



## **Representation on the key concerns of the Education sector under the current indirect tax regime and possible solutions under the Goods and Services Tax (GST) regime**

This representation is being filed with the purpose of sharing the key concerns of the Education industry under the tax treatment accorded to the sector under the current regime of indirect taxes and suggesting the possible solution under the GST regime to ensure ease of doing business and tax efficiency.

GST is being considered to be implemented in India from April 2017 and The Education Committee<sup>1</sup> of the FICCI ('We') have been tracking the GST developments and understand that tax treatment for the Education sector has not been discussed under the Model GST Law and Rules released in public domain so far.

Before proceeding to the challenges and their possible solutions, a brief background about the education industry and its contribution to the growth of Indian economy is given below.

### **1. Education sector is an important social sector**

Education is one of the most important sectors of any growing economy like India, and plays an important part in the building of a nation. The late Nelson Mandela had said that "No country can really develop unless its citizens are educated". Moreover, this sector is at a vital stage of growth in India. Further, the education sector in India is churning out not only strong professionals, but developing entrepreneurs who are playing an important role in India and globally. In the world now, India is recognized as having one of the best talent pools of the world.

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Having said this, there is still a large portion of the economy which is not being provided proper education. The Gross Enrollment Ratio ('GER') of India, which is the ratio of total number of students enrolled in school, to the total number of people who qualify for education at that level, is still abysmally low. Another issue in the sector include lack of proper research and innovation for providing these services. This needs to improve to bring India's economy in line with the top economies of the world.

### Recent Government initiatives for Education

With human resource increasingly gaining significance in the overall development of the country, development of education infrastructure is expected to remain the key focus in the current decade. Various government initiatives are being adopted to boost the growth of education, besides focusing on new education techniques, such as E-learning and

M-learning. Education sector has seen a host of reforms and improved financial outlays in recent years that could possibly transform the country into a knowledge haven.

Some of the major initiatives taken by the Government of India includes:

- Specific provisions under union budget 2016-17 for World class public and private educational institutions;
- Prime Minister Mr Narendra Modi launched the Skill India initiative – 'Kaushal Bharat, Kushal Bharat'. Under this initiative, the government has set itself a target of training 400 million citizens by 2022 that would enable them to find jobs.
- India and Australia have signed a Memorandum of Understanding (MoU) to boost partnerships between the two countries in the fields of higher education and research, including technical and professional education, schools, vocational education and training.

In addition to the above initiatives, the Government of developing country like India should ensure that the cost of Education does not increase with introduction of any tax regime including GST regime. In fact steps should be taken to ensure that education reaches the students at minimum cost.

Through this representation, we wish to bring the following to your attention:

- (i) Tax and Regulatory implications on Education and anomalies in the current tax treatment for the Educational Sector,



- (ii) Implication under GST, if anomalies of current tax structure are not addressed
- (iii) Preferred tax treatment under GST for Education

## 2. Tax and Regulatory implications so far for Education sector in India

In India, over 40% of school going students and over 60% of college going students study in independent private educational institutions. These educational institutions are largely set up by either societies, Trusts or companies incorporated under Section 8 of the Companies Act, 2013 (erstwhile Section 25 of Companies Act 1956). The only source of funds available to them is the fee that they charge to the students. There is no aid or grant provided by the government. As such these educational institutions have access to limited funds and resources.

As a result, the Educational Institutes typically operate from rented premises; further, the Educational Institutes typically outsource the functions like transportation, catering, content development, training of teachers etc. The Educational institutes also spend towards procurement of goods including furniture, IT equipment including computers for labs, other laboratory equipment, books, uniform, stationery etc.

The typical model of Educational Institution’s structure in today’s scenario is as per the **Annexure A**.

Further, the indirect tax treatment on output and input of an Educational institute, under the current scheme of taxes is as under:

Particulars	Applicable tax	Tax treatment
Output	Service tax	Exemption from Service tax
Input service	Service tax	<p><b>Partial exemption:</b></p> <p><u>Exempted services:</u></p> <ul style="list-style-type: none"> <li>- transportation of students / faculty,</li> <li>- catering service,</li> <li>- security &amp; housekeeping services, and</li> <li>- services pertaining to admission and conduct of examinations</li> </ul>



