



The Chamber of Tax Consultants

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POST – BUDGET MEMORANDUM 2022

**Suggested amendments in respect of Indirect Taxes
for Finance Bill, 2022**

THE CHAMBER OF TAX CONSULTANTS

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Date: 10th March, 2022

To,
Honorable Finance Minister,
Government of India,
Ministry of Finance,
North Block, Parliament Street,
New Delhi – 110 001

Respected Madam,

Subject: Post – Budget Memorandum Indirect Tax Proposals of Finance Bill 2022

We are pleased to submit our suggestions on Indirect Taxes of the Finance Bill, 2022 for your Honor's Kind consideration. We have concentrated on certain clauses and made suggestion which, we are sure, will meet with your approval. Each of the suggestions has been necessitated as serious hardship or inconsistency in the law may be caused.

With regards,

Yours truly,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-

Ketan L. Vajani
President

Sd/-

Mahendra Sanghvi
Chairman
Law & Representation Committee

Sd/-

Apurva Shah
Co-Chairman

POST BUDGET MEMORANDUM INDIRECT TAX PROPOSALS OF FINANCE BILL 2022

Sr. No.	Proposed Amendment	Section and GST Act	Issue	Recommendation	Remark
1	Insertion of additional condition by way of clause (ba) for eligibility of ITC. The said conditions proposes to allow ITC only to the extent which is not restricted u/s 38 and communicated to recipient.	Section 16(2) of the CGST Act	Section 16(2) already provides for 5 conditions for availment and eligibility of ITC. Insertion of additional 6th condition for availment of ITC will cause hardship to small and medium business entities. The small and medium business entities do not have enough resources to keep continuous check on compliances of their vendor under GST. In any case they donot have any control on the vendors and they donot have access to the information about vendor complying GST provisions. Further, SME businesses work on wafer thin margins and such restrictions on ITC leads to working capital crunch for no default on their part.	GST law propounds for seamless availment of ITC & ITC is the heart of GST. When the eligibility of ITC is already having 5 stringent conditions u/s 16(2), there is no need for the proposed additional condition. ITC should not be denied to the Recipient of the Supply, due to any default of the Suppliers, where the Recipient has no control on the wrong actions/in-actions/defaults of the Supplier.	
2	Substiution of section 38 proposing for various restrictions on availment of ITC	Section 38 of the CGST Act	Many stringent conditions and restrictions have been proposed on allowance of ITC such as vendor has taken correct and eligible ITC as per 38(2)(a), vendor has complied to section 49(12) of the CGST Act. Besides several restrictions proposed herein, are	Conditions which have a circular effect or require compliances of vendors under various sections such 38(2)(a), 49(12) etc should be done away with for imposing restriction of ITC to recipient. ITC should not be restricted to the Recipient of the Supply, due to any default of the	

			already forming part of the conditions under existing provisions of section 16(2) of the Act .	Suppliers, where the Recipient has no control on the wrong actions/in-actions/defaults of the Supplier.	
3	Substitution of section 41 proposing for reversal of ITC along with interest for Non Payment of Tax by Supplier	Section 41 of the CGST Act	Recipients are made liable for payment of interest along with reversal of ITC for defaults of their suppliers. On the such ITC portion, interest is collected from vendor as well recipient, thereby double collection of interest.	The government should first try to collect Tax from the defaulting supplier and the recovery proceedings should be made known to the recipient. A time limit should be prescribed for reversal of ITC that too only after it is established that all efforts to recover the tax from the defaulting suppliers are exhausted and the said GST cannot be collected from the defaulting supplier. Specific Provision to be made under statute for automatic re-credit of interest along with ITC, once the GST is recovered from respective defaulted supplier.	
4	Retrospective amendment w.e.f. 1st July,2017 for payment of interest only if ITC is wrongly availed AND utilized. The rate of interest also reduced to 18% from existing 24%	Section 50(3) of the CGST Act	It is welcome proposal. However, there is no provision of refund of interest already paid at higher rate and on mere wrong availment of ITC	Provision of refund of interest already paid as per erstwhile section 50(3) to be made under statute	

5	Extension of Time limit to avail ITC to 30th November of subsequent financial year	Section 16(4) of the CGST Act	It is welcome proposal and will be a good solace to recipients who have missed the availment of ITC inadvertently	Time limit to avail ITC could be extended to 31st March of subsequent financial year as generally the assessee comes to know about such unavailed ITC during income tax or statutory audit, which is due by 30th November of subsequent financial year. Over the past years even during non covid times, there was extension for conduct of income tax and statutory audits by the Government and therefore it is recommended that time limit for availment of ITC be extended till 31st March of subsequent year till which the other statutory audits are generally completed. Further there is no loss to the revenue, as it just availment of genuine credit which was missed inadvertently.	
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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.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

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.

