Steel Users Federation of India

www.steelfederation.org
info@sufi.org.in

31stJanuary 2019

To,
To GST Council,
5th Floor, Tower II, Jeevan Bharti Building,
Janpath Road, Connaught place,
New Delhi – 110 001.

CC:
Shri Piyush Goyal Ji
Hon'ble Railway, Coal and Interim Finance Minister
Government of India

Subject- Covering letter of recommendation on TDS in GST by Steel User Federation of India (SUFI)

Respected Sir,

With reference to the open house discussion on problems faced by trades and businesses in GST regime, conducted by the ministry on 15th July, 2018 in Mumbai, SUFI through its representative CA Samir Sanghvi has recommended TDS mechanism in GST.

Further, in this regard, SUFI has received several queries from stakeholders for which due diligence is required to be given. Therefore, going a step ahead, SUFI has made an endeavor to draft the TDS mechanism and process flow for the kind consideration of your goodself and SUFI also tried to provide possible solutions of the queries raised by the stakeholders.

The Enclosed Note is divided into 4 Sections. Gist of each Section is given blow-

Section I- Deals with the current scenario where current situation has been projected with an example and SUFI recommendation on 15th July 2018.
Section II- Deals with the process flow where step by step process flow of proposed returns is recommended.
Section III- Deals with the proposed format of forms and returns.
Section IV- Deals with the possible solutions for the queries raised by stakeholders.

We thankful to the Government where Government is doing tirelessly effort to ease the complexities of the GST and addressing the issues faced by the trades and businesses by conducting open house and directly involving the stakeholders. We as a "SUFI" will always try to give our best to achieve the target in general interest of the trades and businesses.

Thanking you,

Your Faithfully,

CA Samir Sanghvi,
Empaneled GST Expert for SUFI

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Steel Users Federation of India
(Sec.8 of Companies Act,2013 – Non Profit organisation)
Regd off: 2/3, Ashok Chambers, Devji Ratanshy Marg, Masjid East, Mumbai – 400 009.

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SECTION- I

Introduction

SUFI recommendation on reversal of input tax credit in case of default of supplier

On 15th July, 2018, during the Mumbai visit of Hon'ble Railway, Coal and Interim Finance Minister Shri Piyush Goyal Ji on First anniversary of GST, Steel Users' Federation of India (SUFI) through its representative CA Samir Sanghvi has recommended some suggestions to make GST effective, secure and user friendly amongst the stake holders. In the guise of 'Ease of Doing business', one of the issues under current GST that requires immediate action from the Government is **"Reversal of input tax credit if supplier defaulted on payment of GST"**.

To understand the sensitivity of aforesaid issue, we would like to draw your attention to GST - Economic distribution by transaction type and turnover group:

The table below shows the transaction type by the size of the firms (Published till December,2017)

Source: www.indiabudget.gov.in

Particulars	Transaction Type					Share of filed returns	Share in Tax liability
	B2B	B2C	Exports	Nil*	Total		
Below-threshold	0.2%	0.2%	0.0%	0.0%	0.4%	32.2%	0.9%
Composition	1.2%	1.1%	0.0%	0.1%	2.4%	36%	4.4%
SME	3.8%	2.3%	0.1%	0.5%	6.8%	22%	10.5%
Medium	15.5%	4.3%	1.5%	2.8%	24.1%	9.2%	29.8%
Large	36.5%	4.9%	7.7%	17.1%	66.2%	0.6%	54.4%
Total	**57.3%**	**12.8%**	**9.4%**	**20.5%**	**100%**	**100%**	**100%**

**This category consists of transactions reported by firms that are not part of GST, for example sales and purchases of petroleum products.*

Fact Finder:

Registered smaller firms (the first three categories) seem to be equally involved in selling to consumers (B2C) and selling to other firms (B2B). Medium and large firms, in contrast, have a much greater presence in B2B than B2C transactions. If for time being, Nil transactions are excluded, absolute B2B transactions contribute 57.3% of above table, but effectively it accounts for 72.08%[1] appx. verses appx. 16.10%[2] share of B2C category.

[1] 57.3% / (57.3+12.8+9.4)%*100% = 72.07%
[2] 12.8% / (57.3+12.8+9.4)%*100% = 16.10%

Relevant issues and concerns:

Reversal of input tax credit if supplier defaulted on payment of GST-

Facts of the case

As per Clause (C) of Sub Section 2 of Section 16 of CGST Act, Input tax credit to the buyer shall be available if among other conditions-

"the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply"

Based on above mentioned condition, if supplier did not deposit GST to the Government then input tax credit will not be available to the buyer. This is genuine hardship to the buyer because default is made by the supplier, but due to current system, ITC is denied to the buyer.

Example-
Mr. A who is honest trader, purchases goods from Mr. B. Mr. B charged GST on tax invoice. Suppose, Mr. A paid full value of invoice along-with GST charged on invoice to Mr. B in good faith assuming Mr. B will deposit GST and file his return in due time. Accordingly, Mr. A claimed input tax credit of GST paid at the time of purchase.

Say after filing of GST annual return, Mr. A came to know that Mr. B has not actually filed his GSTR 1 (Sales details) return, and due to supplier B's default, Mr. A may be denied the ITC. He tries to locate Mr. B but neither B is traceable, nor he is dealing anymore with Mr. A.

As a result, at the time of assessment, officer of Mr. A will not only reverse ITC but would also levy interest and penalty for default of Supplier B under current regime. It is hard reality today!

It is evident from the above example that Mr. A performed his part honestly, then too he suffers loss by way of reversal of ITC including interest and penalty which may end up with freezing of accounts or any blockage of Government incentives for no fault on his part, which should not have been the case otherwise.

The repercussion of current provision would be very sensitive and penalises the honest!

