

FICCI RECOMMENDATIONS ON GST

GST Model Law was released on 14-06-2016 in public domain and since then, as per various news reports, over 40000 recommendations have reached the Government of India.

We invite your attention to the following press release compiling various recommendations submitted by FICCI to the Empowered Committee of State Finance Ministers which is worth reading to understand the major challenges and implications under the new proposed tax law.

1) Approach to Classification of Goods for Applying Rates of GST

As per current indications and newspaper reports, goods will be categorised as being subject to merit rates (12%), standard rates (18%) and de-merit rates (40%). Certain goods will be exempt from GST while bullion and jewellery would be charged to 1% / 2%.

FICCI has recommended that the following objective criteria be adopted by which goods can be covered in different rate categories:-

1. Goods fully exempted from the levy of excise duty and VAT by all the states be categorised as exempted goods in the GST regime as well.
2. Goods chargeable to nil rate of excise duty but charged to VAT in most of the States could be identified for levying a merit rate of GST.
3. All other goods (except jewellery and demerit goods) could be subjected to the standard rate.

As regards the rates to be adopted, these will depend upon the size of the baskets comprising the exempted goods and the merit goods. However, with a view to check inflation, ensure compliance and check the tendency to evade taxes, FICCI suggests that the merit rate should be lower and the standard rate should be reasonable.

It has been further recommended that the rate of GST applied to services should be the same as the standard rate. Moreover, the rates for nationwide services such as telecom, banking and ecommerce sectors should be uniform across all states.

2) Continuation of Certain Existing Exemptions

Clarity on the current exemption schemes (area based exemptions, incentives under State policies) is required because the transition provisions prescribed under the draft law do not provide for the treatment of the said exemptions / incentives. The existing model of tax exemption and other fiscal and financial incentives allows such units to compete with the other units situated in developed areas. FICCI has requested that certain existing exemptions such as the area based exemptions under the excise legislation and incentives under the State Industrial policies should be converted into an effective, non-discretionary tax refund mechanism. Such a tax refund scheme should not disrupt the input credit chain either.

3) Implementation Schedule

In order to provide adequate time to the trade and industry to prepare itself for a hassle free roll out of the GST regime, FICCI has proposed that 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.

4) Administration of the GST

As per present indications, there will be two separate authorities for administering the GST, one of the Central Government for the CGST / IGST and the other of the States for the SGST. Further, the draft Model GST Law contains separate and disparate provisions relating to administering the above levies by these authorities. FICCI has made the point that the GST is a path breaking tax reform and the opportunity it therefore provides for a thorough overhaul of the tax administration should not be missed. Consequently, FICCI strongly recommends that the GST be administered by one authority alone and not by two. This would mean that the assessment / audit / adjudication related processes should be administered by one designated authority. Should this suggestion be not deemed feasible for implementation for the time being, FICCI would strongly urge that at the very least, the provisions related to assessments, adjudication orders, appellate and review processes and similar administrative matters be uniform across the CGST / IGST / SGST laws and that on no account should an assessee be subject to differentiated and variable administrative processes across these taxes. Further, the laws should provide mechanisms for ensuring a uniform and consistent interpretation of all relevant provisions across these taxes, including on classification of goods and services and, consequently on the applicable GST rates themselves.

5) Non-Adversarial Tax Regime

Given the stated intent of the Government to bring about a taxpayer friendly tax administration, with a non-adversarial relationship between the taxpayer and the tax authorities, it was hoped that the draft Model GST Law would contain path breaking provisions to bring about this desired outcome, couched in language which would further this objective. Instead, the Model Law has incorporated the extant provisions of the present Central Excise law at the Centre as also the present VAT laws of the States besides also containing several provisions which are even more rigorous than at present and worded in stringent language, such as the presumption of guilt and wrongdoing on the part of the taxpayer, in various situations which are enumerated in the Model Law. The Model Law has also conspicuously failed to incorporate a tax payer rights charter. FICCI has urged that a comprehensive redrafting of the Model Law be done in order that the GST law that will come into force with the advent of the tax is indeed a model one, in ushering in a more equitable and balanced tax administration and regime.

6) Centralized Registration for Nationwide Service Providers

The proposed legislation requires a service provider operating in various states to obtain registration in each state. This will increase the compliance burden of taxpayers manifold considering that each taxpayer will have to file three returns per month and an annual return for each registration. Business entities will be engaged only in filing returns rather than concentrating on their business. FICCI has requested that given the robust automation backbone of the GST Network, centralised single registration be introduced for service companies (such as banking, telecom, insurance). They should be permitted to file a single return covering all their transactions in their state of incorporation. The return will contain all data necessary to segregate value of services and state-wise payment of taxes for each state. The scrutiny and audit of their

accounts should be carried out by a single designated authority. This recommendation does not however imply a break in tax credit chain.

7) Intra entity transfer of services

FICCI has requested that supply of service within the same legal entity from one vertical or division or office to another for use / consumption in the same legal entity should not be made liable to GST. Collective performance of services by multiple branches/ offices cannot be treated as supplies between branches *inter-se*. It will result in taxing artificial transactions and not economic transactions. Legally and economically there cannot be any transaction with oneself and moreover taxing such transactions would impose huge administrative burden on the entities by way of identifying such transactions and determining their value on notional basis.

8) Doing away with requirement of way bills/documents for movement of goods

In the draft GST law, wide powers have been given to Central/State Governments to prescribe transport documents for transportation of goods. Standardization in requirement of transport documents (such as consignment note, lorry receipt, delivery challan, GRN etc.) should be aimed under GST across all the States. No specific document should be required for inter-state movement of goods. Since transaction level details are provided in the GST returns, there should be no further requirement for entry/ exit documentation.

9) Valuation principles should not go beyond transaction value

Valuation provisions under the draft GST laws are reflection of valuation laws of a single point tax like excise duty. Wide powers have been given under the draft GST laws to authorities to reject declared transaction value. The valuation provisions under GST (a transaction based tax) should give primacy to actual transaction value. Extending the scope of valuation rules would go beyond the concept of 'tax on consideration'. FICCI has accordingly requested for reconsideration of the valuation provisions under the model GST laws. It is to be noted that unlike the single point excise duty where there was no set off, input tax credit will be available in the GST regime.

10) Mismatch of Input Tax Credit

The manner of resolving the mismatch between the details of outward and inward supplies uploaded on the GST Network (GSTN) is unfair to the recipients of such supplies. The draft provides that a buyer shall not be entitled to claim an input tax credit (ITC) unless the tax charged in respect of such supply has been paid by the seller. Shifting the onus on the buyer to check whether the seller has paid goods and service tax (GST) is the most onerous provisions in the draft Model GST Law. FICCI has represented that the recipient of goods and supplies should be eligible to take credit on the strength of supplier's valid invoices and if there is any default relating to such supplies, the consequences / onus should be on the supplier and not on the recipient of goods and services. As a principle, once non-compliance is detected, it is the responsibility of the Tax Administration to proceed against non-compliant entities. This responsibility should not be fastened on the recipients