



19th August, 2019

To

Hon'ble Minister of State for Finance and Corporate Affairs,
Government of India,
North Block,
New Delhi.

Respected Sir,

Subject: Certain important issues being faced by taxpayers in the country

We represent thousands of Chartered Accountants across the country and thereby, lakhs of tax payers of our great nation.

At the outset we appreciate and thank the Government of India for coming out with pro-active measures to redress taxpayers' grievances and issues and thereby boosting tax payers and professionals' faith in the government machinery. Various pronouncements made in the past few weeks will go a long way in reducing litigation, increasing transparency and avoiding mal practices. We wholeheartedly welcome these steps.

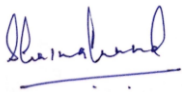
We take this opportunity to bring to your kind attention certain very important issues which need to be addressed by the government to further strengthen the tax payers' confidence. For every issue, we have also provided our suggestion(s) and offer our fullest co-operation in implementation of the same if our views are acceptable to the establishment.

In the larger interest of the tax payers of the country as well as improving compliance levels and to assist the government in its historic efforts to take

the Indian economy to \$5 trillion level, we, the Chartered Accountants of the country offer our fullest co-operation. We hope that our suggestions are taken up at the highest levels and we assure you of our complete support in implementation of any or all of our suggestions with the ultimate objective of bringing in Achche Din for the citizens of our nation.

Thanking you,

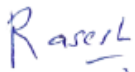
Yours sincerely,



Anand Sharma
President,
**Chartered Accountants Association,
Ahmedabad**




Manish Sampat
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PART A - INCOME TAX RELATED ISSUES AND SUGGESTIONS

1. Timely availability of return forms

Every year, we have new ITR forms and schema and not only are changes made in the forms but the applicability of forms also changes.

Also, there are frequent changes in the return utilities even after the utilities are once released thereby hampering the return filing process since the software vendors also take time to incorporate the changes leaving a very less time on hand for the taxpayers and the professionals to file the return. Such an approach leads to hardship to the taxpayers and a negative mindset across the board. This year (for A.Y. 2019-20), the income tax utility has been changed 4 times in 2 months. In a country like ours where there are internet connectivity issues in remote areas and even in large cities, late release of return utility leaves very little time to the tax payers and their consultants to prepare and file accurate and correct income tax returns.

Our Suggestions:

After the budget is announced in the month of February, the government has almost one year to incorporate such changes in the return forms and release the utilities well in advance so that the taxpayers can file their returns of income well within the due date.

It is also suggested that a testing platform should be provided to the software vendors before release of the income tax utilities to make sure that all the return filing software are error-free and no bug remains therein which would hamper the processing of the income tax returns.

2. Due dates

It is pertinent to mention here that since last 5 years, every year for some reason, the due dates for filing return of income are extended after a lot of anxiety and hysteria amongst the public. This has almost become a norm now.

Our suggestions:

This being the case, it is advisable for the Government to urgently look into this matter and to avoid frequent changes. A core group may be formed which should undertake the task of reviewing the due dates under various laws and re-cast such dates so that no two due dates under various tax laws coincide with each other and thereby smoothing the entire process.

Also, since the month of July brings flood like situation in many parts of the country it is suggested that the due date for filing the return of income should be extended to August instead of July and for audit cases, October instead of September so that there is no need for the extension of due dates every year. Also, it is unlikely that there would be a major revenue loss since interest for delayed payment of tax would any ways be payable by the taxpayers.

Further, since the last date for the filing of the TDS returns is 31st May and the credit gets reflected in the 26AS of the deductees in the first week of June, the taxpayers are prevented from filing the returns at any time before June which leaves very little

time for filing the return of income. It is therefore suggested that the last date for filing the TDS returns for the last quarter should be advanced to 15th May from the present 31st May.

3. Smooth functioning of TDS

a) Refund mechanism

In cases where excess tax has been paid by the assesses, may be by mistake, refund of the excess tax paid takes a lot of time and causes undue hardship to the taxpayers since there is no mechanism for getting refund of such excess tax paid.

