

Hyderabad Branch of SIRC of ICAI

# **Death and Beyond.. Professional Awareness**

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# Your attention please....

- ✓ This session does not deal with spirituality
- ✓ This session does not make you fear about death
- ✓ Attending this session is not injurious to health and it will enhance your wealth
- ✓ This session is designed to make you aware about the things involved with death in Legal and taxation
- ✓ This is towards a beginning for new revenue avenue .....

# Agenda - General

- ✓ Purpose of the session
- ✓ Reducing the uncertainties associated with DEATH
- ✓ What are the uncertainties?
- ✓ Why should we, the CA community, adopt this as a professional service line?
- ✓ Are we, the CA community, have capabilities? - Vis-à-vis Advocates or Certified Financial Planners etc
- ✓ What is that specific knowledge that we should poses to offer this service as a line of professional service?
- ✓ Is this line of service remunerative?
- ✓ How should we market and sell this service?

# What are the uncertainties?

- Confusion as to distribution of assets
- Channelizing assets to loved ones only
- Intestate Problems
- Disputes or Litigation
- Planning for unforeseen eventualities and Planning for remaining family members
- Taxation, wealth planning and charities

# Reducing uncertainties associated with DEATH

- Through Nomination
- By Writing a will from the early stages of earning life
- Proper evidence for the assets and liabilities to benefit family members and others
- Proper planning with discipline and timeliness

# Why should we, CA community, adopt this line as a professional service line?

1. We have access to personal financial information of a client
2. We understand finances better
3. We know the family, members & dynamics, of the client better
4. We understand the tax and wealth planning better
5. We interact with client and client's financials more than any other
6. Involvement in the business affairs along with financial affairs, better
7. Discussion by clients in the matters of financial privacy

**We are the trusted advisors**

Are we capable? - Vis-à-vis Advocates  
or Certified Financial Planners etc

Yes

# What is that specific knowledge that we should poses to offer this service as a line of professional service?

- Understanding the client's community, caste and religion
- Laws of inheritance
- Basic English writing skills (not essential but advisable)
- Usage of specific words (legal and other terms)
- Advising keeping estate planning in mind for suggesting to include



# Is this line of service remunerative?

- A nominal fee ranging between 5K and to 25K, each time for writing
- Consulting charges for preparation and presenting the affairs depending upon the
  - Time involvement
  - knowledge applied
  - capacity of the client and
  - complexities involved

# How should we market and sell this service?

- Inform every person with whom you interact about nomination and will
- Explain the benefits to the persons in general and clients in specific

# Agenda Specific (Purpose)

- Basics of Nominations & Wills
- Legal framework
- About nomination
- About the will
- Writing a will
- Formalities associated



**Nomination**

# Who is a nominee

( from Black's Dictionary 10<sup>th</sup> edition)

1. Some one is proposed for office, membership, award, or like title or status
2. An Individual seeking nomination, election or appointment is a candidate. A candidate for an election becomes a nominee after being formally nominated.
3. **A person designated to act in place of another, usually in a very limited way**
4. **A party who holds bare legal title for the benefit of others or who receives and distributes funds or the benefit of others.**

- What is nomination
- Benefits of appointing a nominee
- Difference between nominee and legal heir
- Nomination in context of Investments & Assets
  - Land
  - Jointly owned property and beneficial owner
  - House property
  - Flat & Common area in apartments (Condominium)
  - Co-operative Society
  - Share in partnership Firm
  - Deposits with Banks etc.
  - Companies Act, 2013 – Shares & Securities
  - Insurance – General & Life

## **Need for execution of Will**



**WILL**

# What is a WILL

- Definition of WILL
  - Section 2(h) of Indian Succession Act, 1925
  - “Will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.
- Two essential characteristics
  - Will is intended to come into effect after the death of the testator
  - Will must be revocable by the testator during his lifetime.



