



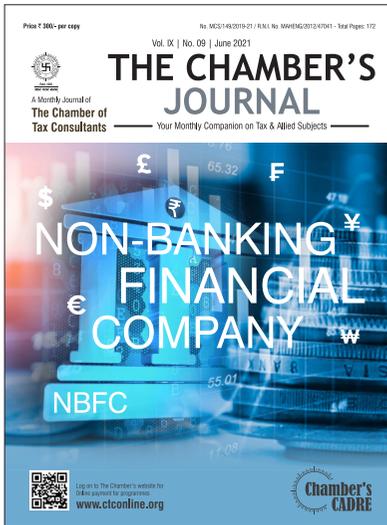
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Pre-Budget Memorandum 2022

Suggested Amendments in respect of Goods and Services Tax (GST)
for Finance Bill, 2022

Dated: 1st December, 2021



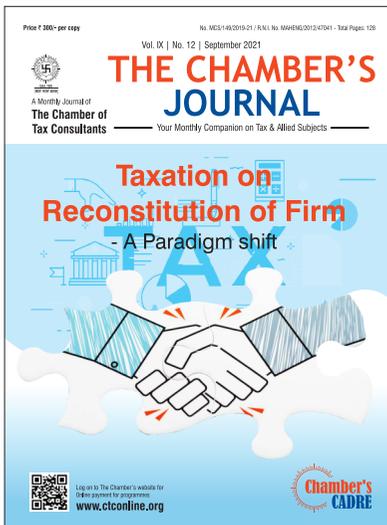
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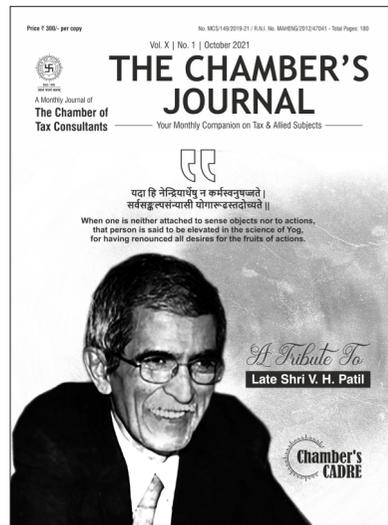
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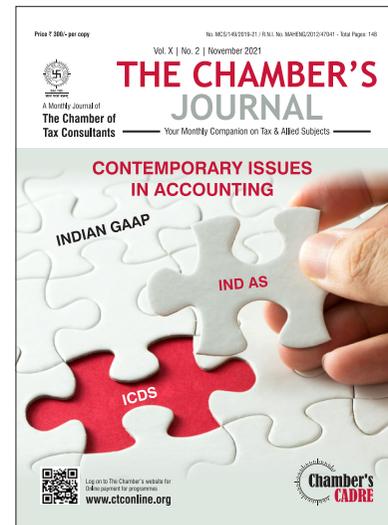
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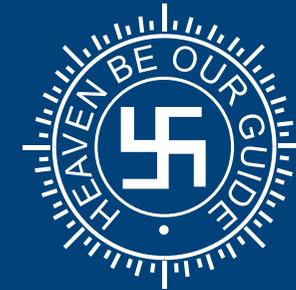
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(A Monthly Journal of the Chamber of Tax Consultants)



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1st December, 2021

Shri J. B. Mohapatra,
Chairman,
Central Board of Direct Taxes,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi –110001

Respected Sir,

Subject: Pre-Budget Memorandum 2022-2023–Suggestions on GST

We are pleased to submit our suggestions on GST for the Budget of 2022. We have concentrated on only few suggestions which, we are sure, will meet with your approval. Each of the suggestions has been necessitated on account of the serious hardship or inconsistency in the law.