1. There is definite sandwich of the buyer as supplier would not transfer goods or services unless B2B buyer (like Distributor, Wholesaler, Retailer) pays him full amount within general credit system ranging between 0-60 days on average;
2. Seller claims full money but may differ the GSTR1 to avoid any Cash outflow towards GST. Currently, there is no mechanism in GST available to track such defaulter on REALTIME basis unless he is either importer or Exporter, where cross verification can be made on real time basis with Custom authority. Further, tracking of E-way bill may not be effective solution as it deals with movement of goods but not service. Also, tracking of E-way bill becomes difficult

when movement of goods is constructive or symbolic (such as Buyer – consignee transactions).

3. Further, as on date, GSTR2 is not operationalised, due to this, buyer always remains unsecured and uncertain about credit of ITC despite due compliance of GST Law at his end.
4. The rate of GST is reasonably higher than individual rate of erstwhile Excise Law, State VAT Laws or Service Tax Laws. Therefore, more the time to track defaulter, chances of losses are high!

Therefore, under current system, the only mechanism where default can be effectively caught is only when Buyer files Annual Return along with Audit report (the formats are under draft stage currently), which can happen only after 6 months on lower side or 1 and half year on higher side from date of transaction in any case due to due date being October of next Financial year. Till then, seller with defaulting intention can do tremendous irreparable damage to GST system by collecting but not paying at all.

The current system needs re-consideration to catch and punish the defaulter and reward the compliant.

Earlier Recommendation to Ministry of Finance (MoF):

SUFI recommends the Government to introduce Tax deducted at source (popularly known as "TDS") mechanism in B2B transactions.

The scheme will have inherent advantage as listed below-

- With TDS mechanism, the genuine buyer can deduct TDS at applicable GST rate and pay it to Government treasury before Due date of Form 3B to safeguard his interest as well as revenue to the Government.
- In turn, the Government will get its share of taxes without delay, which in today's situation, they may be losing till the time, the supplier files his return and makes payment.
- This move would enable buyer to timely claim ITC, as there would be no scope for supplier to default in B2B transactions which would occupy not less than 70% of total trade at any point of time.
- Most importantly, TDS mechanism would expose the defaulting supplier and reward the GST compliant (explained below).

SECTION- II

Proposed Process Flow

Process Flow

Post recommendation given to MoF, SUFI has received several queries which is required to be dealt with before implementation of TDS mechanism. Therefore, SUFI has endeavoured to address those queries through this note that may be considered by the Government for implementation of TDS mechanism.

SUFI would first like to recommend the proposed process flow for TDS mechanism which will help to resolve above mentioned queries-

Supply of goods by SUPPLIER	•Seller sells goods (Sales Price+GST) to buyer through B2B transaction or B2C transaction.
'TDS Payment' by BUYER **10th of the next month** *(propsoed in line with GSTR1 date)*	•**In case of B2B transaction** •Buyer will deposit full amount of GST on each B2B Tax invoices to the Government on 10th of the next month. •Buyer will pay sale price (excluding GST) to Seller as per contract terms. •**In case of B2C transaction** • No tax deduction is required. current mechanism will prevail.
'Filing of return' by BOTH **10th of the next month**	•**Return by seller** •Seller will file GSTR-1 showing B2B + B2C transactions on 10th of the next month. •**Return by buyer** •Buyer will furnishing **Supllier wise TDS** details under his login ID in proposed TDS return tab created on www.gst.gov.in.
Auto generation of 'Mismatch report' by GST PORTAL **12th of the next month**	•On 12th of the next month, seller and buyer gets auto notification if any, for any mismatch.
'Set-off of GST TDS against liabilities' by SUPPLIER **20th of the next month**	•On 20th of the next month, dealer files form 3B showing •B2C GST on Output — XX •B2B GST on Output — XX •Gross Tax Liability to be discharged on Output — XX •Less-Eligible ITC in respect of purchases for which TDS on GST paid by him — (XX) •Less-B2B liability to be discharged by buyer on seller's behalf — (XX) •Balance to be paid towards Output liability (net of ITC) (A) — XX •Tax liability under RCM (B) — XX •Total GST for the month — XX

SECTION- III

Proposed Forms and Design of TDS Return

SUFI Recommendation for GST council for immediate action:

- To design 'TDS' tab on GST Portal www.gst.gov.in containing following minimum details-

Table 1:

Sr No.	Supplier Name	Supplier GST No./UIN	Date of Invoice / Credit Note	Date of Receipt	Place of Supply	Value of Transaction	Rate of GST	CGST	SGST	IGST
1										
2										
Total						XXX		XXX	XXX	XXX

Table 2:

TDS Payment under	By payment through utilising credit in Electronic Credit Ledger A/c.	By payment through Net Banking/Credit Card/Debit Card etc.
CGST		
SGST		
IGST		
		Bank Name: IFSC Code: BRN No.: CIN No.: Date of Payment:

Note – TDS can be paid by single challan based on summary of deductee wise working made in first table.

- To design 'Mismatch report' in GST portal www.gst.gov.in containing minimum information:

On Supplier's Portal:

Mismatch categories arising after reconciliation with TDS details by Buyers	Amount involved in Mismatch				Need for Rectification by seller (Yes/No)	If yes, then proceed
	Net Value of Goods/ Services	CGST	SGST	IGST		
• GSTN of Buyer						Click here*
• Invoice Number						---do--
• Invoice Value						---do--

• GST amount						---do--
• Place of Supply						---do--
• Month of Invoice / credit note of supplier and Receipt of Goods/Services by buyer					Yes	---do--
					No	Create Reconciliation with reason

* **Click here-** It will enable supplier to make necessary changes in GSTR1 filed on 10th.