# Kinds of WILLS

- Conditional or contingent WILL
- Joint WILL
- Mutual WILL
- Duplicate WILL
- Concurrent WILLS
- Sham WILL
- Holograph WILL
- Privileged & Unprivileged WILLS

# Important terms in relations to WILL

- Administrator
- Annuity
- Attestation
- Beneficial Interest
- Bequeath a Legacy
- Bequest
- Codicils
- Demonstrative Legacy
- Devise
- Executor
- Legatees or Beneficiaries
- Life Interest
- Personal effect
- Probate
- Real Estate
- Residual Legatee
- Specific Legacies
- Succession Certificate
- Testator
- Testamentary Document
- Testimonium
- Trustee
- Universal Legatee
- Vested Interest

# Applicability

- Hindu Succession Act, 1956
  - Hindus, Buddhists, Jains, & Sikhs
- The Muslim Personal Law (Shariat) Application Act, 1937
  - Sunnis & Shias – different provisions – Residing in India
- Indian Succession Act, 1925
  - Christians, Parsis, Jews, Anglo Indians, Etc., - residing in India

# Who can make a WILL

- Every Person
  - Not being minor
  - Person of Sound Mind
  - Married women
  - Foreigners
  - Convicts
  - Deaf or dumb or blind
  - An ordinary insane person may make WILL during an interval in which he is of sound mind.
  - Artificial Persons are incapable of execution of a WILL
    - They may benefit under a WILL by a person
  - Person under intoxication or suffering certain illness or any other cause who do not know what he is doing.

# Essentials for a valid WILL

- Testamentary capacity
- Sound disposing mind
- Knowledge of content
- Free from
  - Undue influence
  - Fraud
  - Coercion
- Voluntary act

# What properties can be Bequeathed

- All properties which are transferable
  - Movable
  - Immovable
- Testator is a owner of the property
  - Other's property can not be bequeathed
- Property which can not be legally transferable
  - Can not be bequeathed
- Future property can be bequeathed
- Leasehold property can be bequeathed

# Illustrative list of properties

- Annuity
- Appurtenances
- Belongings
- Books including manuscripts
- Business
- Car
- Chattels
- Debts
- Effects
- Estate
- Land & tenements
- Money i.e., cash or bank balance
- Furniture including paintings, linen
- Chine both useful and ornamental
- Fixtures
- Household goods
- Income including dividend
- Investment in stocks, shares debentures, deposits other than bank, bonds & securities
- Jewellery including unmounted diamonds
- Interest in Partnership including declared but undrawn profits and undeclared profits

# How to prepare a WILL

- WILL must be in writing
  - Exception – Muslims can declare oral WILL.
- No Particular form of WILL
- Stamp Paper is not required
- Typing is not essential
  - Desirable



# Must follow

- Name and address of the testator
- The fact that the testator is making the WILL
  - Voluntarily
  - With sound disposing mind
- Necessity or urgency, if any, for execution of WILL
- Enumeration of testator's relatives (Heirs)
  - Who would be entitled to his properties
  - To whom the bequest are proposed
- Details of procedure of making bequests

## Must follow...

- Usage of clear and unambiguous language
- Avoidance of conflicts with the law of the Land.
- Appointment of executor
- Schedule of property bequeathed
- Attestation of WILL by at least two witnesses.
- Provisions relating to bequest and trust created by the WILL should be complete.
- Interest conveyed by the WILL must be clearly defined. A WILL not expressive of any definite intention is void for uncertainty.

# Precaution in drafting a WILL

- Prepare list of properties
  - after meeting debts
  - Wish to distribute
- Make a realistic appraisal of net estate available for disposition
- Advisable to draft in the language best understood by the testator
- In case the testator is illiterate
  - language known to the testator should adopted.
  - The attestors must read out the WILL before testator sign the WILL

# Precaution in drafting a WILL

- WILL should be drafted in simple language and it should be unambiguous.
- Abbreviations must be explained in the WILL itself.
- It is advisable to execute single copy of the will to avoid confusion and disputes.
- The testator must be aware about the WILL content
- The option of registered WILL to be known to the testator
- Preferably, one witness should be a medical practitioner or a certificate from a doctor that day that the person is of sound mind

# Legal requirements

- Testator shall sign the WILL
- Placing of signature of testator
- Attested by two or more witnesses
- Acknowledgement of WILL by witnesses
- Attestor need not know the content of the WILL
- Selection of the witnesses
- Form & manner of attestation
- Registration of WILL

# Death - Taxation

The only things certain in life are death & taxes

- Benjamin Franklin

- No provision in the Income Tax Act, 1961 about submission of information relating to death.
- Income Tax liability till the date of death will be responsibility of the legal heir.
- Section 18(3) of CGST Act, 2007