Thanking you,

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-
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PRE BUDGET-SUGGESTIONS/VIEWS ON "GOODS AND SERVICES TAX"		Date : 15-11-2021	
Sr. No.	Issue	<u>Justifications</u>	
	<u>Existing Provisions</u>		<u>Suggestions</u>
1.	<p>If a recipient fails to make payment to the supplier within a period of 180 days from the date of issue of invoice by the supplier, then an amount equal to the input tax credit availed by the recipient has to be reversed along with the payment of interest.</p> <p><u>Relevant Provision:</u></p> <p>Second Proviso to Section 16(2) of the CGST Act, 2017 “(2)... <i>Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon <u>within a period of one hundred and eighty days from the date of issue of invoice by the supplier</u>, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:</i> ...”</p>	<p>It is recommended that a proviso should be inserted after the second proviso to Section 16(2) of the CGST Act, 2017 to extend the period of 180 days to the due date as per the contractual terms, wherein as per the contractual terms between the supplier and recipient the payment is due beyond the period of 180 days from the date of issue of invoice.</p> <p>Suggested Proviso : Provided further that where the contractual terms provide for credit period of more than 180 days for payment of consideration, then the due date for payment as per the contractual agreement should be considered instead of the period of 180 days from the date of issue of the invoice by the supplier.</p>	<p>Difficulty is being faced by taxpayers in sectors where the contractual terms provide for a credit period of more than 180 days for payment. The supplier would have already paid tax on the basis of the invoice issued, but the recipient has to reverse the credit inspite of contractual terms agreed with the supplier of making payment beyond 180 days.</p>

<p>2. As per Rule 36(4) of the CGST Rules, 2017, a registered person (recipient) can avail input tax credit in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in their Form GSTR-1, only up to a specified percentage (currently 5%) of the eligible credit which is appearing in FORM GSTR-2A of the recipient.</p> <p>Further, a new clause (aa) to sub-section (2) of Section 16 of the CGST Act, 2017, is being proposed to be inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in their Form GSTR-1/IFF i.e. appearing in Form GSTR2A/2B of the recipient.</p> <p>Relevant Provisions:</p> <p>Rule 36(4) of the CGST Rules, 2017 <i>“(4) Input tax credit to be availed by a registered person <u>in respect of invoices or debit notes, the details of which have not been furnished by the suppliers</u> under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, <u>shall not exceed 5 per cent. of the eligible credit available</u> in respect of invoices or debit notes the details of <u>which have been furnished by the suppliers</u> under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.”</i></p> <p>Section 16(2)(aa) of the CGST Act, 2017 - proposed to be inserted vide the Finance Act, 2021 dated 28.03.2021, <i>“(2)... (aa) the <u>details of the invoice or debit note</u> referred to in clause (a) has been furnished by the supplier in the statement of outward supplies</i></p>	<p>Functionality as envisaged under section 38,42 and 43 of the CGST Act,2017 should be enabled on the GST portal to verify, validate, add, modify or delete invoices and/or credit/ debit notes issued by the supplier which are not appearing in Form GSTR-2A of the recipient.</p>	<p>Currently, the availment of ITC by the recipient is dependent on the supplier’s compliances.</p> <p>Supreme court in various cases has held that input tax credit is a vested right of every taxpayer and the core of any value added tax mechanism. Though every right is subject to reasonable restrictions, taxpayers should not be asked to do the impossible.</p> <p>GST law envisages in Section 38 of the CGST Act, 2017 that the buyer/recipient can upload invoices not appearing in Form GSTR-2A. However, this functionality is not operational. Enabling this will empower the government to initiate action against delinquent suppliers.</p>
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<p>and such details <u>have been communicated to the recipient</u> of such invoice or debit note in the manner specified under section 37;"</p>		
<p>3.. As per section 16(4) of the CGST Act, 2017, a registered person is not eligible to claim the input tax credit in respect of any invoice or debit of a particular financial year after the due date of furnishing return for the month of September following the end of that financial year or furnishing the annual return for that financial year, whichever is earlier.</p> <p>Relevant Provision:</p> <p>Section 16(4) of the CGST Act, 2017 “(4) A registered person shall <u>not be entitled to take input tax credit</u> in respect of any invoice or debit note for supply of goods or services or both <u>after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</u>”</p>	<p>It is recommended that the time limit prescribed for claiming the input tax credit should be extended till the time of filing the annual return of that particular financial year.</p>	<p>This will allow taxpayers to claim any unclaimed input tax credit before filing the annual return.</p>
<p>4. A registered person is not eligible to claim the input tax credit in respect of goods or services or both which are blocked under clause (b) of Section 17(5) of the CGST Act, 2017.</p> <p>However, the proviso mentioned after sub-clause (iii) of clause (b) of Section 17(5) states that the input tax credit in respect of goods or services or both is available, where it is obligatory for an employer to provide the same to its employees under any law.</p> <p>Relevant Provision:</p>	<p>It is recommended that necessary amendment / clarification should be made in clause (b) of Section 17(5) of the CGST Act, 2017 to provide clarity that proviso given after sub-clause (iii) applies to all the sub-clauses i.e. (i) to (iii) mentioned in clause (b) of Section 17(5) of the CGST Act, 2017.</p>	<p>Currently, there is an ambiguity whether the proviso mentioned after sub-clause (iii) applies to all the sub-clauses i.e. (i) to (iii) mentioned in clause (b) or only to sub-clause (iii) of clause (b) of Section 17(5) of the CGST Act.</p> <p>This does not seem to be the intention of the government.</p>