Input/ Goods		<u>Taxable services:</u> <ul style="list-style-type: none"> <li>- Rest all services except the above 4 and including the essential services like Rent for premises, Content development and online access to foreign universities content, Royalty to foreign universities for carrying their courses in India, Teachers training, etc. are liable to Service tax @15%</li> </ul>
	VAT	<p><b>Partial exemption:</b></p> <p><u>Exempted goods:</u></p> <ul style="list-style-type: none"> <li>- VAT is a state levy and the tax treatment differ from state to state. Following are the items which are typically exempt in most states:             <ul style="list-style-type: none"> <li>- Books</li> <li>- Stationery</li> </ul> </li> </ul> <p><u>Taxable goods:</u></p> <ul style="list-style-type: none"> <li>- The items other than above are generally taxable and includes:             <ul style="list-style-type: none"> <li>- Furniture</li> <li>- Uniform</li> <li>- Computers</li> <li>- Servers</li> </ul> </li> </ul>

As is evident above, under the current scheme of Service tax levy, Education service is kept under the 'list of Exempted services' and Educational Institutes are not required to recover Service tax on the fee collected from the Students. However, on the input side, the educational institutes are incurring indirect tax cost on most of the goods and services except few exempted items. The educational institutes are also required to pay Service tax @15% on imported as well as certain domestic services under the reverse charge

mechanism and undertake Service tax compliances even being a provider of Exempted service. The VAT paid on goods also become cost of providing education and certain VAT compliances (Works contract TDS, etc.) are also added to the compliance burden for the educational institutions.



As a result, of tax treatment discussed above, the educational institutes typically incur tax cost of approximately 6% – 8% on its procurements, which eventually increases the cost of education.

Accordingly, the current tax structure for Education sector have following limitation/ challenges:

- i. *Increase in cost of education* – To the extent Educational institutes are required to pay indirect tax on its procurements, it becomes an expense and increases the cost of providing education. Currently the extent cost increase is 6% - 8% of the total expenses of the educational institute.
- ii. *Less funds for Education/ Infrastructure* – To the extent that the Education service as output is exempted and that the fee charged being largely regulated, any increase in burden of input tax is primarily to be borne by the educational institutes. This is leading to reduction in funds available to the institution which could be used for improvement in infrastructure and quality education.
- iii. *Service tax Compliances* – Educational institutes are required to obtain registration to pay Service tax under reverse charge on certain domestic services as well as for import of service. Other compliances like filing of periodic return etc. are also required under the current regime of Service tax.
- iv. *State wise VAT compliances* - Educational institutes are also required to pay VAT on procurements and to obtain state vide registrations in certain circumstances for example- sale of uniform, scrap etc. or to undertake compliances like deducting TDS on works contract transactions.

### **3. Cost burden on Education would increase under GST, if current scheme of tax is carried forward**

As briefly discussed above, in today's scenario, the output service i.e. the service of education given by the educational institutes is an Exempted service, due to which taxes paid on procurements is neither available as credit nor can be recovered from the student. Hence any tax paid on procurements increases the cost of education.



It is our expectation that the said limitation of the current tax structure would be done away with under GST scenario. However, we wish to mention that if the scheme of exemption as available under the current tax regime continues under GST, is likely to further increase the cost of education due to following:

- a. Increase in tax rate under GST – as the tax rate under GST (18%-20%) is likely to be higher than the current rate of Services tax (15%) and VAT (5%-14.5%);
- b. Under GST the tax base is likely to expand, i.e. most of the goods and services which are currently out of tax net would be brought under the ambit of GST resulting in increase in tax cost of procurements for Educational Institutes;
- c. It is anticipated that the exemptions would be kept to minimum and there may be further decrease in the exemptions available to educational institutes.

Due to above factors, as per our analysis, the total tax cost to an Educational institution would increase from current 6% - 8% to 10% - 12% (assuming a standard GST rate of 18%-20% on goods and services). This would lead to increase in the cost of Education by a significant percentage, which is not desired in context of developing economy like India.

#### **4. Most preferred tax scenario under GST regime**



#### **4.1. Zero rating the supply of education**

It is well accepted that the Education is one of the socially important sector of our country and should be accorded preferred tax treatment to ensure that the cost of education service is minimum. It would also be relevant to note that any inability of the education institution to avail credit on inputs and input services procured will result in increase in the cost for rendering education.

It is recommended that Education service shall be declared as zero-rated supply under the GST. Zero rating status is generally granted to 'exports' to reduce the overall burden of tax on the supply. Facilitating affordable education is equally important for a nation as is earning foreign exchange. Zero rating is the scenario where the output is taxed at zero rate and the credit of taxes paid on procurements is allowed as refund.

