



## **Representation to address the concerns of Primary, Secondary and Higher secondary schools under Goods and Service Tax ('GST') regime**

This representation is being made to bring to your kind notice the concerns of Primary, Secondary and Higher secondary schools (herein after called as 'Schools') on tax treatment and compliances under GST regime. The relevance of School education is very well recognized and acknowledged in context of our country and have not been discussed here for the purpose of brevity.

### **GST implications on Schools:**

Under the GST, services provided by schools to its students, faculty and staff are exempt from levy of GST. Further, any person engaged exclusively in the business of supplying goods or services wholly exempt from GST shall not be liable to registration.

In this regard, we would like to draw attention to the following provisions of GST law which would entail the GST registration for exempted educational institutions also:

#### **1. Aggregate turnover for the purpose of registration threshold include exempted supplies**

Every supplier having 'aggregate turnover' of more than INR 20 lakhs is liable to be registered under GST; where, "aggregate turnover includes all the supplies made by taxable person including exempted turnover". Therefore, it is clear that Schools being provider of exempted services are not required to obtain GST registration for its regular output supplies by virtue of being exclusively engaged in the business of supplying goods or services that are wholly exempt. However, practically Schools may have some taxable supplies like sale of used assets (furniture, computers, buses etc.) which are ancillary to the main activity of provision of education of services. As per the GST provisions<sup>1</sup>, it appears that Schools would be required to take GST registration and make tax payments on sale of such used assets, even while the main activity of the Schools is exempt from tax.

**To illustrate this with an example** A School purchases 10 computers in year 1 of its operations for the purpose of imparting education to students by means of modern technology and pays GST on such procurement. Since the output of the School is exempt, the GST paid on these computers is not claimed as input tax credit. In year 5 i.e. by end of life when School

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<sup>1</sup> Section 22 of CGST Act: *Every supplier shall be liable to be registered under this act in the state or union territory, other special category states, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.*

sells these computers, it would be required to pay GST on the same computers, as an output supply. Please note that tax cost in case of Computers and furniture items would vary between 12% to 28%, however the same may go upto 53% (28% GST + 25% Cess) in case of buses purchased for transportation of students.

The above is due to the reason that definition of 'aggregate turnover' for the purpose of calculating threshold limit is very wide and includes all the supplies by a taxable person<sup>2</sup>. In case of sale of used assets by Schools, the turnover of exempted services would also be counted along with the few taxable transactions like sale of used computers, buses, furniture, teacher training etc. Accordingly, the threshold limit for registration is exceeding.

2. Procurement of any specified service taxable under reverse charge would entail Schools to take GST registration

Under GST, certain domestic services including 'legal services' are taxable in the hands of recipient being a business entity. Accordingly, an entity that receives any of these specified services on which GST is payable under reverse charge is compulsorily required to obtain registration.

For example, as per the Reverse charge Notification 10/2017- IGST (Rate), any business entity located in the taxable territory who is a recipient of service is required to pay tax on legal services, services by an arbitral tribunal and specified services by the Government. While there is no definition for 'business entity' in GST law, for legal services, the Notification has broadly defined a business entity as a litigant, applicant or petitioner, as the case may be, shall be treated as the person who received the legal services. Accordingly, Schools are also required to pay tax under reverse charge on these specified domestic services.

List of specified service also include import of services, where the liability to pay tax is on the 'person' located in taxable territory who is the recipient of service. While a specific exemption is granted to charitable entities registered under section 12AA of the Income-tax Act, 1961 from payment of GST on import of services, no such exemption has been extended to Schools, specifically.

In view of the above provisions, Schools would be required to obtain GST registration as 'recipient' even when their output is wholly exempt from GST and they are entitled for exemption from registration basis their output supplies. In this regard, we wish to highlight the impact of such tax structure on Schools.

- A. Procurements from Unregistered persons: Under GST, a registered person is required to pay GST under reverse charge on all its procurements from unregistered persons. Once registered due to provisions explained above, Schools would also be required to pay GST on any procurement from unregistered person. Given that the schools make substantial procurements from unregistered vendors like visiting faculties, tax liability will arise on such procurements once Schools are registered under GST.