Section 17(5) of the CGST Act, 2017

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

...

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”

<p>5..</p>	<p>Section 24 of the CGST Act, 2017, mandates GST registration for persons who are liable to pay tax under the reverse charge mechanism irrespective of the turnover threshold limit.</p> <p>Relevant Provision:</p> <p>Section 24 of the CGST Act, 2017 <i>“24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,--</i> ... (iii) <i>persons who are required to pay tax under reverse charge;</i> ...”</p>	<p>It is recommended that a facility of paying tax under reverse charge mechanism, , through a PAN based challan cum return should be provided to unregistered recipients (upto their basic threshold limit of registration) without making them liable for mandatory registration u/s 24(iii).</p>	<p>Due to this provision, a person whose turnover is below the threshold limit is required to get registered if he receives specified categories of goods or services or both which are liable to GST under reverse charge mechanism. Once a person gets registered under the Act, he becomes liable to comply with all the provisions of the Act although otherwise he is not liable due to aggregate turnover being below the threshold limit.</p> <p>Allowing such facility will reduce the compliance burden and ensure ease of doing business.</p>
<p>6.</p>	<p>Section 31(3)(f) of the CGST Act, 2017, requires a registered person, who is liable to pay GST under reverse charge mechanism, to issue a self invoice for goods or services or both received by him from an unregistered supplier.</p> <p>Further, as per section 31(3)(g) of the CGST Act, 2017, a registered person is also required to issue a payment voucher at the time of making payment to the supplier (whether registered or not) for the inward supplies of goods or services or both which are liable to reverse charge.</p>	<p>It is recommended that the requirement to generate a self-invoice should be done away with by omitting sec.31(3)(f).</p> <p>Consequentially, Rule 36(1)(b) of the CGST Rules,2017 can be suitably amended to avail input tax credit on the basis of payment of tax under Reverse Charge Mechanism.</p>	<p>Self-invoice as well as payment vouchers, both are required to be generated for each transaction by registered person liable to pay tax u/s 9(3) or 9(4) of the CGST Act, 2017 (i.e. under Reverse Charge Mechanism)</p> <p>Invoices are generally issued by the suppliers, whether they may be registered or unregistered.</p>

<p>As per Rule 36(1)(b) of the CGST Rules, 2017, input tax credit of GST paid under reverse charge mechanism can be availed based on self-invoice issued in terms of section 31(3)(f) of the CGST Act, 2017, where the supplier is unregistered.</p> <p>Relevant Provisions:</p> <p>Section 31(3)(f) and (g) of the CGST Act, 2017 “(3) ... (f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 <i>shall issue an invoice</i> in respect of goods or services or both <i>received by him from the supplier who is not registered</i> on the date of receipt of goods or services or both; (g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 <i>shall issue a payment voucher</i> at the time of making payment to the supplier.”</p> <p>Rule 36(1) of the CGST Rules, 2017 “(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,- ... (b) <i>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;</i> ...”</p>		<p>The payment voucher as per Rule 52 of the CGST Rules, 2017 covers the basic parameters as required in an Invoice.</p> <p>The recipient is eligible for Input tax Credit only after making payment of taxes under Reverse Charge Mechanism.</p> <p>Time of supply provisions are applicable to invoices issued by supplier and not to self-generated invoices.</p> <p>Removing the requirement of generating self-invoices will reduce the compliance burden on the taxpayers.</p>
<p>7. Any person who is aggrieved by any decision or order passed by authority can file an appeal to the appellate authority or tribunal only</p>	<p>It is recommended that law should be amended to give power to the</p>	<p>Mandatory pre-deposit creates a financial burden on the business entities</p>