Q & A –  
Next Time



Thank you

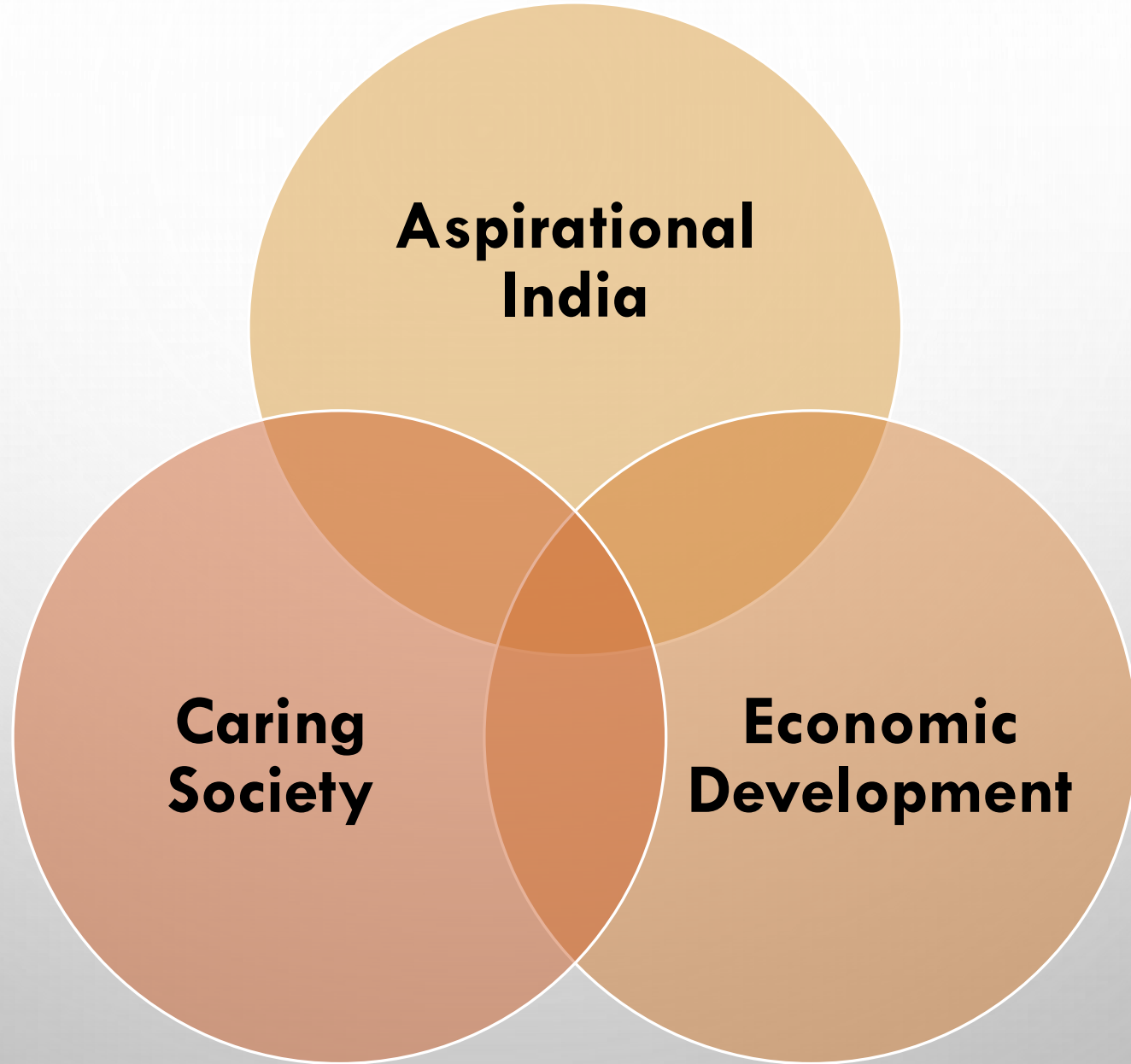
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# **INDIRECT TAX PROPOSALS BUDGET 2020**

**CA SATISH SARAF | SARAF SATISH & CO | CHARTERED ACCOUNTANTS | HYDERABAD**



# THREE THEMES – BUDGET 2020



## THE NUMBERS

100+

- Very Important & Important

9

- Customs Act, 1962

2

- Customs Tariff Act, 1975

16

- CGST Act, 2017

2

- IGST Act, 2017

4

- UTGST Act, 2017

1

- GST Compensation to States Act, 2017

1

- Health Cess as part of Customs Act, 1962

# PROPOSED AMENDMENTS

Customs Act, 1962

- 11, 28, 28AAA, Chapter – VAA [Administration of Rules of Origin under Trade Agreement, Chapter – VIAA, 51B, 111, 156 & 157.

Customs Tariff Act,  
1975

- 8B & three Schedule

CGST Act, 2017

- 2, 10, 16, 29, 30, 31, 51, 109, 122, 132, 140, 168, 172, & Schedules – II.

