry out job work, will it still be classified as "job work" The industry would like to suggest as under _ a) In construction Sector fabrication of huge civil structures by job workers takes long time and hence the period for return of finished goods within 180 days needs to be increased to 365 days and further extension should be left to the discretion of the jurisdictional authority depending on the time required to finish such job work. b) Practically, in any job work, in addition to goods supplied by principal manufacturer, job worker also uses consumables, supplementary goods procured on behalf of principal manufacturer. c) To avoid ambiguity, explanation may be added to the definition, clarifying that, job-work will also include in its ambit supply/procurement of additional materials to be used by job worker, for / in connection with job work without treating

Sr. No	Issue	Suggestion
		it as "composite supply" or "works contract". d) As infrastructure projects largely depend on job works, clear conditions and guidelines may be laid down for hassle free operations.
14	**Amendment to Section 2 (43) - Export of Services:**	
	As per Model GST Law, apart from other conditions, the supply of goods and/or services shall be treated as export of service when : (d) the payment for such service has been received by the supplier of service in convertible foreign exchange and (e) the supplier of service and recipient of service are not merely establishments of a distinct person. (Note – Two of the requirements covered above)	Clarification is sought on the following issues: a) What happens when payment is received in non-convertible foreign currency. For most of the infrastructure projects are carried out in the neighboring countries such as Nepal, Bhutan, Bangladesh etc, payment is received in other than Freely convertible currency. The Industry is of the view that these transactions are also export of service and appropriate treatment should be given for considering such transactions as export in par with other exports. b) If service provider and recipient of service are establishments of a distinct person (i.e from an Indian Company to its foreign branch), the transaction between them should also be treated as Export of service.
15	**Taxation of Services between related parties**	
	Under GST regime, supply of service between related Companies would be subject to Valuation rules for acceptance of Transaction value for Taxation purpose	It would be practically difficult to verify the value of service with contemporary similar or identical services provided by other service providers. This may also lead to unavoidable delay in valuation and possible litigations.
16	**Anomaly in the definition of "Government Authority"**	
	While introducing Negative List of Services, Government issued Mega Exemption Notification No.25/2012-S.T. dated 20.6.2012 in which "Government Authority" was defined	Inadvertently in Schedule IV of Model GST Law defines "Government Authority" as per old definition originally stated in Not. No.25/2012.

Sr. No	Issue	Suggestion
	as under: *"governmental authority'' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government* ***and*** *set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.* In view of representation from Trade & Industry on account of certain anomaly experienced by them in the definition, vide Notification No.2/2014-S.T.dated 30.1.14, the definition was amended as under: *"governmental authority" means an authority or a board or any other body; (i) set up by an Act of Parliament or a State Legislature;* ***or*** *(ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;'.*	Since the amended definition vide Not. No.02/2014-S.T. dated 20.1.2014 was hassle free, it is requested to maintain the amended definition in the Model GST Law.
17	**Tax deduction at source:**	
	Section 37 provides that the Central or a State Government and any category of persons as notified by Governments may mandate for a deduction of Tax at the rate of 1% from the payment made or credited to the supplier of Taxable goods and / or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds Rupees Ten Lakhs. The deductor is required to furnish TDS certificate within 5 days of crediting the amount so deducted to the appropriate Govt. The deductor shall be liable to pay, by way of late fee, Rs 100 per day, after expiry of 5 days. (such fee not to exceed Rs 5000)	The concept of TDS should be avoided in the GST regime. When all transactions of supplies are expected to be captured with levy of applicable GST, the Construction Industry is of the view that there should not be any TDS under the GST law of if inevitable the rate should be kept at 1%. Notwithstanding the above, the time provided for furnishing the TDS certificate is too short and needs to be reviewed. The industry requests for reconsidering the penalty clause as well.
18.	**Applicability of payment of GST under reverse charge**	

<table>
<tr><th>Sr. No</th><th>Issue</th><th>Suggestion</th></tr>
<tr><td></td><td>There is a provision for levy of GST under reverse charge.

Further Section 13 (Time of Supply of Service) provides that in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—
(a) the date of the receipt of services, or
(b) the date on which the payment is made, or
(c) the date of receipt of invoice, or
(d) the date of debit in the books of accounts.</td><td>Since under the GST provisions, credit shall be available for all supplies, the concept of discharging GST under reverse charge should be done away with or restricted to import of services and GTA.