<p>after making payment of a certain percentage of the disputed tax amount. No appeal is admitted before payment of the mandatory pre-deposit</p> <p>Relevant Provisions:</p> <p><u>CGST Act, 2017</u></p> <p>Appeals to Appellate Authority: “107 ... <i>(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-</i></p> <p><i>(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and</i> <i>(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.</i> <i>Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”</i></p> <p>Appeals to Appellate Tribunal “112 ... <i>(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-</i></p>	<p>appellate authorities to reduce/waive the amount of pre-deposit for admitting the appeal.</p>	<p>which are under financial stress and in cases where the huge demands are created on passing of unreasonable orders or high pitch assessment orders.</p>
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	<p>(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and</p> <p>(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.”</p>		
8.	<p>Currently there are no powers provided to the proper officer / adjudicating authority to administratively condone the delay in making applications for refund, appeals, registration, cancellation of registration, revocation of cancellation of registration etc.</p>	<p>Powers to grant administrative relief to dealers by way of condonation of delay in making Refund Application, filing Appeal, Obtaining Registration, application for Cancellation of Registration and application for revocation of cancellation of registration should be provided to the proper officer / adjudicating authority.</p>	<p>There are instances where there is delay in refund applications and filing appeal due to reasonable causes. The proper officer / adjudicating authority should be authorized to condone the delay in genuine cases to provide justice to the applicants.</p>
9.	<p>1. Currently, Rule 96B of the CGST Rules,2017 provides the process for recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds are not realized within the period allowed under the Foreign Exchange Management Act. The amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the CGST Act, as the case may be, as is applicable for recovery of erroneous refund. The procedure for repayment of refund recovered is provided in cases where the sale proceeds are realized after recovery of refund.</p> <p>2. However no procedure is prescribed for re-credit of the ITC utilized from the electronic credit ledger at the time of payment of Intergrated Tax in case of exports on payment of tax or for re-credit of ITC debited from the electronic credit ledger at the time of claiming of refund for exports under LUT.</p>	<p>1. Till the time, the provisions for requirement of realisation of export proceeds for export of goods is not enforced/made effective in Sec 16 of the IGST Act, the recovery of the refund amount must be kept in abeyance under the Rule 96B.</p> <p>2. The Rule 96B should be made applicable to Exports made after the proviso to Sec.16(3) of the IGST Act is made effective.</p>	<p>1. The proviso to Sec 16(3) of the IGST Act is not yet operative and thus, Rule 96B cannot be implemented till the proviso is made effective.</p> <p>2. The Rule 96B should have prospective effect and should be made applicable to Exports made after the proviso to Sec.16(3) of the IGST Act is made effective.</p> <p>3. There are no specific guidelines for depositing the refund amount being recovered, nor are</p>