##### **Benefits of Zero rating Education under GST regime:**

- Declaring the Education service as zero-rated supply under GST regime will send a powerful message to the common man regarding the benefits of GST which will positively touch and impact lives of millions of Indians;
- Zero rating will eventually work towards decrease in cost of education in the hands of ultimate consumer i.e. students, since any tax paid by educational institutes would not become cost;
- It will also help Government to counter any adverse publicity resulting due to transitioning to GST;
  
- It will assist the Government to promote extensively the social agenda of the Nation without significant loss of tax revenue to the Government.
- It will reduce the cascading impact of tax which is one of the main reason for implementation of GST in India

We also wish to mention that even in international tax jurisdictions, the education sector is accorded a priority treatment. For instance, in the developing economies like Australia and Equador, the education is treated a GST free supply i.e. the supplier will not have to pay GST when they supply education service, but they will be entitled to GST credits.



## 4.2. Alternative - exemption on supply and on procurements made towards supply of Education service

While Zero rating is the only solution to the issues which will crop up in the GST regime, in the event that this plea of the Education sector is not accepted, the following alternative is suggested. It is recommended that similar to the present scenario, supply of Education service by Educational institutes may be declared as exempted service under the GST regime. However, the alternative of exemption to Educational institutes has a limited benefit until comprehensive exemption is also granted for the procurements by the Educational Institutes. In this regard, it is relevant to note that at present, procurement of following services by Educational institutes are exempted under the service tax legislation:

- transportation of students / faculty,
- catering service,
- security & housekeeping services, and
- Services pertaining to admission and conduct of examinations.

It is recommended that supply of abovementioned services to Educational institutes should continue to be exempted under the GST regime. Further, the following additional critical and high cost input services for Educational institutions, should also be exempted under GST if they are provided to an educational institution:

### i. Renting of premises

Land and building is one of the most important requirements for any educational institution, as adequate and well provisioned premises are required for effective impartment of education. However, ownership of a premise requires a huge capital cost, which is usually beyond the capacity of educational institutions. Thus, it has become almost inevitable that the education providers have moved to an asset-light model and new educational institutions are set up on rented premises. Various regulating arms of the government and agencies have also made provisions to facilitate arrangements so that high cost of real estate should not become an impediment to education such as:

1. All examination affiliating bodies allow schools to be set up on leased premises
2. State education departments have started giving permanent recognition to schools operating from leased premises
3. In many states private university acts allow setting up of university in leased premises





4. Foreign direct investments for creation of education infrastructure falls under the automatic route

Given the high rentals for real estate across the country even in 'B' and 'C' towns and the significant land requirement for operating an educational institution, the rental costs are a major expense for the educational institutions. Thus, levy of GST on renting of premises to an educational institution will significantly increase the cost of providing education to students.

Accordingly, it is essential that GST exemption is provided to the educational institutions on the renting of immovable property i.e. no GST should be payable by the institutions on such services. The person providing renting of immovable property service shall be allowed to raise an invoice without GST, if the said service is provided to an educational institution. This is akin to the facility provided to SEZs under the current service tax law.

**ii. Goods and Services used in Construction/ Infrastructure Development**

Having proper infrastructure is a key to good education system. Education infrastructure includes buildings housing classrooms and facilities like laboratories, amphitheatres, sports facilities and Hostels. This infrastructure requires substantial investment and the GST payable on the construction of these buildings need to be exempted. Investment in Education sector is scarce given the non-profit status and taxing this scarce investment would be increasing the cost of education. Accordingly, all goods and services used in developing infrastructure of an educational institution should be exempted under GST.

**iii. Payments made to foreign educational institutions under collaboration agreements**

In today's world, quality of education has also become important among the students. Accordingly, it has been observed that Indian students tend to travel overseas to seek better quality education. The expenditure to get the education is leading to a foreign exchange drain from the country. As an alternative, Indian education institutions are engaging with the foreign educational institutions thereby bringing better quality of education in India at a much reduced cost. As a result the Indian education institutions are themselves getting the required ingredients to improve the quality of education to be imparted to the students in India. It is suggested that any such cost incurred by an educational institution in the form of royalty etc., paid to the foreign universities for providing technical knowhow and affiliation should be exempt from GST under the



reverse charge. Further, the online access of the content developed for foreign universities shall also be exempted from the GST. This would help in overall development of the education sector and reduction in cost of imparting quality education in the country.

### **Our request**

It is well known and accepted that Education is one of the most important sector of any growing economy like India, and deserves a preferential tax treatment under GST. In view of the detailed discussion in the paragraphs above, we humbly requests your goodself considers our submissions and grant the Zero rating treatment to the Education sector, so that this sector can realize its full potential in the development of the Indian economy. However, in case, the same is not possible, as an alternative, education should be considered as exempt from GST and the above specified services supplied to the education institutions should also be exempt from GST. We further request your good-self to give us a time for a meeting to explain in detail.

We trust our concerns and suggestions shall be given due consideration.

Thanking you

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## Annexure A

### Illustration of not-for-profit educational institution's structure

