

MODEL GST LAW

By

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**Empowered Committee of State
Finance Ministers June, 2016**

GOODS AND SERVICE TAX

Single biggest tax reform since Independence ,

All stake holders are eagerly waiting for the monsoon session with the hope that the much awaited Constitutional (122nd Amendment) Bill, 2014 on GST will be passed, which will pave the way for GST in the Country.

GST is a destination based consumption tax levied at multiple stages of production and distribution of goods and services, with taxes on inputs credited against taxes on output.

GST is going to be big game changer and will be one of the most significant tax reforms in the fiscal history of India to consolidate present multiple layers of Indirect taxation.

The implementation of GST will have a far-reaching impact on almost all the business operations in our country.

It will impact tax structure, tax incidence, tax computation, supply chain optimization, credit utilization, compliance system etc., leading to a complete overhaul of the current indirect tax system.

Government on October 6, and October 20, 2015, placed the following Draft Business Processes of GST on public domain:

Report of the Joint Committee on Business Processes for GST
On Refund Process
On Registration
On Payment Process
On GST Return

Now, on June 14, 2016, the Central Government has put the Draft Model GST Law on public domain after getting in-principle approval from the Empowered Committee of State Finance Ministers, in a way that the GST might start from April 1, 2017.

The Draft GST Law is a model which the Central Government and each of the State Governments would use to draft their respective Central and State GST Acts.

Further, a Draft of the Integrated GST Act, 2016, which will govern levy of GST on inter-State supplies by the Central Government, is also issued.

The Draft Model GST Law states that the Act shall be referred as THE CENTRAL / STATE GOODS AND SERVICES TAX ACT, 2016.

The Draft Model GST Law consists of 162 sections divided into 25 Chapters along with 4 schedules and Rules as to Valuation under GST.

Further, the Draft Integrated GST Act, 2016 consists of 33 sections divided into 11 Chapters.

The Draft Model GST Law covers the following aspects:

Definition of key terms such as 'goods', 'services', 'aggregate turnover', 'business' etc.

Meaning and scope of supply. Meaning of the term 'supply' plays a crucial role since under GST, tax would be levied on supply of goods & services and the present concepts of manufacture/ rendering of services/ sale would lose its relevance;

To levy GST, the business should be in relation to goods or services. The important definitions are as follows:

Section 2 (6): “aggregate turnover” means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation.- Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.

Section 2 (40): “electronic cash ledger”

means the cash ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf;

Section 2 (41): “electronic credit ledger”

means the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf;

Section 2 (42): “exempt supply”

means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services which are specified in Schedule of the Act or which may be exempt from tax under section 10;

Section 2 (48): “goods” means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

Section 2 (59): “services” mean anything other than goods. It also includes intangible property and actionable claim and immovable property also.

Section 2 (54): input” means any goods Other than capital goods, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

Section 2 (55): “input service” means any service, subject to exceptions as may be Provided under this Act or the rules made Thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

Section 2 (57): "input tax" in relation to a taxable person, means the {IGST and CGST}/ {IGST and SGST} charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under subsection (3) of section 7;

Section 2 (72): "output tax" in relation to a taxable person, means the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis;

LEVY OF GST

Charging section 7 of the Act provides that there shall be levied a tax called the Central / State Goods and Services Tax (CGST/ SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.

On Inter-State supplies of goods and/or services: IGST shall be levied by the Central Government at the rate to be prescribed.

.Central GST (CGST) and State GST (SGST) will be leviable on intra-State supplies and Integrated GST (IGST) will be leviable on inter-State supplies.

●The provisions for determination of whether a supply is inter-State or inter-State are in sections 3 and 3A of the IGST Act, 2016

●Supply of goods/services shall be inter-State if location of supplier and place of supply are in different States. Otherwise the supply will be intra-State.

**Imports of both goods and services
Have been deemed as inter-State
Supplies leviable to IGST.**

Export is zero-rated.

**Separate provisions have been made
for determination of place of supply of
goods and services respectively.**

•Section 8 Composition Levy

A registered taxable person, whose aggregate turnover in a financial year does not exceed Rs. 50 lakhs, shall be provided an option to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than 1% of the turnover during the year, subject to following conditions:

- 1.The benefit of composition scheme shall not be granted to a taxable person who effects any Inter-State supplies of goods and/or services**
- 2.The taxable person opting for composition levy shall not collect any tax from the recipient to whom goods and/ or services are supplied;**
- 3. No credit of input tax shall be allowed.**

.Certain transactions involving both supply of goods and services such as works contract, restaurant service, etc. have been deemed as supply of service under Section 3 read with Schedule II of the Model Law. Various declared services of the current service tax law have also been deemed as supply of service. Transfer of Right to Use Goods has also been deemed to be a service.