Our suggestion:

Some mechanism should be introduced for easy refund of such excess tax paid to avoid hampering the working capital blockage of the taxpayers.

b) Low/Nil withholding tax certificate u/s. 197

The application for nil / low withholding tax certificates u/s. 197 has been computerised. We welcome this initiative. However, at ground level, we see no improvement. The delays in getting the certificates continue. The officers refuse to give Nil certificates even in the most deserving cases. Despite digitisation, there is still a lot of discretion being exercised. This not only results in delays but also unnecessary blockage of funds in the form of TDS which has then to be claimed as refund. Sometimes, "high refund" is a reason for selection of a case for scrutiny. So, the tax payer gets a double whammy in such cases.

In many cities, there is a huge shortage of staff in the TDS department. This results in greater delays in administration work. Often, the staff of tax professionals has to sit with the staff of the officers and help in doing data entry in the system. This has been a ground reality and the only practical way of expediting the issue of the certificates.

Our suggestions:

Wherever the certificate is issued for a rate of TDS higher than the rate that the assessee has applied for, the reasons for the variation should be compulsorily mentioned in the covering letter issued to the applicant. Further, in those cases where the applicant is a charitable trust or where the assessee has consistently been making losses, the officer who refuses to issue a NIL withholding tax certificate must be questioned by his senior officer(s).

A realistic assessment of the staff requirements needs to be done and wherever there is a shortage of staff, the same needs to be filled up so that taxpayers do not suffer.

c) Non payment of TDS by the deductor

Non payment of TDS may result into no credit in Form No. 26AS. In such cases, the tax payer has to face double whammy because he has not only received the amount pertaining to transaction after deduction of tax at source but, since such tax is not deposited with the Government, he also does not get credit for

the TDS resulting into payment of tax with interest subsequently. Such anomalous situations need to be corrected in the interest of honest tax payers.

4. Processing of returns and other matters by the CPC:

- a) Of late, the department has been issuing notices proposing to consider the returns filed as defective. However, in such cases it is observed that the notices are being issued beyond the jurisdiction provided u/s. 139(9) of the Act.
- b) In the event of duplicate reporting of income and tax by the deductor while filing his TDS return, the deductee's Form No 26AS would show an amount in excess of the actual income which in fact is not the correct income. However, in such cases, notice u/s. 139(9) are issued requiring the assessee to disclose income as shown in form no. 26AS which is not the correct income.

Our suggestions:

A thorough review of all the cases where the returns are proposed to be considered as defective by the CPC needs to be done immediately and proper legal advice needs to be taken as to whether the reasons given actually fall in the categories laid down in section 139(9). Wherever the notices are found to have been wrongly issued, the CPC must be directed to immediately inform the concerned tax payer that the notice is withdrawn.

The department needs to understand the genuine reasons why income as appearing in the Form 26AS need not always be the correct income that a taxpayer must disclose in his return. There can be dozens of bonafide reasons for the differences between income as appearing in the Form 26AS and as disclosed in the return of income. Without giving proper opportunity to a taxpayer to explain the reasons, it is unfair to treat the return as defective or to make an addition u/s. 143(1) to the returned income.

5. Functioning of CIT(A)

- a. At present, there is no deadline for passing the appellate orders by the CIT(A).

Our suggestion:

It is strongly suggested that a time limit should be fixed for passing of orders by the CIT(A) so as to smoothen the judicial system.

- b. Hearings for appeal should be fixed in a chronological order i.e. on FIFO basis. At present, while the hearings are fixed on this basis, the disposal is often skewed. Often, the hearings go on for months together. For small and flimsy reasons, the officer adjourns the hearing or asks for more information either from the assessee or from the assessing officer. When remand reports are sent to assessing officers, they take months to respond. There is no accountability and no time limit given for responding to such matters.

Our suggestions:

Once an appeal is taken up for hearing, there should be a time limit for disposal. Further, there should be a time limit for assessing officers to submit remand reports to the CIT(A). If the report is not received from an officer in that time, it should be presumed that the officer has nothing to say in the matter and the CIT(A) can proceed with the disposal.

Further, a list of pending appeals with date of filing should be prominently displayed in the income-tax offices for each CIT(A) and also on the income-tax department's website to bring in transparency and accountability.

- c. It has been our perception that almost 50% of the demands raised are deleted at the first appellate stage and almost 80% of them are deleted at the subsequent stages. This only shows the poor quality of assessment orders being passed by the lower authorities.

Our suggestions:

There should be a proper mechanism to monitor the quality of assessments. Raising of and recovery of demands which are ultimately deleted in appeal only creates unnecessary bottlenecks for the businessmen who are, presently, already reeling under economic strain because of lack of liquidity as well as slow down in business.