On Buyer's Portal:

Mismatch categories arising after reconciliation with GSTR1 of Suppliers	Amount involved in Mismatch				Need for Rectification by seller (Yes/No)	If yes, then proceed
	Net Value of Goods/ Services	CGST	SGST	IGST		
• GSTN of Supplier						**Click here***
• Invoice Number						---do--
• Invoice Value						---do--
• GST amount						---do--
• Place of Supply						---do--
• Month of Invoice / credit note of supplier and Receipt of Goods/Services by buyer					Yes	---do--
					No	Create Reconciliation with reason

* **Click here-** It will enable Buyer to make necessary changes in TDS return filed on 10th.

SECTION- IV

Possible Solution of Queries Raised by Stakeholders

Possible solution of queries raised by stakeholders

SUFI has received several queries from stakeholders which are summarised below:

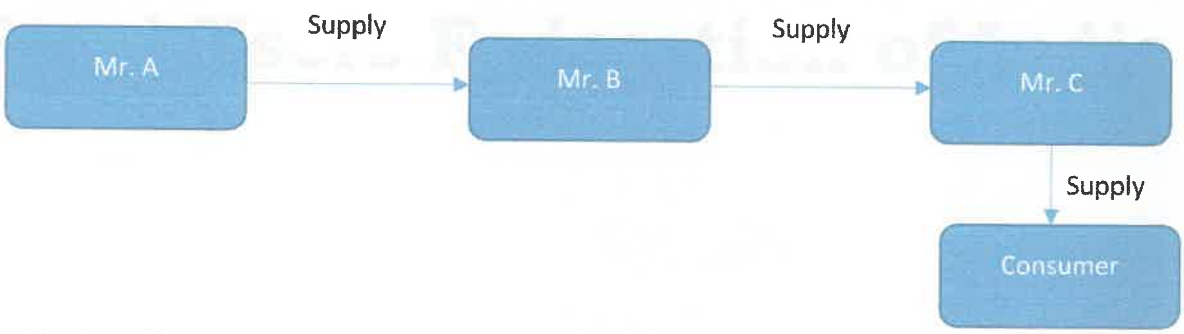
1. What if the buyer (Deductor) doesn't deposit TDS?
2. What if buyer receives goods/ services in subsequent month and enters purchase invoice in subsequent month?
3. Whether refund of ITC will be available in case of export?
4. Whether TDS would be required to be deducted on advance for goods or not?
5. What about GST ITC available to the seller in credit ledger as of today? Whether refund will be granted by the Government or same shall be allowed to be adjusted against TDS liability on supplies?
6. Whether TDS is required to be deposited deductee wise or through a single challan?
7. What about the credit if buyer doesn't make payment to the supplier within 6 months?
8. Whether TDS provisions will be applicable to Composition scheme dealer?

Lets' take queries one by one in line with process map suggested by SUFI-

1. What if the buyer (Deductor) doesn't deposit TDS?

This is one of the serious issues where one party defaults in payment of GST however in case of default by the buyer, mitigating steps can be taken to reduce the inconvenience of the seller which is not available in current system. Steps can be understood with the help of following example-

<u>**Example-1**</u>



<u>Event summary:</u>

Date	Event	Nature	Transaction value	GST	TDS applicability?
7th September,2018	A supplied to B	B2B	20,000	3,600	Yes
9th September,2018	B supplied to C	B2B	30,000	5,400	Yes
15th September,2018	C supplied to Consumer	B2C	40,000	7,200	No

On 10th October,2018 –

- A filed GSTR1 showing Transaction with B
- B neither deposit TDS nor file GSTR1
- C deposited TDS in name of B and filed TDS return and also files return showing further sale.

Particulars	**Mr. A**	**Mr. B**	**Mr.C**
GSTR1	✓	✗	✓
TDS paid	NA	✗	✓

On 12th October, 2018, a mismatch report will be generated where Mr. A can follow up with Mr. B for deposit of TDS.

On 20th of October, 2018,

Particulars	**Mr. A**	**Mr. B**	**Mr.C**
GSTR 3B	✓	✗	✓
B2B Liability	3,600	5,400	NA
Add- B2C Liability	0	0	7,200
Gross tax liability to be discharged	3,600	5,400	7,200
Less: B2B liability to be discharged by buyer on seller's behalf ***(Refer Note 1)***	3,600	5,400	0
Tax liability to be discharged by sellers	Nil	Nil	7,200
Less: ITC available *(based on TDS paid on behalf of supplier)*	0*	0#	5,400
Net Liability to be discharged	Nil	Nil	1,800
Amount to be paid in cash	Nil	Nil	1,800

**ITC available is NIL assuming there is no credit available.*

#ITC is not available because B has defaulted in the payment of TDS. Similarly, for A, TDS credit not available in monthly Form 3B.

Note:

1. SUFI proposed that, seller should not discharge GST liability on B2B transactions as all. Only buyer should be made liable for GST liability on B2B transactions.
   According to SUFI, there will not be any loss to the Revenue simultaneously interest of the sellers can be protected.

Scenario 1 (Current tax regime)
Situation i
Suppose A, B and C all discharge their GST liability then revenue to Government

Particulars	**Mr. A**	**Mr. B**	**Mr.C**
B2B Liability	3,600	5,400	NA
Add- B2C Liability	0	0	7,200
Gross tax liability to be discharged	3,600	5,400	7,200
Less: ITC available *(based on TDS paid on behalf of supplier)*	0*	3,600	5,400
Net Liability to be discharged	3,600	1,800	1,800
Amount to be paid in cash	3,600	1,800	1,800
Net revenue to the Government	**7,200**		

*Assumed that there is no ITC available in A credit ledger

Situation ii
Suppose A and C both discharge their GST liability, but B does not pay then revenue to Government.