Further the liability for payment of tax is triggered as soon as the Service is received, which would put the service recipient into great difficulty in case of import of services. There should be a provision for payment of Tax within 90 days of the receipt of such service (as existing under Rule 7 of the Point of Taxation rules under Service Tax).</td></tr>
<tr><td>19</td><td colspan="2">Time required for filing of first return</td></tr>
<tr><td></td><td>As per Section 27A, the first return shall be filed as under –

<table><tr><td>For outward supplies</td><td>From the date on which he became liable to registration - By end of the month in which registration is granted</td></tr><tr><td>For inward supplies</td><td>From the date on which he became liable to registration - By end of the month in which registration is granted</td></tr></table></td><td>If the registered taxable person is to be registered by 1st April 2017 and if such registration is granted in April itself, the 1st return will have to be furnished by 30th April. This time limit is too short and the industry suggests for reviewing the same and providing reasonable time for furnishing the first return.

The Industry requests that at least 3 months time may be provided for filing the 1st return.</td></tr>
<tr><td>20.</td><td colspan="2">Appeals to First Appellate Authority</td></tr>
<tr><td></td><td>As per Section 79, an appeal can be filed by the Appellant if he has deposited a sum equal to 10% of the amount in dispute arising from an order passed by the adjudicating authority. It is further provided that the Department may order for a higher amount of pre-deposit, not exceeding 50% of the amount in dispute, in a case which is considered by the Commissioner of GST to be a serious case. The Explanation provides that a “serious</td><td>The amount of 10 per cent of disputed amount payable is very high. At best the percentage can be fixed at 2.5% of the disputed amount or Rs 2 crores whichever is less.

Further the percentage of 50 per cent of the disputed amount where the Department feels that the case is serious, is very exorbitant. There could be arbitrary demands even when</td></tr>
</table>

Sr. No	Issue	Suggestion
	case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores.	the question of law or interpretation issue is involved.
21	**Definition of India for purpose of application of GST needs to be reviewed**	
	As per Section 2(53) India means : a) the territory of the …. b) Its Territorial Waters, continental shelf, exclusive economic zone" other maritime zones at 1976 c) …	As per Section 7(1) of Territorial Waters, Continental Shelf, Exclusive Economic Zone and other maritime Zone Act, 1976 - "The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is **two hundred nautical miles** from the baseline referred to in subsection (2) of section 3" Currently, only Service Tax is applicable on services provided beyond 12 nautical miles and upto 200 nautical miles while VAT/CST is not applicable. The industry is of the view that GST should be applicable only to the transaction taking place up to 12 only nautical miles.
22	**Non-eligibility of ITC on motor vehicles specified under the stated sections - Sec 2(20) & 16(9)(a)**	
	ITC is available only where Motor vehicles which are used in furtherance of business viz. for transporting inputs/capital goods between units of same taxable person and for collecting inputs for use in supply of goods. The above restriction is similar to the one imposed under Rule 2(a) of Cenvat Credit Rules, 2004	Motor vehicles are owned by taxable person for facilitating workmen, staff and executive to commute in the course of furtherance of business; and the depreciation on these Motor Vehicles is factored in Taxable value of goods. Therefore it is a fit case for granting input credit on such motor vehicles.
23	**Input Tax Credit on Immovable property Sec 16(9)(c)& (d)**	
	The Model GST Law provides that Input Tax Credit is not available on goods and / or services acquired by the Principal in the execution of works contract resulting in construction of immovable property, other than plant & machinery.	a) Despite the Immovable property being used in the course of or in furtherance of business – credit would be inadmissible which will increase cost of setting up such immovable property