- d. In larger cities, there is a huge backlog of appeals before most of the CIT(A)s. This results in dozens of appeals being fixed up on a daily basis. It is physically impossible for any appellate officer to hear and dispose of so many appeals on a single day. This, in turn, results in tax professionals having to wait for hours together in the offices of the CIT(A) without any tangible result. As per the newly announced monetary limits for filing of appeal, the CIT(A)s now have more responsibility to pass judicious orders.

Our suggestions:

A thorough review of the number of pending appeals before each CIT(A) needs to be done and wherever there are a disproportionately large number of pending appeals, the concerned officer should be questioned about the same and simultaneously, some of the appeals should be transferred to another CIT(A) with fewer pending cases.

It is also suggested to establish an open court system of appellate justice delivery system in case of CIT(A) in all cities on the same lines as has been implemented in Surat City.

6. Prosecution

a. Income-tax Returns

Prosecution notices have been issued to hundreds of tax payers for various kinds of procedural defaults. The threshold limits for launching prosecution are very low. Today, on the one hand, the CBDT does not allow tax department to file appeals to ITAT / HC / SC if the tax impact does not exceed Rs. 50 lakhs /

1 crore / 2 crore respectively, on the other hand, the threshold for launching prosecution for non-filing/late filing of return is as low as Rs. 10,000 and this too is a limit that has been brought in via the latest Budget. In such cases since tax has already been paid along with interest there is no revenue loss. Launching of prosecution in such cases has an impact of intimidation amongst the small and sundry tax payers for such petty and procedural defaults.

Our suggestion:

The threshold limit for launching prosecution should be increased to match with the threshold fixed for non filing of appeals by the department or to a level which is more realistic and practical.

b. TDS Returns

Several notices have been issued for prosecuting the deductors who had made delayed payment of the tax deducted at source even though the tax along with interest and fees was already deposited to the revenue exchequer though subsequently. Sec. 278E assumes culpable state of mind upon taxpayer implying that it is duty of taxpayer in prosecution proceedings to prove absence of guilty intention. Such legal requirement do not embrace mere late payment of tax deducted at source. However prosecution is initiated on the ground of mere late payment of tax deducted at source even if such tax is paid subsequently with interest and penalty.

In both the aforesaid cases the officers insist for compounding of the cases and the compounding fees are normally very hefty particularly in light of the fact that there is no loss to the revenue.

Launching of prosecution is governed by criminal laws and therefore it takes years to reach to the final outcome leading to wastage of time and energy of the government machinery as well as assesseees.

Our suggestions:

It is imperative to note that CBDT instruction No 1335 dated 28/05/1980 had instructed the officers not to launch prosecution in cases where the delay in deposit of tax did not exceed one year. However, the said instruction was subsequently withdrawn on 06/08/2013. It is therefor suggested that the said instruction should once again be made operative to remove unnecessary hardships to the taxpayers.

The Hon. Finance Minister has in a recent tweet stated that “***honest taxpayers should not be harassed for minor or procedural violations***”. Accordingly, in all pending cases of prosecution where there is no revenue loss, a sympathetic approach should be adopted since after payment of tax deducted at source there is complete absence of guilty intentions.

Further, going forward, prosecution should not be launched in those cases where the tax has ultimately been paid alongwith interest within a reasonable period of time.

7. Re-opening u/s. 147 of the Act

Over the past few years there has been an exponential rise in the number of cases that have been re-opened u/s. 147 of the Act. A lot of time and energy are being wasted on such assessments and at the same time not all cases result in addition or increase in the revenue.

Our suggestion:

It is time to ensure that the cases are re-opened on selective basis rather than selection of all cases on a generalized approach. For instance, off late, in case of penny stock transactions, cases of all taxpayers who have traded in such penny stocks, are being re-opened rather than picking up selective cases where such facilities have been misused in shoddy transactions. This will help in directing the energies of the assessing officers to a few cases but where there is greater chance of the addition / disallowance being sustained in appeal.