Particulars	**Mr. A**	**Mr. B**	**Mr.C**
B2B Liability	3,600	5,400	NA
Add- B2C Liability	0	0	7,200
Gross tax liability to be discharged	3,600	5,400	7,200
Less: ITC available *(based on TDS paid on behalf of supplier)*	0*	3,600	0#
Net Liability to be discharged	3,600	1,800	7,200
Amount to be paid in cash	3,600	1,800$	7,200
Total revenue to the Government	**10,800##**		

*Assumed that there is no ITC available in A credit ledger
Since B has not discharged his liability, hence, no credit will be available to C
$ Recoverable from B by the Government via recovery proceeding
Since no credit of Rs. 5,400 has been allowed to C due to default by B, therefore, revenue to Government has been increased. If amount has been recovered from B at a later point of time, then credit may be given to C at that time.
Therefore,
Net revenue to the Government post recovery will be 10,800+1,800-5,400= Rs. 7,200

Scenario 2 (Proposed tax regime)

Situation i

Suppose A, B and C all discharge their GST liability then revenue to Government

Particulars	Mr. A	Mr. B	Mr.C
B2B Liability	3,600	5,400	NA
Add- B2C Liability	0	0	7,200
Gross tax liability to be discharged	3,600	5,400	7,200
Less: B2B liability to be discharged by buyer on seller's behalf	3,600	5,400	0
Tax liability to be discharged by sellers	Nil	Nil	7,200
Less: ITC available *(based on TDS paid on behalf of supplier)*	0*	3,600	5,400
Net Liability to be discharged	Nil	(3,600)	1,800
Amount to be paid in cash	Nil	Nil	1,800
Net revenue to the Government	**7,200**		

*Assumed that there is no ITC available in A credit ledger

Situation ii

Suppose A and C both discharge their GST liability, but B does not pay then revenue to Government.

Particulars	Mr. A	Mr. B	Mr.C
B2B Liability	3,600	5,400	NA
Add- B2C Liability	0	0	7,200
Gross tax liability to be discharged	3,600	5,400	7,200
Less: B2B liability to be discharged by buyer on seller's behalf	3,600	5,400	0
Tax liability to be discharged by sellers	Nil	Nil	7,200
Less: ITC available *(based on TDS paid on behalf of supplier)*	0*	0#	5,400
Net Liability to be discharged	Nil	Nil	1,800
Amount to be paid in cash	Nil	Nil	1,800
Net revenue to the Government	**7,200**		
Recoverable from Defaulter i.e. Mr. B	**3,600$**		

*Assumed that there is no ITC available in A credit ledger

Since B has not discharged his TDS liability, hence, no credit will be available to B

$ Recoverable from B by the Government via recovery proceeding

If amount has been recovered from B alongwith interest and penalty at a later point of time, then credit of Rs. 3,600 will be given to B at that time.

Therefore,

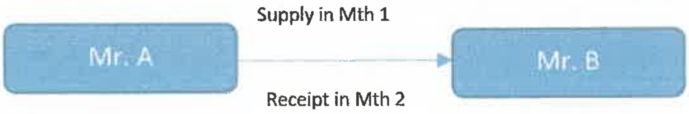
Net revenue to the Government post recovery will be 7,200+3,600-3,600= Rs. 7,200

Considering the above scenario, following are the advantages of proposed scenario-

1- Buyer can avail credit only after payment of TDS on purchases which will lead to reduction in litigation related to input tax credit.
2- No hardship to buyer as well as seller because there will not be any outflow of excess fund from sellers or buyers as compare to current regime where buyer loses input tax credit and pays interest and penalty on such inputs on account of default of seller.
3- Traceability of defaulter will be hassle free as report will be available on periodic basis.
4- Net revenue to the Government is indifferent.
5- Government will get its share of taxes without delay on timely basis, which in today's situation, they may be losing till the time and the supplier files his return and makes payment.
6- Government will be able to track defaulter B within a shortest period of time (say a month's time), when they can trace TDS deposited by C in name of B, but B has neither filed GSTR1 and 3B to reflect such sales transaction. Even, when GSTR1 of A showcase details of sales transaction with B, and B fails to deduct TDS, Government will be in position to re-establish the incidence of default on B's part.
7- Government will be in position to pull out list of defaulter suppliers like B very easily, who have not filed returns/not paid dues on time, but, in their name, TDS is deposited by buyer. Government will not lose any tax collection on B2B transactions and get a ready list of such defaulter. Further, this will alarm them on probable default of supplier B in B2C transactions, which otherwise would not have been hinted in current scenario and accordingly, necessary actions can be taken out by sending a show cause notice or visiting the premises of defaulter within a months' time and prevent the supplier B to make it a habit of defaulting. **This move would enable the Government to corner defaulters with preventive approach rather than remedial one.**

2. **What if buyer receives goods/ services in subsequent month and enters purchase invoice in subsequent month?**

Example-2



Event Summary:

Date	Event	Nature	Transaction value	GST	TDS applicability?
29th September,2018	A supplied to B	B2B	20,000	3,600	Yes
3rd October, 2018	B received Goods and records Tax Invoice				

On 10th October, 2018 –

- A filed GSTR1 showing Transaction with B
- B did not deposit TDS because he received Invoice in the month of October,2018.

On 12th October 2018, a mismatch report will be generated where Mr. A can follow up with Mr. B for deposit of TDS. But, based on response of B, A shall fill relevant column of Mismatch report as amount not rectified and subject to reconciliation, as this is genuine timing difference.

On 20th October, 2018

Particulars	Mr. A
GSTR-3B	
B2B Liability	3,600
Add: B2C Liability	-
Gross tax liability to be discharged	3,600
Less: ITC available *(based on TDS paid on behalf of supplier)*	-*
Less: TDS credit for payments made by buyer on our behalf	3,600
Net Liability to be discharged	Nil
Amount to be paid in cash	Nil

** ITC available is NIL assuming there is no credit available.*

On 10th November, 2018

- B paid TDS and filed TDS return showing Transaction with A by mentioning Invoice date of October,2018 and receipt date of November,2018.
- A did not make any reference in its GSTR1 return of transaction with B during October,2018.