IGST Act, 2017

- 25

UTGST Act, 2017

- 1, 2, 26.

GST Compensation  
Cess Act, 2017

- 14

Heath Cess

- Fourth Schedule



# **CENTRAL GOODS & SERVICES TAX ACT, 2017**

## SECTION 2(114) OF CGST ACT, 2017

Before proposed amendment	<p>“Union territory” means the territory of—</p> <p>(a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) <b>Dadra and Nagar Haveli</b>; (d) <b>Daman and Diu</b>; (e) Chandigarh; and (f) other territory.</p> <p><i>Explanation.</i>—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;</p>
Proposed amendment in Budget 2020	<p>“Union territory” means the territory of—</p> <p>(a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) <b>Dadra and Nagar Haveli and Daman and Diu</b>; (d) <b>Ladakh</b>; (e) Chandigarh; and (f) other territory.</p> <p><i>Explanation.</i>—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;</p>
Impact of amendment	<p>Ladakh has been added into the definition of Union Territory.</p>

## SECTION 10(2) OF CGST ACT, 2017

Before proposed amendment	<p>(b) he is not engaged in making any supply <b>of goods</b> which are not leviable to tax under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies <b>of goods</b>;</p> <p>(d) he is not engaged in making any supply <b>of goods</b> through an electronic commerce operator who is required to collect tax at source under section 52; and</p>
Proposed amendment in Budget 2020	<p>(b) he is not engaged in making any supply <b>of goods or services</b> which are not leviable to tax under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies <b>of goods or services</b>;</p> <p>(d) he is not engaged in making any supply <b>of goods or services</b> through an electronic commerce operator who is required to collect tax at source under section 52; and</p>
Impact of amendment	Seeking to bring supplier of services in prescribing conditions for availing Composition Levy.

## SECTION 16(4) OF CGST ACT, 2017

Before proposed amendment	<i>A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both 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 <b>invoice relating to such</b> debit note pertains or furnishing of the relevant annual return, whichever is earlier.</i>
Proposed amendment in Budget 2020	<i>A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both 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 <del>invoice relating to</del> <b>such</b> debit note pertains or furnishing of the relevant annual return, whichever is earlier.</i>
Impact of amendment	Debit note is delinked with date of Invoice in claiming the ITC.

## SECTION 29(1)(C) OF CGST ACT, 2017

Before proposed amendment	<p>(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—</p> <p>.....</p> <p>(c) the taxable person, <b>other than the person registered under sub-section (3) of section 25</b>, is no longer liable to be registered under section 22 or section 24.</p>
Proposed amendment in Budget 2020	<p>c) the taxable person, <del>other than the person registered under sub-section (3) of section 25</del>, is no longer liable to be registered under section 22 or section 24 <b>or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.</b></p>
Impact of amendment	<p>Voluntary registered person can cancel his registration provided he is not required to take registration U/s. 22 or 24.</p>



# PROVISO TO SECTION 30(1) OF CGST ACT, 2017

Before proposed amendment	Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and it hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of this Act, against such order passed upto 31-03-2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22-07-2019.
Proposed amendment in Budget 2020	<i>Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,— (a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days; (b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a)</i>
Impact of amendment	Extending the period of revocation of cancellation of certificate of registration.

# PROVISO TO SECTION 31(2) OF CGST ACT, 2017

Before proposed amendment	<p><i>Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—</i></p> <p><del><b>(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or</b></del></p> <p><del><b>(b) tax invoice may not be issued.</b></del></p>
Proposed amendment in Budget 2020	<p><i>Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—</i></p> <p><b>(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;</b></p> <p><b>(b) subject to the condition mentioned therein, specify the categories of services in respect of which—</b></p> <p><b>(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or</b></p> <p><b>(ii) tax invoice may not be issued.</b></p>
Impact of amendment	<p>Government will get the power to notify the documents for category of services in rules relating to time and manner of issue of documents.</p>

## SECTION 51(3) OF CGST ACT, 2017

Before proposed amendment	<del>The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.</del>
Proposed amendment in Budget 2020	<b>A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.</b>
Impact of amendment	This amendment empower the government to prescribe the form and manner of issue of Certificate of Tax Deducted at Source.

## SECTION 51(4) OF CGST ACT, 2017

Before proposed amendment	If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.
Proposed amendment in Budget 2020	<del>If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.</del>
Impact of amendment	Omission of Section 51(4) – resulting into removal of late fee in furnishing the Tax Deduction Certificate.