<p>Relevant Provisions:</p> <p>RULE 96B: Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised</p> <p><i>(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:</i></p> <p><i>Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.</i></p> <p><i>(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under</i></p>	<p>3. Detailed circular/clarification must be prescribed entailing how a person who has received refund may deposit the amount so refunded on non realisation of export proceeds within the time limits prescribed under FEMA.</p> <p>4. To the extent input tax credit was debited by the taxpayer from his Electronic Credit Ledger:</p> <p>a) For discharging the liability on Exports With Payment of Tax (EWPAY)</p> <p style="text-align: center;">OR</p> <p>b) While making refund application for Exports without payment of tax (EWOPAY) under LUT.</p> <p>There should be a procedure for re-crediting the input tax credit utilized/debited earlier in the electronic credit ledger while making exports/refund application. The refund recovery procedure would take care of the recovery of refund granted in cash, the deposit thereof in cash and the re-refund thereof on realization of exports proceeds as per the extended time limits as per FEMA.1.</p>	<p>there any guidelines for re-refunding the recovered amount.</p> <p>4. (a) In case of Export of Goods with payment of tax, in many cases, the tax liability is discharged by utilizing the credit lying in the electronic credit ledger. However, on non realization of the export proceeds within the time limit under FEMA, no procedure is prescribed for depositing the amount of refund received in cash as well as re-credit of amount utilized from the electronic credit ledger.</p> <p>(b) In case of Refund applications with respect to Export of Goods without payment of tax under LUT, the electronic credit ledger is debited to the extent of amount of refund claimed. However, on non realization of the export proceeds within the time limit under FEMA, no procedure is prescribed for depositing the amount of refund received in cash as well as re-credit of</p>
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<p><i>sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.</i></p>		<p>amount debited from the electronic credit ledger.</p>
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The Chamber of Tax Consultants



Estd. 1926

Vision Statement

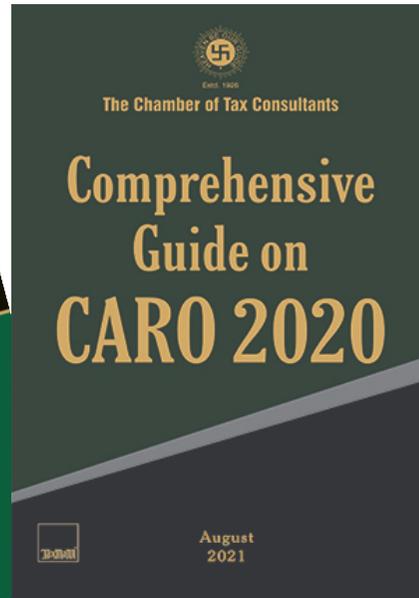
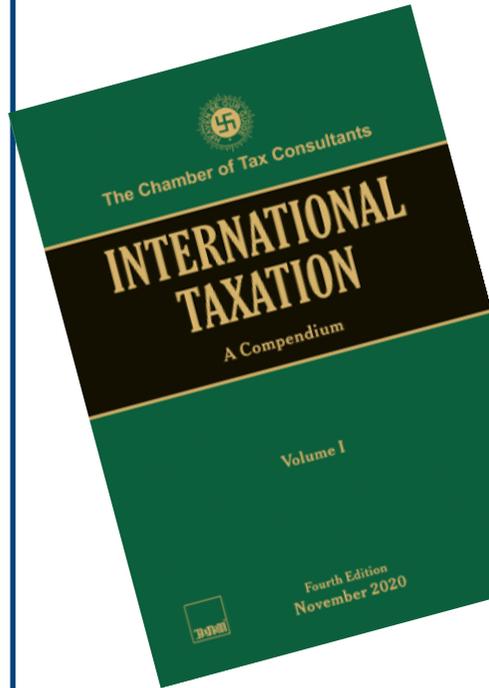
The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

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The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur**, Senior Advocate on 30th January, 2008.



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THE CHAMBER OF TAX CONSULTANTS

ABOUT THE CHAMBER OF TAX CONSULTANTS

The Chamber of Tax Consultants (CTC) was set up in 1926 and is one of the oldest voluntary non- profit making professional organisations. It is the voice of more than 4000 professionals on PAN India basis which comprises of Advocates, Chartered Accountants, Company Secretary, Cost Accountants, Corporates, Tax Consultants and Students.

The Chamber is in its 91st year and is a young dynamic organisation which has a glorious past and undisputedly ambitious future. The Chamber is a great institution with a tradition of high integrity, independence and professionalism.

The Chamber acts as power house of knowledge in the field of fiscal law, always proactive in contributing to the development of law and profession through research, analysis and dissemination of knowledge and by tendering suggestions to authorities. The Chamber provides networking platforms to professionals through interactive meetings and seminars

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The Chamber shall preeminent in upholding among the professional, tradition of excellence in service, principal conduct and social responsibility.