On 20th November, 2018

Particulars	Mr. A
GSTR-3B	-
B2B Liability	-
Add: B2C Liability	-
Gross tax liability to be discharged	-
Less: ITC available *(based on TDS paid on behalf of supplier)*	-
Less: TDS credit for payments made by buyer on our behalf	(3,600)
Net Liability to be discharged (after netting off last month's outstanding	Nil
Amount to be paid in cash	Nil

Note:

It is proposed that since it is timing difference, mismatch report may be reconciled periodically through online portal using GSTR 1 filed by seller and monthly TDS return filed by buyer on or before 2 months from the end of every period for which GSTR 1 is filed.

In our example above, by 30 November 2018 (i.e. 2 months from September 2018) reconciliation must be completed by the seller.

3. Whether refund of ITC will be available in case of export?

Example-3

Event Summary:

Date	Event	Nature	Transaction value	GST	TDS applicability?
5th September,2018	Mr. A supplied to Mr. B	Export	20,000	NIL	No
7th September, 2018	Mr. A Purchase from Mr. X	B2B	10,000	1,800	Yes

On 10th October, 2018 –

- Mr. A filed GSTR-1 showing Export Transaction with Mr. B.
- Mr. A deposited TDS in respect of purchases made from Mr. X

On 20th October, 2018 –

Due to Export, Mr. A will not have any output liability.

Particulars	Mr. A
GSTR-3B	
B2B Liability	-
Add: B2C Liability	-
Gross tax liability to be discharged	-
Less: ITC available *(based on TDS paid on behalf of supplier)*	(1,800)
Less: TDS credit for payments made by buyer on our behalf	-
Net Liability to be discharged	(1,800)

Note:

SUFI recommends that in case of exporter, current practice of refund or credit adjustment available to exporter, shall continue. Accordingly, the exporter can either-

a. Claim refund of the ITC in respect of purchases for which TDS is paid by him, or
b. Carry forward the credit for offset against future liability.

4. Whether TDS would be required to be deducted on advance for Services or not?

Example-4

Event Summary:

Date	Event	Nature	Transaction value	GST	TDS applicability?
5th September,2018	Mr. B paid advance to Mr. A	B2B	10,000	1,800	Yes
7th October, 2018	Mr. A provided services to Mr. B	B2B	20,000	3,600	Yes

On 10th October, 2018 –

- Mr. A filed GSTR-1 showing advance received from Mr. B.
- Mr. B deposited TDS on advance in the name of Mr. A with the Government.

On 20th October, 2018

Particulars	Amount
GSTR-3B	
B2B Liability	1,800
Add: B2C Liability	-
Gross tax liability to be discharged	1,800
Less: ITC available *(based on TDS paid on behalf of supplier)*	-*
Less: TDS credit for payments made by buyer on our behalf	(1,800)
Net liability to be discharged	NIL

** ITC available is NIL assuming there is no credit available.*

On 10h November, 2018

- Mr. A filed GSTR-1 showing sales value of transaction with B and adjusting advance received from Mr. B during October,2018 GSTR1 return.
- Mr. B deposited TDS on balance amount in the name of Mr. A with the Government.

On 20th November, 2018

Particulars	Amount
GSTR-3B	
B2B Liability	3,600
Add: B2C Liability	-
Gross tax liability to be discharged	3,600
Less: ITC available *(based on TDS paid on behalf of supplier)*	-*
Less: TDS credit for payments made by buyer on our behalf	(1,800)
Less: Advance adjustment	(1,800)
Net liability to be discharged	NIL

** ITC available is NIL assuming there is no credit available.*

Note-

Under current regime, GST is not applicable on Advance received for Goods, however it applies to receipt towards services to be rendered.

5. **What about GST ITC available to the seller in credit ledger as of today? Whether refund will be granted by the Government or same shall be allowed to be adjusted against TDS liability on supplies?**

SUFI strongly recommends that with introduction of TDS under GST, the ITC available in Electronic Credit Ledger A/c. shall be allowed to be carried forward and utilised against future GST/TDS liability arising due to TDS mechanism. By following this recommendation, neither Government would lose any GST nor the dealer would lose his right to claim GST ITC, which otherwise he could have set off against output liability under current regime. This move will save Government cost of managing refunds.

Example 5

Considering the Example 1, Mr. C is into retail business. His opening balance of electronic credit ledger is Rs. 10,000.

Payment of TDS

Particulars	Amount
Goods purchased	30,000
GST @ 18%	5,400
TDS liabilities of Mr. C	5,400
Less: Utilisation of Electronic credit ledger balance	(5,400)
Liability to be discharged in cash	NIL

Payment of GST on B2C

Particulars	Amount
GSTR-3B	
B2B Liability	0
Add: B2C Liability	7,200
Gross tax liability to be discharged	7,200
Less: ITC available *(based on TDS paid on behalf of supplier)*	5,400
Less: TDS credit for payments made by buyer on our behalf	0
Net Liability	1,800
Less: Utilisation of Electronic credit ledger balance	(1,800)
Liability to be discharged in cash	NIL

Net balance available in Electronic Credit Ledger- Rs. 2,800 (10,000-5,400-1,800).

6. **Whether TDS is required to be deposited deductee wise or through a single challan?**

   As per SUFI recommended TDS mechanism process, the payment can be made even vide single challan since the registered person is required to provide deductee wise deduction details in his GST return.