8. Refunds

Refunds are being held up in various cases. Some of the major reasons for this are:

- a) In the cases which have been selected for scrutiny assessment, the refunds are withheld till the date of completion of assessment which is against the provisions of the law. Section 241 of the Income-tax Act, 1961 (the Act) which permitted the authorities to do so has been repealed by the Parliament way back in the year 2001. Even recently the Department has come out with guidelines for release of refund but particularly for non-scrutiny cases only.
- b) Failure by the officer to pass rectification orders and orders giving effect to appellate orders
- c) Refunds exceeding a certain sum/limit are normally delayed to avoid disruption of the government budget – particularly in the months of February and March every year.
- d) NRIs are not getting refunds only because their bank account is not getting pre-validated and many banks (including many multi national banks like HSBC) are not recognised for this purpose. CPC Helpline is unable to help the taxpayers.
- e) Transfer of rights from CPC to the Assessing Officers for the purpose of rectification of the returns is a time-consuming task and the refunds of the assesses get delayed in the meantime. The tax payers need to request the officers to capture the rights from the CPC which results in unnecessary delay.
- f) For smallest of defaults in compliance, taxpayers/tax deductors have to be pay daily fines / penalties / interest etc. whereas there are no similar provisions for delay by the income tax authorities.

Our suggestions:

- a) Time limits should be fixed so that the officers function in a time bound manner and avoid release of refunds. Accountability must be brought in to rein in errant officers who deliberately delay issue of refunds / passing of rectification orders / orders giving effect to appellate orders.
- b) The process of issuing refunds only through electronic credits is a welcome step but if it results in unfair delays to some merely because of technical issues relating to banking regulations, then it needs immediate attention. The department must take immediate steps to ensure that those tax payers who hold accounts in non scheduled banks or in foreign banks or co-operative banks do not suffer.
- c) The process of transfer of rights from CPC to jurisdictional officers must be time bound and thereafter, the disposal of any matter by the jurisdictional officer should also be monitored and made time bound.
- d) The government should publish the figures of returns processed and refunds issued till a particular date so as to ensure transparency and remove negative mindset of the public at large with regards to the refund policy of the government.
- e) The helpline at the CPC needs to be made stronger and more effective. While the infrastructure at the CPC is state of the art and world class, the results that tax payers get leave a lot to be desired.

9. Other issues

- a) At present, the tax payers are required to upload financial statements under various laws viz. MCA, Income tax, GST etc. On each portal, the technological requirements are different. Even the JAVA versions required for various portals are different. This causes tremendous hardship to taxpayers.

Our suggestion:

While it would be impractical to have a common platform for uploading all the financial statements so that uniformity is maintained, if the technological requirements of all portals are made uniform it would help the citizens of the country in terms of compliances.

PART B – GST RELATED ISSUES AND SUGGESTIONS

At the outset, we reiterate our full fledged support for the introduction of GST in India and acknowledge the untiring efforts put in by all the concerned stakeholders to make the transition towards the landmark reform as painless as possible.

Despite the best of intentions, we find that on a regular basis, issues crop up in the smooth administration and implementation of the GST Law and these issues hamper the 'ease of doing business' – a goal towards which the present Government is strongly committed.

As one would recollect, the period immediately post the implementation of GST was chaotic and it resulted in the GST Council proactively taking a few steps towards simplification of GST. Some key positive steps taken by the GST Council which helped in easing a lot of ground level difficulties are listed below:

1. Relaxation of the requirement of payment of tax on advances received for goods
2. Removal of concept of reverse charge mechanism for procurement from unregistered dealers
3. Relaxation of the requirement of matching of credits and filing returns in GSTR2 and GSTR3 and introduction of simplified Return GSTR3B

Each of the above steps eased procedural difficulties to a large extent but did not impact the revenue collections materially. After successfully completing 2 years since the introduction of GST, we believe that it is important to relook at many other 'pain areas' which could be easily addressed without major revenue implications. We present our suggestions in this regard as Part "A" of this document.

One major irritant in the entire space of GST has been the systems related challenges. These challenges have occupied the mindspace of not only the tax payers and administrators but the judiciary has also been pressed into to look at some of these cases. For an IT behemoth like India, it is important that this piece is appropriately addressed. We present our suggestions in this regard as Part "B" of this document.

GST is expected to be a destination based consumption tax with a seamless flow of input credit at each intermediary level. Due to revenue compulsions, the law does contain various provisions conflicting with this core concept of GST. While we believe that an ideal GST should not have any such conflict, considering revenue constraints, we restrict our suggestions in this regard to a few important conflicts which are seriously impacting the business structures. Such suggestions are presented as Part "C" of this document.

