

Update on NASSCOM's engagements on Taxation issues

It's been over a year to the implementation of the landmark GST regime and we have partnered with the industry and the Government in deliberating and addressing some of the key legislative and procedural issues of the technology industry. Over the last one year we have represented GST issues on several forums and have been working very closely with the GST council, CBIC and GSTN. You could continue to share your concerns for their inclusion in the pre-budget memorandum and our discussions with the Government.

On the direct tax front, there were several amendments during the year for eg amendments in the secondary adjustment provision, draft rules on the Significant Economic presence provision, final POEM notification, etc). On the basis of feedback received from you we shared detailed feedback on each of these amendments capturing the impact of these announcements and corresponding issues and recommendations. We look forward to hearing from you on specific recommendations under the corporate tax regime.

We would be organising calls, interactions and webinars to get your views and I would request your support in sharing concerns and participating in discussions.

Please share your comments and suggestion with us by **15th September 2018**.

Direct taxes

Some of the developments during the year impacting the sector are provided below along with the actions taken during the year towards a redressal.

1. Clarification on provisions on Country by Country Report (CbCR)

The Finance Act 2018 had clarified on conditions under which an Indian resident entity has to file CbCR in India and also extended the due date for filing CbCR in India by 12 months. On the basis of feedback received from many of you NASSCOM engaged with the CBDT and shared draft rules to simplify the compliance requirements. The FAQs to the effect are awaited.

2. Amendments under section 9

Very recently CBDT had invited comments on draft rules on the significant economic presence rules. We have submitted a preliminary feedback on the basis of member inputs highlighting concerns over the said provision. We now look forward to forward consultations.

3. Draft amendment in Rule 10CB of IT Rules, 1962 in respect of computation of interest income pursuant to secondary adjustment u/s 92CE of IT Act, 1961

In the rules released by CBDT in June 2017 there were ambiguity in the rules relating to computing the time limits for repatriation particularly in case of Agreement for Advance Pricing (APA) and Mutual Agreement Procedure (MAP) proceedings and NASSCOM had highlighted the need for clarification on certain important aspects. The draft notification released in July this year with an objective of addressing such ambiguities was released and NASSCOM has submitted a detailed feedback on the amendment proposed.

4. Final notification by CBDT for taxation of foreign Cos held as resident in India as per Place of Effective Management

The final notification on Place of Effective Management (POEM) guidelines were released in June 2018. The draft notification was issued in June last year and we had been requesting

for the release of final notification considering the rules become effective from FY 16-17. NASSCOM had flagged several ambiguities in the draft notification and some have been partially addressed and for the rest we will continue to engage with the Government basis the feedback received from industry.

5. Apart from the issues listed above, some of the other direct tax issues which remained unaddressed in the Budget 2018 are as follows and we will be continuing our efforts towards a resolution to the same.
 - a) Initiate review of Foreign Tax Credit mechanism
 - b) Remove cascading effect of DDT on dividend received from foreign companies
 - c) Remove Angel Tax - Share Premium In Excess Of Fair Market Value Treated As Income
 - d) Roadmap for corporate tax rationalisation

GST issues

NASSCOM has been working very closely with the GST council secretariat and CBIC towards resolution of key legislative and procedural issues of the sector.

1. Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports

Many of the companies had reported the breakdown of the online process prescribed for obtaining upfront exemption for exports through a Letter of Undertaking. NASSCOM raised the issue with the GST Council Secretariat and with their support suitable clarification was issued on the manner of filing of LUT, additional documentation required, criteria etc.

2. Postponement of the TDS/ TCS provision

Very recently applicability of TCS was postponed until September 30, 2018. NASSCOM had advocated on this aspect and had urged the Council to postpone the implementation of TDS and TCS provisions. We will continue to engage with Government towards a long term resolution.

3. Upfront exemption for STPI/ EOU units

One of the most pertinent issues faced by the IT/ ITeS sector was that the upfront exemption in respect of import of goods by the STPI/ EOU units is limited only to certain period of time. The exemption has however after continuous advocacy been now extended up to September 30, 2018.

4. Filing of TRAN-1 was allowed basis audit trail

Companies faced numerous challenges in filing the transitional return under GST. NASSCOM had shared concerns pertaining to the technical glitches on GSTN and the inability of companies to file TRAN 1 under the stipulated time frame. As a result of our request, a circular was issued by the CBIC regarding setting up of an IT grievance redressal mechanism for the glitches experienced on the GSTN portal.

5. GST Circular related to refund issues

In response to refund issues being experienced by companies under GST, the CBEC issued a detailed circular clarifying some common concerns faced by the companies. NASSCOM

has been highlighting the issues experienced by IT industry regarding difficulties in claiming refund and will continue to do so in accordance with the member feedbacks.

6. Explanatory Notes to the Scheme of Classification of Services

The Central Product Classification of the United Nations contains explanatory notes which aid in determination of appropriate classification of services. However, no such guidelines were prescribed under GST and this has indeed lead to confusion in case of classification of certain services. Upon NASSCOM's request with the CBIC, explanatory notes were issued in relation to the scheme of classification of services under the GST regime.

7. Recent amendments to the GST Bills

GST Council had before the monsoon session released the proposed amendments to the CGST Act, 2017, IGST Act, 2017 and the GST (Compensation to States) Act, 2017. While the proposals seek to address several issues identified in the Acts/ Rules, some of the important asks from the technology sector were not a part of the list of proposals. Hence to address the specific challenges faced by the IT sector, NASSCOM submitted a detailed feedback on such proposals along with issues which remain unaddressed and also met the GST council secretariat to discuss the key legislative and procedural issues and understand the Government's perspective.

The relevant amendments now proposed in the Finance bills are as follows:

- *SEZ Registration* –An amendment is proposed in Section 25(1) by way of insertion of proviso which allows SEZ units to obtain a registration separate from other DTA units in the same State/ UT.
 - *Issuance of consolidated credit notes* – An amendment to Section 34 of the CGST Act is proposed to provide option to the supplier to issue consolidated credit notes for multiple invoices.
 - *Rectification of returns* - Section 39(9) of the CGST Act to be amended to provide for rectification of omission in a return.
 - *High sea sales and bonded warehouse sales* - Schedule III (Activities to be neither treated as supply of goods or services) is proposed to be amended to include within its purview, the high sea sales and bonded warehouse sales. As a result such transactions will not qualify as “exempt” supplies and no reversal of input tax credit is therefore required.
8. Apart from the issues listed above we will be continuing our efforts towards a resolution of the following issues:
- a) Complexities in determination of place of supply for services
 - b) GST implications on transactions between head office and branch offices outside India
 - c) Issues faced by SEZ units on certain procurements

- d) Practical difficulties in refund processing (refund formula, requirement of furnishing of FIRC's, FIFO method of credit utilisation on online portal etc)