ABOUT THE CHAMBER OF TAX CONSULTANTS

The Chamber of Tax Consultants (The Chamber) was established in 1926 and is one of the oldest voluntary non-profit making professional organisations. It is the voice of more than 4,000 professionals on a pan-India basis. Its members comprise of Advocates, Chartered Accountants, Company Secretaries, Cost Accountants, Corporates, Tax Consultants and Students.

The Chamber, despite its vintage, is a young dynamic organisation having a glorious past and undisputedly ambitious future. The Chamber is a well-respected institution with a tradition of high integrity, independence and professionalism.

The Chamber acts as a power house of knowledge in the field of fiscal law, always proactive in contributing to the development of law and profession through research and analysis, dissemination of knowledge and proactive interaction with policy makers. The Chamber also provides professionals several networking opportunities through interactive meetings and seminars.

Professional luminaries like late Shri B. C. Joshi, late Shri V. H. Patil, Dr. Y. P. Trivedi, Shri S. E. Dastur, late Shri D. M. Harish, late Shri Narayan Varma, Dr. K. Shivaram, Shri S. N. Inamdar, have been The Chamber's Presidents.

For The Chamber education is the supreme power and spread of education is its motto.

The Chamber Strives to be pre-eminent in upholding among the Professionals a Tradition of Excellence in Service and Principled Conduct with Social Responsibility

Knowledge sharing initiatives

The Chamber disseminates knowledge by holding high quality Workshops, Seminars, Lecture Meetings, Study Circles and Study Group Meetings, Outstation Conferences, etc., for the benefit of members which keeps them up-to-date with the latest developments in the field of tax and commercial laws.

Keeping in pace with the technological revolution, The Chamber also holds webinars on various professional subjects especially for members outside its area of physical presence. Through its various orientation and advance courses in new and emerging areas of practice, it equips young professionals to build their careers in unconventional practice areas. It functions through effective sub-committees in addition to its Managing Council which have about 300 core group members.

The Chamber also holds three offsite Residential Refresher Courses (RRCs) annually on Direct Tax, Indirect Tax and International Tax. In-depth study and close fellowship and bonding make the RRCs a 'must attend' for loyal enthusiasts and eager new learners alike.

Representations before Regulatory Authorities and Public Interest Litigations

The Chamber has always stood up for its members and also the taxpayers at large by making effective representations before the Government and Regulatory Authorities. Its voice is respected in Government Departments and Ministries. Professionals look upon The Chamber as an institution which can take their grievances to the Court of Law, when required.

Every year, The Chamber makes at least 25 representations on issues of tax and allied laws which cause or are likely to cause hardship to the public. The Chamber was successful in getting favourable order for the Writ Petition filed before Delhi High Court, challenging, *inter alia*, issuance of Income Computation & Disclosure Standards (ICDS) by the CBDT and the circular thereafter. The Chamber also filed a Writ petition in the Bombay High Court against the proposal by the Central Board of Direct Taxes (CBDT) to reward appellate authorities for 'quality' orders which ultimately led to the proposal being shelved. Recently the Chamber had filed a Public Interest Litigation (PIL) before the Hon. Bombay High Court against the fundamental flaws in the Faceless Appeal Scheme 2020 as notified by the Central Government. This has resulted in the Faceless Appeal Scheme being completely revamped and a new scheme - Faceless Appeal Scheme 2021 has been now notified on 28-12-2021. Most of the issues raised by the Chamber in its petition has been addressed by the Central Government while framing the new scheme. The Chamber *inter alia* makes effective representation through pre and post Budget memorandums and need based representations on burning issues.