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<sup>2</sup> 'taxable person' is defined to mean a person registered or liable to be registered under GST provision.

This would lead to a situation where input procurements used for the exempt supplies are made taxable, thus defeating the basic intention of law to keep schools out of tax net.

B. *Increase in GST compliances for Schools:* Registration of schools under GST would require schools to undertake following additional compliances under GST:

- Obtain state-wise GST registration;
- Generate Self-invoicing and Payment Vouchers in format prescribed under GST and pay GST by relevant due date, which will be a transaction level activity;
- Filing monthly return for output, input and final return i.e. 37 statements each year each state in which School has operations;
- Final Annual return for each state.

C. *Increase in cost of education:* When schools are required to pay indirect tax on its procurements and to undertake substantial compliances under GST, the burden of tax cost on education would increase. Further to the extent that education service as output is exempted, coupled with the fact that the fee charged by school are being largely regulated, any increase in burden of tax cost is primarily to be borne by the Schools. This is leading to reduction in funds available to the Schools which would otherwise be used for improvement in infrastructure and providing quality education.

The average tax cost to Schools on their procurements under pre-GST regime was ranging between 6%-8%. Tax rates under GST regime are invariably higher as compared to earlier regime and Schools are anyway not eligible for claiming input tax credit. Resultantly, the tax cost to the Schools under GST regime, has increased to 12% -14% approximately.

D. *Tax on Self Supplies:* Where a school is having different branches in more than one state, any transfer of material/ assets between these branches or common cost allocation would be subject to GST. This would further require schools to undertake following compliances:

- Invoicing in case of transfer of goods, assets and cost allocation between various branches
- Increase in tax cost as input credit is not available for payment of output GST;
- Compliance with valuation provisions for valuing these transactions.

### ***Suggestions***

In view of the above discussion, we would like to mention that the tax structure for Schools under pre-GST regime was better off than under GST due to the following reasons:

- The aggregate turnover for the determination of registration requirement under Service Tax specifically excluded exempt supplies, which is in contradiction of the definition of aggregate turnover under GST
- The threshold limit for state VAT was calculated for each state separately and the turnover of output services was not counted for the purpose of calculating threshold for VAT purpose. This kept schools/ organisations with exempted supplies out of the threshold limit for their non-business activities like sale of used furniture etc.

While there exists inefficiencies for the Schools under Service Tax regime also for which we have made representations with your office, the tax structure for schools under GST regime is further more inefficient.

While law intends to keep the suppliers of exempted goods/ services free from GST registration, however, the liability for schools to register under GST and undertake all the compliances is clearly against the intention of the law makers. To mitigate the above impact on Schools, we would like to provide following suggestions.

**Suggestion I: Exempted supplies should not be included for calculating threshold**

It should be provided that since Schools are engaged in the 'business of supplying exempted supplies', the transactions like sale of used assets which does not even constitute as a regular 'business activity' should not require Schools to obtain GST registration and undertake monthly compliances. Or Alternatively, it should be specified that the Schools which are engaged in provision of 'exempted services', should not be required to obtain GST registration in case the taxable transactions from 'non-business' activities does not exceed 7.5 % of the total turnover. This can be achieved by issuing a Notification capturing the following:

(a) Non-business taxable supplies of Schools not to be included for calculation of registration threshold limit.

Or

(b) GST registration should not be required in case the taxable transactions are less than 7.5 % of its aggregate turnover of a school

The above clarifications would not bring any revenue loss to the Government since the applicable GST is already paid on the procurements by School which is not even claimed as input tax credit.

And

**Suggestion II- Reverse charge should not apply to Schools providing exempted education service:**



As explained above, since the GST law require recipient to obtain registration in case of any specified procurements, Schools should be provided specific exemption from GST payable under reverse charge. This can be achieved by including following in respective exemption notification:

*“Services received by Primary, Secondary or Higher Secondary School providing education services which are exempt from GST are exempt from payment of tax on procurements under reverse charge”*