A. SUGGESTIONS NOT HAVING SIGNIFICANT REVENUE IMPLICATIONS BUT CAN CREATE AN EASE OF DOING BUSINESS, IF IMPLEMENTED.

1. Payment of Tax on Receipt of Advances towards Services

The provisions of the GST Law require the tax payer to discharge GST at the time of receipt of advance or raising of invoice whichever is earlier. However, through a subsequent amendment, the requirement of discharge of GST on advances for goods has been relaxed. However, the said condition is not relaxed for services.

The requirement of payment of tax on advances results in a series of difficulties ranging from the requirement to issue a receipt voucher at the time of receipt of advance, keep a track of the GST component of the said advances separately so that the same can be subsequently adjusted at the time of raising the invoice. In most of the organisations, the systems, processes and responsible persons for receipt of moneys are different from those for raising the invoices.

Our suggestion:

It is therefore suggested that the requirement to discharge GST on advances received towards services be done away with. This amendment will have no implications of revenue loss, but merely lead to deferment of revenue by a month or two in some cases.

2. Self Adjustment of Balances in Cash Ledgers across multiple GSTINs of a single legal entity

The provisions of the GST Law require a single entity to obtain registrations in each of the States from where it operates. Each registration requires the maintenance of distinct electronic cash ledgers towards CGST, SGST, IGST and Cess. The Finance (No. 2) Act, 2019 has permitted a cross utilization of such electronic cash ledgers within a single GSTIN. However, the cross utilization is not permitted across multiple GSTINs even though they may belong to a single legal entity and the legal entity is required to file a refund claim in one state and pay the tax in another state, resulting in not only procedural hardships but also blockage of working capital for such taxpayers.

Our suggestion:

It is therefore suggested that cross utilization of balances in electronic cash ledgers be permitted across multiple GSTINs of a single legal entity having a common PAN. This amendment will have no implications of revenue loss, but will build confidence of Government's commitment to move towards "One Nation One Tax" in true letter and spirit.

3. Transfer of Balances in Electronic Credit Ledgers across multiple GSTINs of a single legal entity

The State level registration requirement also implies the maintenance of distinct electronic credit ledgers towards CGST, SGST, IGST and Cess. Cross utilization of such balances in electronic cash ledgers within a single GSTIN is permitted subject to certain restrictions and rules of adjustment. However, the cross utilization is not permitted across multiple GSTINs even though they may belong to a single legal entity. This may result in the same legal entity requiring to pay tax in some states despite having accumulated balances in

some other states. This not only results in procedural hardships but also substantial blockage of working capital for such taxpayers.

Our suggestion:

It is therefore suggested that the accumulated balances in electronic credit ledgers (except the State Tax Component) be permitted to be transferred across multiple GSTINs of a single legal entity having a common PAN. This amendment will have no implications of revenue loss, but will build confidence of Government's commitment to move towards "One Nation One Tax" in true letter and spirit. It may further render the requirement of 'input service distributor' redundant and those provisions may then be done away with.

4. Removal of requirement for reversal of proportionate common credit attributable to exempted supplies

Section 17(2) read with Rules 42 and 43 require the reversal of proportionate common credit attributable to exempted supplies. While the said provisions are logical, the methodology of calculation prescribed under the Rules is very cumbersome. Also, on a practical parlance, though the provisions apply to all the taxpayers, we believe that except a few sectors, the impact of the said provisions may not be more than 0.5% of the tax paid by the taxpayer. When this provision is viewed in isolation, the cost of compliance with these provisions is far larger than the reversal amount collected.

Our suggestions:

It is therefore suggested that the provisions of Section 17(2) read with Rules 42 and 43 requiring the reversal of proportionate common input tax credit be done away with in general and may be made applicable only to specific sectors identified by the Government, which may include:

1. Banking and Financial Service Providers – for which specific provisions already exist
2. Real Estate Developers – for which specific provisions already exist
3. Restaurants and Hotels – in most cases, input tax credit is totally denied resulting in no major implications
4. Taxpayers engaged in petroleum sector – for which specific provisions may be incorporated in consultation with the relevant stakeholders

5. Removal of requirement for reversal of input tax credit on account of non payment to the vendor within 180 days

Law presently provides that ITC needs to be reversed in cases where the payment is not made to the concerned vendor (on whose invoice ITC has been claimed) within 180 days from the date of said invoice of the total invoice value. The tax amount will be allowed as re-credit on eventually making the payment. The law further provides that interest shall also be applicable on such reversal.