7. **What about the credit if buyer doesn't make payment to the supplier within 6 months?**

   The provisions existing under current regime, would increase its importance under GST regime, as in case buyer doesn't make payment to supplier within 6 months, buyer will have to reverse input tax credit utilised/availed even if he has paid GST TDS on such transactions. Hence, it will be more painful to the buyer and this will prompt him to make payment to supplier in timely basis.

   Therefore, in the interest of healthy trade, Government should continue the current provision to protect the interest of suppliers, else, he may face probable issues of Bad debts on account of non-payment from the buyer intending to defraud him.

8. **Whether TDS provisions will be applicable to Composition scheme dealer?**

   No, since no GST is collected by him on Sales and ITC is not available to him. For Supplier, such transactions shall be categorised under B2C category for due compliance purpose.

TDS mechanism will not only beneficial to the seller, also it is beneficial to the revenue. Government will be in position to track the defaulters in timely manner and action can be taken against them accordingly. Further unlike in current system, buyer will take a sigh of relief because if he would be penalised due to his own act not because of act of others (e.g. reversal of credit if seller default in GST payment).

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Thanking you,
Yours faithfully,

CA Samir Sanghvi,
Empaneled GST Expert for SUFI

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Covering Letter

Date: 31st January, 2019

To,
GST Council,
5th Floor, Tower II, Jeevan Bharti Building,
Janpath Road, Connaught place,
New Delhi-110 001

CC:
Shri Piyush Goyal Ji,
Hon'ble Railway, Coal and Interim Finance Minister
Government of India

Respected sir,

Ref: Recommendations on GST

In the Government endeavor to make GST successful, SUFI has come forward with few recommendations which Government may into consideration to go ahead.

With reference to above, we would like to present our recommendations. While proposing the recommendations, we have considered following aspects:

a) Rationalization of GST rates on – sale/resale of residential property, petroleum products, electric vehicle & related infrastructure and cess on GST.
b) Abolishment of double taxation in GST with reference to ocean freight under RCM.
c) Clarification on E-way bill in case of bill to ship to.
d) Issue of reversal of input tax credit if supplier defaults in payment of GST to the Government.
e) Issues related to input tax credit in case of symbolic delivery/constructive delivery.
f) Improvement in GST return filing.

The recommendations are contained on page no. 2 to 11

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1- Rationalization of rate of tax

a- Tax on real estate-

- At present there is 12% GST on real estate or under construction property purchase. Further, in addition to the GST, stamp duty which is vary State to State, is charged by the State Government.
- Hence there is increase in cost of purchase and accordingly there is a hardship to the common people because to buy a home, a person has to shell out approximately 18% (Gst 12% and 6% Stamp duty) extra from his pocket.
- Further, if a person resale the same property, again buyer has to pay stamp duty on the same which again lead to increase in cost of property.

Recommendation-

i- We believe that Government may consider, to abolish stamp duty and increase the GST rate on residential property. Further, at the time of resale of the property GST should be levied on additional value of the property. In this way, cost of the property will reduce and also a common man fulfill his dream of buying a home.

Example-

Current Senario-

Current Scenario		**Proposed Scenario**	
1st Sale			
Cost of home (under construction)	5,000,000	Cost of home (under construction)	5,000,000
Rate of GST	12%	Rate of GST	18%
Rate of Stamp duty	6%	Rate of Stamp duty	
Total cost of property (5,000,000+12%+6%)	5,900,000	Total cost of property (5,000,000+18%)	5,900,000
Resale of same property			
Cost of home (Completed property)	5,900,000	Cost of home (under construction)	5,900,000
Rate of GST	Nil	Rate of GST	18%
Rate of Stamp duty	6%	Rate of Stamp duty	
Total cost of property (5,900,000+6%)	6,254,000	Total cost of property (5,900,000+18%)-900,000 (GST Paid earlier)	6,062,000

Implication:

- Based on the above table it can be concluded that value of property will be reduced under proposed method and more people will incline to purchase property.
- Though, there will be loss to the revenue due to abolishment of stamp duty but the effect of the same will be reduced with the increase in the number of transactions.
- Furthermore, more and more people will get benefitted in terms of saving of money.

ii- Government may also consider to provide set off of stamp duty on resale of residential property rather than increasing the rate of GST and abolishment of the stamp duty. By doing so common people will get more benefitted and a common person can buy his dream home without incurring any additional cost.

b- GST on petroleum products like petrol, diesel etc.

We are pretty sure that Government is formulating the policy to levy GST on petrol and diesel. Therefore, in this regard, recommendation from SUFI is mentioned below for your kind consideration-

i- Petrol and diesel are the back bone of the economy. Any price deviation in the two will resulted in major impact on the economy. As per current tax structure on petrol and diesel, normally, taxes of approx. Rs. 36/liter on petrol and Rs. 26/liter is paid by the end consumer. Further, above-mentioned tax includes taxes levied by States which are differ from State to State, hence there is no uniformity in rate of petrol and diesel of different States. As a result of which, cost of goods produced in one State may be differ from cost of goods produced in another State because State to State variation in price of petrol and diesel are upto Rs. 10/liter which is very huge gap.

To fill this gap, Government will have to bring these items under the preview of GST. Further, only Center should have power to increase of decrease in the rate of tax so that uniformity in price can be maintained.

ii- Taxes collected on petrol and diesel are the major source of revenue to the Government and if Government do not want to lose the revenue source then It may think not to provide full credit on petrol and diesel. Partial credit like 50% or 40% may be allowed so that cost of production to industry can be reduced which may result in reduction in inflation and increase in consumption also.

iii- Government may also consider to allow credit to specific class of persons like- transporters, airlines where major cost is fuel. It may also result in decrease in freight charges and common men can be befitted with this move.