Sr. No	Issue	Suggestion
	.	b) While GST would get imposed on entire value addition (currently excise duty is not applicable beyond manufacturing stage), denial of Input Tax credit will be detrimental to the business. . c) Input Tax Credit should be permitted on setting up of immovable property subject to condition that the same is used in the course of or in furtherer of business resulting in output GST liability. d) Real Estate "Developers" who set up Immovable property for the purpose of "renting" on which GST is payable should be allowed to take Input Tax credit and utilize the same for discharge of output GST. e) Further there is ambiguity in the word 'Principal', which may be clarified.
24	**Annual Return requirement of submitting audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return Section 30(2)**	
	Section 30(2) provides that every taxable person who is required to get his accounts audited under subsection (4) of section 42 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement.	As per accounting standards, annual accounts are prepared on Company level and not State-wise. Practically difficult to fulfill this requirement. Keeping in mind practical aspects & accounting guidelines, this requirement needs to be dispensed with. GST network to provide aggregated data for registrations under each PAN for assessee to reconcile with consolidated accounts – which should be accepted.
25	**Determination of tax not paid / short paid / erroneously paid - Section 51A and 51B - Request for review**	

Sr. No	Issue	Suggestion
	Section 51 provides for determination of tax not paid or short paid or erroneously paid.	a) The GST Law is considered to be a Game Changer and assumes immense significance. After introduction of this Law, Tax Payers especially small tax payers, may take time to familiarize themselves with the requirements of Law and genuine lapses may occur without intention to evade tax. b) If short payment or non-payment of tax or wrong availment of credit is reported against any registered taxable person, the same shall be deemed to be occurring on account of reason other than fraud or any willful-misstatement or suppression of facts and the taxable person shall be allowed to pay the tax due within 30 days of notifying of such non payment or short payment. c) Moratorium period of one year from the date of roll out of GST may be declared as period of "Tax Compliance – Amnesty Period". In such case, interest shall be levied as applicable and not penalty.
26	**Drafting Issues**	
	The following issues in drafting of provisions may please be noted and amended – Section 15 (2)(f) - Subsidies provided in any form or manner, linked to the supply have been made as part of the transaction value. In section 15(2), at three places, 3 different terms have been used in the same context. Clause (a) refers to 'in relation to such supply', clause (b) refers to 'in connection with the supply' and clause (e) refers to 'in respect of the supply'. Section 15 (2) (e) provides for inclusion of incidental expenses, 'charged by the supplier'. On the other hand, in the main	a) The scope of the term 'subsidy' has not been defined in the Act. Therefore there is room for interpretation differently. It is suggested that the word 'subsidy' may be defined and further 'linked to the supply' may be modified to provide "directly linked to the value of the supply. b) Preferably usage of similar wordings at different places in the same context is advisable. c) Inclusion of 'design or brand charges' are clearly in relation to production of goods or for provision of services. A specific inclusion made may lead to taking interpretation by the tax payer that the

Sr. No	Issue	Suggestion
	definition under Section 15(1), the term used in same context is "paid or payable." Clause (b) of Rule 5 provides for inclusion of 'design or brand charges' in the value. Clause (c) of Rule 5 provides for inclusion of profit and general expenses made by other suppliers of similar goods and services.	cost of production referred may not include some other charges leading to unnecessary litigations. – Clause (b) of Rule 5 may be deleted. d) How the overhead expenses incurred and profit earned by other person become relevant and how is the same to be ascertained? – Clause (c) of Rule 5 may be suitably modified.
27	**Adequate time for switch-over from the existing tax regime**	
	April 1, 2017 is the proposed date for implementation of Goods & Service Tax.	**Sufficient time frame should be given to enable assessees to switch over to the GST regime from the existing regime. In order to provide adequate time to the trade and industry to prepare itself for a hassle free roll out of the GST regime, a minimum of 6 months' time from the date of the adoption of the GST Law by the GST Council should be permitted. Additional time would be required in case the GST Law as passed by the Parliament or the State legislatures is significantly different from the one adopted by the GST Council. Considering the same the expected date of GST roll-out of April 1, 2017 looks unrealistic and should be duly extended.**
28	**Sandbox environment to facilitate training to users in public domain (As per today's new this will be completed by end October)**	
	As per GTN framework published earlier, in order to facilitate early integration, Sandbox which will be syntactically identical to production shall be available in the GTN system.	This facility may be provided early to enable users to familiarize with the system and plan IT infrastructure / program as per requirement well in advance.

Sr. No	Issue	Suggestion
29	**Formation of Dispute resolution panel in the GST council / Board for CGST / SGST / IGST**	
	Being an altogether new concept of levy, there need to be a panel to resolve interpretation of provisions of GST law for its smooth functioning to benefit both the Exchequer as well as the Assessee.	**Industry suggests that such panel may be formed / appointed to resolve interpretation issues.**