This presents an onerous responsibility on the tax payers to maintain elaborate documentation to demonstrate the payment made within 180 days and reconciliation of credit amounts including re-credit amounts, without any substantial benefit to the Government.

Our suggestion:

It is therefore suggested that an amendment should be made u/s 16(2) to not provide for the reversal of such ITC as well as imposition of interest.

6. Retrospective Impact to the amendment for applicability of Interest on Net amount paid in Cash rather than the gross tax amount

An amendment has been made u/s 50(1) vide Finance (No. 2) Act, 2019 to provide that interest will be calculated only on the net amount paid in cash and not on the gross amount prior to adjustment of input tax credit. The amendment is in the right direction and reflects the GST Council decision taken in this regard in December 2017.

Our suggestion:

The above amendment should be effective retrospectively w.e.f. 01.07.2017 (i.e. date of implementation of GST).

7. Need to change the constitution and functioning of Advance Ruling Authorities

An Authority for Advance Rulings have been constituted with the sole purpose to resolve the legal issues faced by the trade and industry well in advance so as to avoid litigations in future. However many instances have happened till now wherein the Rulings have been issued without correctly appreciating the provisions of law and then CBIC had to step in by issuing clarifications impliedly overturning the rulings (e.g. Accommodation services provided by a hotel situated outside SEZ to a SEZ was held not to be zero-rated. Thereafter circular was issued to clarify that such services to SEZ would be in fact zero-rated as per law). Hence a need is felt to overhaul the functioning of the said Authority.

Our suggestions:

Following suggestions are proposed to effectuate the objective with which the said Authority has been constituted:

- a. The composition of the Authority should comprise of majority of judicial members as was the case in the erstwhile regime.
- b. At present there is no right of appeal provided under law before the Tribunal/Courts against the decisions taken by the Appellate Advance Ruling Authority (first appellate authority). Hence it is suggested that the same may be provided.
- c. Vide Finance Act (No. 2), 2019 a National Appellate Advance Ruling Authority has been constituted wherein a legal entity who has received conflicting rulings (for separate GSTIN's within the same PAN) can file the appeal against such rulings before the said Authority instead of filing the appeals before the State Appellate Authority. It is therefore suggested that such right of filing appeal before the National Authority should be granted even to those persons who have received conflicting rulings vis-à-vis rulings in the case of some other persons and not limited to conflicting rulings within PAN.

d. The pendency of applications awaiting orders is high in many State's (e.g. Gujarat). Hence it is suggested that the entire process should be time bound strictly adhering to the time limits prescribed in law.

8. Clarification on the Place of Filing of Appeals in cases alleging E Way Bill Violations

There is confusion in trade and industry as to the appropriate forum wherein the appeals related to orders issued imposing tax and penalties for any violations in E-way bill are to be filed.

As an example a vehicle of a registered supplier in Gujarat sending goods to Delhi is detained in Rajasthan and order imposing tax and penalty is issued by the Rajasthan SGST officer. Now the confusion prevailing in law is whether the appeal against the said order needs to be filed before the higher authorities in Rajasthan (whose subordinate officer issued the order) or in Gujarat where the concerned supplier paying the tax and penalty is registered.

Our suggestion:

It is suggested that the appeal should be allowed to be filed where the concerned supplier is registered to enable easier representation.

B. SUGGESTIONS RELATED TO GSTN ISSUES

GSTN portal is the backbone for GST. Any glitches/issues on the portal hampers smooth and efficient filing of various returns by the tax payers. Some of the issues are as under:

- i. Signing issues in GSTR – 9/9C by digital signature
- ii. Validation issues in the excel utility of GSTR – 9/9C
- iii. Issues while uploading Financial Statements in GSTR – 9C
- iv. Issues while making payment for Annual Return via DRC – 03
- v. Issues related to the non-availability of list of transactions of the auto-populated input tax credit amounts in GSTR – 9 making matching nearly impossible.
- vi. Issues related to payments made via DRC – 03 not getting auto-populated in GSTR – 9.
- vii. Revision of GSTR – 9/9C not permitted to correct some inadvertent errors.