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c- **GST on Electric Vehicle and related Infrastructure-**

- With the increase in problem of pollution. In this direction, bold move has been taken by the Hon'ble Road transport and Highway Minister, Shri Nitin Gadkari Ji to shift to electric vehicle from conventional vehicle by 2030.
- There are lots of efforts and infrastructure development needed to materialize the concept of electric vehicle into India. In this regard we have recommendations in this regard for your consideration-

i- Government may come up with the reduction in rate of GST for electric vehicle so that shifting to electric vehicle can be made successful.

ii- For the purpose of electric vehicle, infrastructure is required to be developed therefore, Government may consider to give the benefit to infrastructure developer in terms of reduction in GST rate so that initial cost can be reduced and services to common people can be given at competitive rates.

d- **Cess on GST**

The objective of bringing GST is to *One Nation One Tax,* however, somehow this objective is get defeated by cess charged on certain items because cess is charged on the amount of GST which in turn is a double taxation. Further it is increasing the cost of certain products which are consumed by a common people. Hence Government may consider to remove the Cess and rate of GST should be inclusive of all taxes.

2- **GST on ocean freight under reverse charge mechanism**

Fact of the case-

As per **Notification No. 8/2017-Integrated tax (Rate) dated 28 June 2017; IGST is leviable @ 5% under the heading 9965 (ii)** for the services described as under:

"Transport of goods in a vessel including services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India."

Further, as per Notification No. 10/2017- Integrated Tax (Rate) dated 28 June 2017, prescribes that Importer, as defined in clause (26) of section 2 of the Customs Act, 1962, is liable to pay integrated tax for the services specified therein as under:

"Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India."

Thus, by definition, GST is required to be paid by importer on the ocean freight under reverse charge mechanism (RCM).

Issue-

If goods are imported on CIF basis where cost of goods includes freight and insurance, then alongwith custom duty, IGST is paid on CIF value at the rate as prescribed for the goods.

Additionally, as per notification mentioned above, GST at the rate 5% is also paid on the value of freight again under RCM. Thus, it leads to double taxation on freight.

There is no doubt that whatever GST is paid above, input credit for the same is available however there is blockage of fund because liability of RCM can be discharged only by way of cash payment.

Hence, this is a hardship for the person where he is having credit in his credit ledger while he is to pay cash for discharging of liability due to RCM.

Example-

Mr. A is importer. He imports goods on CIF basis. Break up of invoice is as below-

Price of goods	USD 1000
Freight	USD 50
Insurance	USD 20
Total invoice value	USD 1070
Rate of custom duty	10%
Rate of IGST on goods	18%
Forex rate	1 USD= INR 60
Custom duty paid	(1070*60)*10%= INR 6,420
IGST paid	(1070*60)*18%= INR 11,556
GST paid under RCM	(50*60)*5%= INR 150 (to be paid in cash)

Conclusion

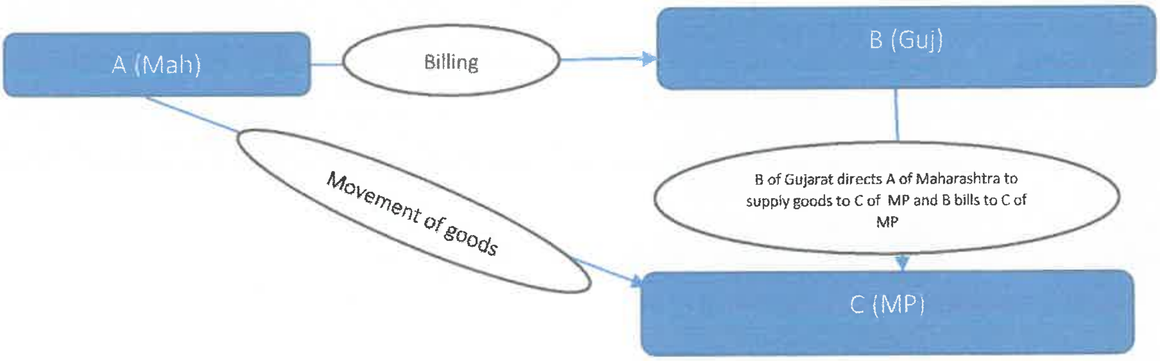
From the above-mentioned example, it is evident that GST on freight has been paid twice which is really a hardship for the business because it affects cash flows.

Recommendation

Government of India may relax the provision of RCM and considering the issue mentioned above either by way of removal of RCM on ocean freight or allow the assessee to discharge liability by way of utilization of credit.

3- **Clarification on E-way bill in case of Bill to Ship to-**

- The major relief to industry is in hassle-free movement of goods across state borders under GST by removing the state barriers, for improvement in **ease of doing business**.
- With E-way bill applicability, transporter does not have to stop at checkpoints and generate challan while crossing the state border.
- E-way bill rules have given more relief to smaller businesses, FMCG, courier and e-commerce companies.



In the above diagram, A sold goods to B and B sold the same goods to C. B directs A to send the material directly to C's premises. (Terms of delivery is Ex-godown/Free on road).

Situation 1: If only A prepares E-way bill-

Then B will have to inform C's delivery address, but B does not want to disclose his customer details to A hence this option is not feasible.

Situation 2: If only B prepares E-way bill-

Then B will have to mention A's premises details in "Dispatch From" column but B does not want to disclose his supplier's details to C hence this option is not feasible.

Situation 3: If only C prepares E-way bill-

Then B will have to mention A's premises details to C but B does not want to disclose his supplier's details to C hence this option is not feasible.

Issue

In the given situation above, only one E-way bill can be prepared which can be prepared by A or B or C based on the terms of delivery. Further it is a general practice in trade that both buyer and seller do not want to disclose their sources with each other because it may impact their business.

But due to introduction of e-way bill, B will have to disclose either his supplier details to C or his customer details to A because in e-way bill it is mandatory to fill address of supplier from where goods are loaded and address of customer where goods are delivered.