## SECTION 109(6) OF CGST ACT, 2017

Before proposed amendment	<p>The Government shall, by notification, specify for each State or Union territory except for the State of Jammu and Kashmir, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:</p> <p><i>Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017:</i></p>
Proposed amendment in Budget 2020	<p>The Government shall, by notification, specify for each State or Union territory <del>except for the State of Jammu and Kashmir</del>, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:</p> <p><del><i>Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017:-</i></del></p>
Impact of amendment	<p>Seek to make applicability of constitution of Appellate Tribunal to the State of Jammu &amp; Kashmir &amp; Ladakh UT.</p>

## SECTION 122(1A) OF CGST ACT, 2017

Before proposed amendment	--
Proposed amendment in Budget 2020	<b><i>(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.</i></b>
Impact of amendment	Seek to impose penalty on the person on whose instance the offence was committed.

## SECTION 132(1) OF CGST ACT, 2017

Before proposed amendment	<p>Whoever commits any of the following offences, namely:-</p> <p>(c) avails input tax credit using such invoice or bill referred to in clause (b);</p>
Proposed amendment in Budget 2020	<p>Whoever commits, <b>or causes to commit and retain the benefits arising out of</b>, any of the following offences namely:-</p> <p>(c) avails input tax credit using the invoice or bill referred to in clause (b) <b>or fraudulently avails input tax credit without any invoice or bill</b></p>
Impact of amendment	<p>Seeks to bring the person on whose instances the registered person has committed an offence and also bring who fraudulently avails ITC without any invoice or bill.</p>



# SECTION 168(2) OF CGST ACT, 2017

Before proposed amendment	<i>The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.</i>
Proposed amendment in Budget 2020	<i>The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, <del>sub-section (5) of section 66</del>, sub-section (1) of section 143, <b>except second proviso thereof</b>, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.</i>
Impact of amendment	Special Audit Fee fixation can not be delegated by Commissioner. The period of 3 years / 1 years for job works can be extended by commissioner by 2 years / 1 year.



# PROVISO TO SECTION 172(1) OF CGST ACT, 2017

Before proposed amendment	<i>Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.</i>
Proposed amendment in Budget 2020	<i>Provided that no such order shall be made after the expiry of a period of <del>three</del> <b>five</b> years from the date of commencement of this Act.</i>
Impact of amendment	Seeks to extend the period of 3 years to 5 years for issue of Removal of Difficulty Orders by the Government.

# PARA 4 OF SCHEDULE – II OF CGST ACT, 2017

Before proposed amendment	<p>Transfer of Business Asset:</p> <p>(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, <b>whether or not for a consideration</b>, such transfer or disposal is a supply of goods by the person;</p> <p>(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, <b>whether or not for a consideration</b>, the usage or making available of such goods is a supply of services;</p>
Proposed amendment in Budget 2020	<p>(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, <del>whether or not for a consideration</del>, such transfer or disposal is a supply of goods by the person;</p> <p>(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, <del>whether or not for a consideration</del>, the usage or making available of such goods is a supply of services;</p>
Impact of amendment	<p>Effective from 01-07-2017 - Seeks to omit the words “whether or not for consideration” so as to give clarity to the meaning of the entries (a) and (b) of said paragraph, to aligning the same with Section 7(1) and Schedule I (supply without consideration) of the CGST Act, 2017.</p>

## **SECTION 140 OF CGST ACT, 2017**

AMENDMENTS TO SECTION 140 ARE MADE TO NULLIFY THE EFFECT OF THE JUDGMENT GIVEN IN THE CASE OF SIDDHARTHA ENTERPRISES BY THE HON'BLE GUJRAT HIGH COURT [(2019) 109 TAXMANN.COM 62 (GUJ)] WHEREIN IT WAS HELD THAT THE RULES THAT PRESCRIBE THE TIME LIMIT TO AVAIL THE TRANSITIONAL CREDIT CANNOT OVERRIDE THE ACT.

**RETROSPECTIVE AMENDMENT FROM 01-07-2017**

## OTHER GST ACTS

### **Proposed amendment to IGST Act, 2017**

- Removal of Difficulty orders period extended to five years from three years.

### **Proposed Amendments to UTGST Act, 2017**

- **Ladakh added as UT**
- Removal of Difficulty orders period extended to five years from three years.

### **Proposed Amendments to GST Compensation to States Act, 2017**

- Removal of Difficulty orders period extended to five years from three years.

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**ANY QUESTIONS**

**THANK YOU**