Our suggestions:

It is hence suggested that the due date for filing of Annual Return and Reconciliation statement for FY 2017-18 be extended as majority of tax payers are facing above stated difficulties even as on date. This is evident from the filing statistics released by the CBIC recently.

It is also suggested that the new return filing system proposed to be introduced from October' 2019 and mandatory e-invoicing proposed to be introduced from January 2020 be thoroughly tested before implementation to avoid any technical issues. If required, the current system can continue for the current financial year and the new return filing system and invoicing system may be introduced with effect from 1 April 2020.

Finally, a comprehensive manual must be released for the aid of the tax payers to understand the system requirements and validations so that the technical difficulties while filing can be avoided and the trade and industry have an assurance that they will be able to file the returns.

C. SUGGESTIONS HAVING REVENUE IMPLICATIONS BUT NECESSARY IN THE INTEREST OF ECONOMY

1. Eligibility of Refund on account of accumulated input tax credit attributable to input services and capital goods in cases of 'inverted rate structure'

Presently the manufacturers supplying goods under the inverted rate structure are not permitted to claim the refund of input tax credit ("ITC") accumulated on account of input services and capital goods. This results into increase in cost as the ITC not refunded becomes part of the cost.

As an example manufactures of agro machinery (e.g. tiller machines) supply their goods @ 12% whereas input services and capital goods are largely taxed @ 18%. This results in the accumulation of ITC the refund of which is not permitted. This eventually adds to the cost. Similar example can also be cited of the manufacturers of railway parts wherein apart from input services and capital goods even refund of higher tax paid on inputs is not permitted.

Our suggestion:

It is therefore suggested to permit refund of ITC accumulated even on account of input services and capital goods under the inverted rate structure. Rule 89(5) of the CGST Rules, 2017 and SGST Act(s), 2017 to be amended to allow refund of accumulated ITC on input services and capital goods. Notification No. 5/2017-Central Tax (Rate) restricting refund in the context of railway parts to also be suitably amended.

Similar refund may be granted even in case of capital goods procured by exporters including SEZ Units and EOUs.

2. Grant of Input Tax Credit attributable to construction of immovable property

Presently ITC in respect of goods and services used for the construction of immovable property is not permitted even if the property is used for the purposes of business. In such cases it increases the capex of the manufacturer thereby increasing the cost which eventually gets passed on to the final consumers including export customers thereby hurting our competitiveness.

Our suggestion:

It is suggested to permit ITC in respect of goods and services used in construction of immovable property used for business.

3. Grant of Refund of Pre-GST Era Taxes Paid under certain situations

The law presently does not expressly provide for refund of pre-GST era tax (Excise, Service Tax, CVD, etc.) paid in the following situations:

- a. Pre-GST tax paid but services not provided (e.g. flat booked before GST but cancelled during GST era)
- b. Pre-GST tax paid after GST implementation but was CENVARIABLE (e.g. CVD paid on pre-GST imports on or after 01.07.2017 due to final commodity price fixation after 01.07.2017 or Service tax paid under reverse charge mechanism on ocean freight in case of CIF imports or non-fulfilment of export obligation under FTP)

Non-grant of refund in above cases results in unjust enrichment of the exchequer and increases the cost of the trade and industry.

Our suggestion:

It is suggested that refund of such pre-GST era tax paid on or after 01.07.2017 be made available by suitably amending Sec. 142 of the CGST Act, 2017.

4. Amendment in the Place of Supply provision for Intermediaries

The law presently provides that an intermediary located in India will be liable to pay tax on the services provided to its foreign customer even though the payment is received in convertible foreign exchange. This increases the cost of such intermediation which eventually increases the cost of imports for domestic industry.

As an example an agent based in Delhi facilitates a supply of a machine from a German manufacturer to an Indian company which shall further use the said machine in manufacture of goods. The commission earned by the Indian agent from the German manufacturer is presently subjected to GST. Thus the said GST eventually becomes the part of the cost of imported machine as the commission including GST paid by the German manufacturer will add to the cost.

Our suggestion:

Supplies made by the intermediaries to foreign customer should be treated at par with other export of services and hence should not be subjected to tax. Sec. 13(8)(b) of the IGST Act, 2017 is hence suggested to be deleted.