Recommendation

Government may introduce such a mechanism where address of ultimate supplier or ultimate customer cannot be displayed in system to anyone except preparer of E-way bill and to GST department.

Further Government may also consider removing the condition to mention full address of customer/consignee on invoice.

4- Reversal of input tax credit if supplier defaulted on payment of GST-

Facts of the case

As per Clause (C) of Sub Section 2 of Section 16 of CGST Act, Input tax credit to the buyer shall be available if among other conditions-

"the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply"

Based on above mentioned condition, it is clear that if supplier did not deposit GST to the Government then input tax credit will not be available to the buyer.

This is genuine hardship to the buyer because default is done by the supplier credit is disallowed to buyer.

Example-

Mr. A who is honest trader, purchases goods from Mr. B. Mr. B charged GST on tax invoice. Mr. A paid full value of invoice alongwith GST charged on invoice to Mr. B in good faith considering that Mr. B will deposit GST and file his return. Accordingly, Mr. A claimed input tax credit of GST paid at the time of purchase.

After 2 months, Mr. A came to know that Mr. B has not filed his GSTR 1 (Sales details) return hence Mr. A is not eligible to get the input tax credit. He followed up with Mr. B but he did not filed his return.

Further, at the time of assessment, officer denied input tax credit to Mr. A and passed an order to reverse credit alongwith interest and penalty.

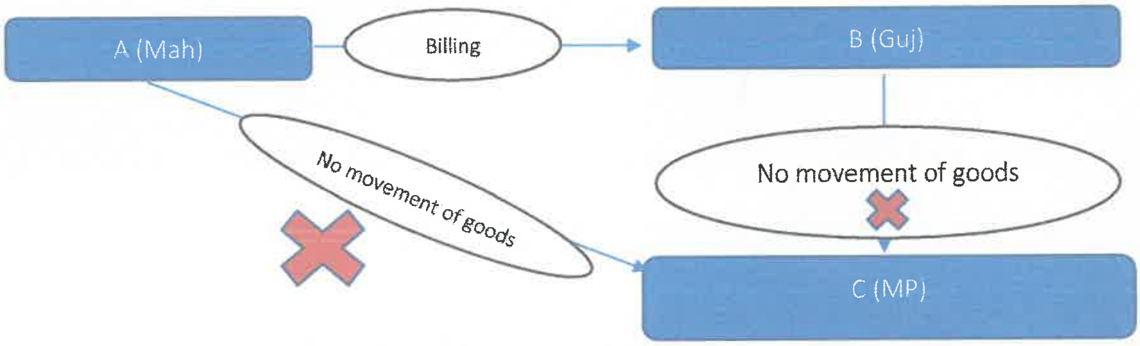
It is evident from the above example that Mr. A performed his part honestly still he has to suffer loss by way of reversal of credit including interest and penalty which should not have been the case.

Recommendation

i- Government may consider introducing, TDS mechanism where buyer can deduct TDS and pay it to Government account to safeguard his interest as well as revenue to the Government.

ii- Government may also consider issuing a list of defaulters alongwith their GST number who have not file their return or discharged their liabilities in past 2 months so that an honest buyer can beware before entering into any kind of transaction with those persons. If still he does any transaction, then he will be doing so at his own risk.

5- Input tax credit in case of no movement of goods



In above situation, A sold goods to B, B sold the same goods to C but there is no movement of goods from A's premises because huge cost is involved in transportation.

As CGST Act, input tax credit will not be given if,

1- Registered person is not in possession of the invoice or debit note.
2- He has not received goods or services or both*.
3- Tax has actually not been paid to Government by the supplier.
4- Return has not been furnished.

*Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise.

Issues

a- Since there is no movement of goods then it will be difficult for the business to prove genuineness the transaction. Further Business will have only invoice issued to customer and customer's acknowledgement. Further, business can demonstrate the movement of funds through bank with reference this kind of transaction. But department may raise a question regarding genuineness of the transaction because there is no movement. Therefore, it is required to be clarified that these documents will be sufficient or any additional proof will be required?

b- Whether it is mandatory for B and C to register A's premises as their 'Additional Place of Business' because as per GST Act, additional place of business is required to be disclosed in registration certificate?

c- Whether input tax credit will be available to B and C because there is no physical movement of goods while there is constructive delivery of goods.

Recommendation
Government may issue clarifications with reference to above mentioned problems in the interest of business and revenue.

6- Change in the date of returns-

When GST were introduced, at that point of time 3 GST return were required to submitted on monthly basis-

a- GSTR 1- Related to sales details, to be filed upto 10th day of next month
b- GSTR 2- Related to purchase mismatch details, to be filed upto 15th day of nex month
c- GSTR 3- Auto populated based on GSTR 1 and GSTR 2. Accordingly, liabilities are discharged. To be filed upto 20th day of next month.

Due to some technical glitches in the system, above mentioned hierarchy could not be maintained and Government has introduced new mechanism of GST returns-

a- GSTR 1- Related to sales details, to be filed upto 10th day of next month
b- GSTR 3B- Summary of GST liabilities and input tax credit and balance liability to be discharged in cash. To be filed upto 20th day of next months.

Issue-

Since there is no concept of GSTR 2 and GST liability is not automatically computed then there is no use of having 2 different date of filling of 2 returns. It will only occupy resources and compel the organization to put extra time and cost.

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Recommendation

1- Government may consider to align GSTR 1 and GSTR 3B and both the returns to be filed on same day. Further Sales summary in GSTR 3B should be auto populated from GSTR 1 so that chance of manipulation can be eliminated.
2- Recommendation if implemented, will result into ease in return filing and consequently will prove great relief to industry from compliance burden and thus **promote ease of doing business** objective of government.

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Thanking you,
Yours faithfully,

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