

FIDC

Finance Industry Development Council

(A body incorporated as a Self Regulatory Organization for Registered NBFCs)
101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077 (India)
Tel: 022 21027324/9820035553 • E-mail: maheshthakkar45@yahoo.in website: www.fidcindia.org

April 4, 2017

Shri Upender Gupta

Commissioner, GST
The Working Group for GST
(Banking, Financial and Insurance Sector)
New Delhi

Respected Sir,

Re: **The GST Working Group on Banking, Financial and Insurance Sector – Concerns of the NBFC Sector**

Finance Industry Development Council (FIDC) is a Self-Regulatory Organization (SRO) cum Representative Body of the NBFCs, registered with the Reserve Bank of India. FIDC was formed 12 years ago, and is the recognized face of NBFCs, especially, those engaged in asset financing. We have been engaged in regular interactions both with Reserve Bank of India and Govt. of India, which include pre-budget meetings and also important policy related meetings with RBI. Almost all the leading NBFCs and a large number of small and medium sized NBFCs are our members.

We are pleased to receive an e-mail dated 1st April, 2017 from Sh.Ravneet Singh Khurana, Deputy Commissioner (GST), CBEC, inviting written representations from us, highlighting the concerns of our sector. We, on behalf of the NBFC sector, would like to place certain concerns which need to be considered and addressed by the working group.

Assumption

We note from the media reports that Revenue Secretary, GOI, had clarified that all exemption/benefits available under the existing VAT/Service Tax regimes would continue under GST. Hence, before putting forth our concerns, we ASSUME that the following exemptions/benefits that are currently available under the existing VAT and Service Tax regimes shall also be available under the GST regime:

Exemptions/benefits that are currently available under VAT & Service Tax (ST): -

- Interest income under Loans and advances, Bills, deposit etc., not chargeable to ST (as per Sec.66D(n)(i) of Finance Act dealing with Service Tax law).
- Penal Interest/Charges charged for delayed remittance of EMI not chargeable to ST (as per Rule-6(2)(iv) of the Service Tax (Determination of Value Rules), 2006.
- 100% utilization of Cenvat Credit (on VAT) on the goods/assets purchased by NBFC/AFC for furtherance of business i.e., by way of Transfer of right to use (Leasing) and delivery under hire purchase is available.

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- All transactions in money are not chargeable to ST. This would include any sale, purchase, acquisition or assignment of secured debt like mortgage debt and hence outside the ambit of Service Tax (as per Para 2.8.9 of the Guidance Note issued by CBEC in 2012).

NB:

All other charges collected, other than the ones mentioned above, under the respective heads, viz., processing fee, servicing fee etc., are currently chargeable to ST.

Concerns of Non-Banking Finance Companies (NBFCs)

Keeping in mind the stated policy of Ministry of Finance and RBI to move from “entity” base regulation to an era of “activity” based regulation, NBFCs registered with RBI, should be treated at par with banks so that all exemptions/ benefits that are extended to banks are also available to NBFCs.

1. Interest, Including Penal Interest/ Charges for Delayed Payment, on Loans and Advances to be Exempted – Request for Clarification

Interest on loans and advances, including the penal interest/ charges for delayed payment, are purely an income which are subject to income tax. As such, there has not been, and there should not be, any further tax levied on interest.

Suggestion: We request that a clarification exempting interest and penal interest be issued

2. Leasing Needs to be Promoted for Financing of MSMEs and Farm Sector- Input Tax Credit on Lease Transactions

Under the current VAT regime, 100% ITC is available when goods/assets are purchased by NBFCs for furtherance of its business i.e., by way of Transfer of right to use (Leasing) and delivery under hire purchase system. Under the proposed GST, both Financial and Operating Lease are to be considered as “supply of service”. In the event of an NBFC deciding to opt and go in for 50% ITC (as per Sec.17(4) of the CGST Bill), then in such case, it will be deprived of 100% ITC which it had under the VAT regime.

Similarly, in such Leasing/hire purchase transactions, if the rate of tax for supply of goods and supply of services differs, it will create unnecessary confusion and may lead to litigation.

World over, “Leasing” has been the most suitable tool and has been effectively used for :

1. Financing MSMEs, including Start-ups, by addressing their need for capital investment required for acquisition of assets like equipment, machinery etc.
2. Enabling farmers to use the right equipment without making any capital investment

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International Finance Corporation (IFC) report on “Leasing in Development” talks about how leasing has played a key role in the development of MSME and Farm sectors in the emerging economies of Uzbekistan, Ravanda, Yemen, Tanzania and many other countries. Unfortunately, leasing has suffered in India due to imprudent taxation policies primarily due to dual / multiple taxation.

Suggestion: There is a crying need to promote leasing of movable assets, especially, for the development of MSMEs(including Start-Ups) and Farm Sector. For this the following para needs to be inserted in Rule 3- Claim of Credit by the Banking Company or a Financial Institution of the ITC Rule:

“The said company or institution shall avail 100% ITC on tax paid on purchase of goods given on lease/hire purchase”.

3. Sale of Repossessed Assets Should Be Exempted

If a borrower commits default in case of asset backed financing, the asset is repossessed by the Financier (Bank/NBFC) and after giving sufficient opportunities, if the default continues, such Financier sells the asset and appropriates the sale proceeds towards the account of the borrower. In this scenario, there won't be any value addition and only value dilution. Further, the input at the time of purchase would not have been utilised by the customer.

Suggestion: Hence sale of assets repossessed in case of default (ITC not utilised cases) should be exempt from the levy of GST.

4. Assignment of Receivables Need to be Exempted

The CGST Bill exempts “Actionable Claims” from the levy of GST. The definition of actionable claims under the CGST bill has been derived from the Transfer of Property Act, 1882. As per this definition, assignment of receivables secured by hypothecation or pledge of movable assets are not treated as actionable claims. As such, assignment of receivables shall be subject to the levy of GST.

Assignments of receivables are effectively used for factoring, securitization and asset reconstruction. They act as a very important mode of refinancing for NBFCs. Bilateral assignment of receivables by NBFCs to banks, especially, in retail lending not only provides funding to NBFCs but adds tremendous value to the asset book of the banks. Both RBI and SEBI have been working to create an enabling environment for such transactions.

Suggestion: We therefore request that assignment of receivables secured by hypothecation or pledge of movable assets should be exempted from the levy of GST.

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5. Request for Centralised Registration and Centralised Tax Payment System

Presently NBFCs are having Centralized Registration and filing half yearly Service Tax Returns centrally for branches all over India. In the GST scenario, State-wise Registration and State-wise Return Filings are required. This leads to complications in control and administration. As against two Returns per year, it will go up 900 or 1000 Returns per annum depending upon the number of registrations.

Suggestion: Even if State wise /Union territory wise registration and tax computation is insisted, NBFCs must be permitted to discharge the GST liability from the head office. Electronic credit register can be maintained at HO and GST liability for all branches in India is to be computed and paid by HO. As per CGST Bill, the definition "recipient" includes agent also, for the purpose of goods and services, the definition to include head office of NBFCs for discharge of GST liability. This will help NBFCs in effecting more controls on correct tax computation and correct availment of input credit. Less compliance cost means more control and less litigation to government and for Industry.

We hope that our above said concerns shall be given a favorable consideration, as they shall also have the potential to affect the development of important sectors like MSMEs, Small Road Transport Operators and Agriculture.

Thanking you in anticipation

Warm Regards
For **Finance Industry Development Council**



Raman Aggarwal
Chairman
Mobile: 9810016667