Powers to grant exemptions, absolutely Or conditional, by notification or by Special order, have been given to the Central and State Governments, on the Recommendation of the GST Council.

Reverse charge basis

There are provisions for reverse charge payments in respect of both goods and services. Notification may be issued for providing specific categories of supply of goods and/or services, on which, GST is payable by the person receiving such goods and/ or services, on reverse charge basis.

Transitional Provisions

- Amount of VAT / Cenvat credit carried forward in A Return will be allowed as ITC. However such carry forward is allowed only if the credit is admissible in terms of the ITC provisions of the GST Law. The procedure may require to await the Rules to be framed in this regard.**
- Unavailed Cenvat credit on capital goods, which is not carried forward in a return, will also be allowed.**
- Credit of eligible duties and taxes in respect of inputs held in stock will also be allowed.**

Place of supply of goods and/or services:

Since, the proposed GST framework will work on the principle of destination based consumption tax, place of supply rules plays an important role to build up a mechanism to determine tax jurisdictions for the smooth implementation of GST. It becomes more important in case of e commerce transactions;

The taxable event for levy of GST shall be 'supply' of goods and services or both.

Supply

The term 'supply' is defined under section 3 inclusively to inter alia include –

- * All forms of supply of goods and/or services by way of sale, transfer, barter, exchange, licence, rental, lease, and disposal of assets **for consideration** in the course of business

- * Importation of service, **whether or not for consideration**

- * Schedule I: Supply without consideration considered as **deemed supply**

- Schedule II: Determination of what is supply of goods and supply of services

- Supply on behalf of any principal and a person acting as a agent

Time and value of supply:

Under the proposed GST regime, all the major taxes levied under the Indirect Taxation i.e. Central Excise, Service tax, VAT/CST etc., are proposed to be brought under the ambit of GST.

Hence, the prevailing concepts of manufacturing of Goods/ provision of Services / sale of Goods will no longer be relevant and common base has to be arrived at for levy and collection of GST in all cases;

Time of Supply

Time of supply of goods shall be **earliest of the following** dates: **(section 12)**

- i. Date of removal of goods by supplier to the buyer for supply
- ii. Where goods are not required to be removed, the date on which goods are made available to the buyer
- iii. Date when supplier issues invoice for supply
- iv. Date on which supplier receive payment for supply
- v. Date on which buyer shows receipt of goods in books of account

- **Time of supply of service shall be earliest of following: (section 13)**
- **i. The date of issue of invoice or date of receipt of payment, whichever is earlier. (provided invoice issued within prescribed time)**
- **ii. Date of completion of service or receipt of payment, whichever is earlier. (if invoice not issued within prescribed time)**
- **iii. Date on which recipient shows receipt of service in books of account. (If not covered by case i and ii above)**

In case of services covered by reverse charge, the time of supply shall be earliest of

- i. Date of receipt of service**
- ii. Date of which payment is made**
- iii. Date of receipt of invoice**
- iv. Date of debit in books of account**
- Provisions have been made for determining time of supply of service in case of continuous supply of service on milestone basis**

Valuation

Draft GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016

Methods prescribed for determination of value of supply are as follows:

- a) Transaction Value Method: The value of goods and/or services shall be the transaction value i.e. the value determined in monetary terms.
- b) Comparison Method: Where value of supply cannot be determined under the Transaction Value Method, the value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.

c) Computed Value Method: Where value cannot be determined under the Comparison method, it shall be based on a computed value which shall include cost of production, manufacture or processing of the goods or, the cost of the provision of services, the charges, if any, for design & brand and amount towards profit & general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

d) Residual Method: Where the value cannot be determined under the Computed Value method, the value shall be determined using reasonable means consistent with the principles and general provisions of the Valuation Rules.

INPUT TAX CREDIT

Input Tax Credit (ITC) is available in respect of inputs, capital goods and input services except negative list of items

ITC is available only on provisional basis until the supplier makes the tax payment and files a valid return.

There will be matching of supplier and receiver data and credit will be confirmed only after such matching. Where the data is not matched and where the supplier has not made the tax payment, the ITC shall be reversed.

- Interest is from the date of wrong availment or utilization.

Credit available of	To be utilised against only
CGST	1st preference: CGST 2nd preference: IGST
SGST	1st preference: SGST 2nd preference: IGST
IGST	1st preference: IGST 2nd preference: CGST 3rd preference: SGST

Order of utilisation shall be as follows:

i. IGST to be used for IGST, CGST and SGST in that order

ii. CGST to be used for CGST and IGST in that order

iii. SGST to be used for SGST and ISGT in that order

iv. CGST to SGST and SGST to CGST adjustment not possible.

Excess credit may be carried forward to next tax Period.

Credit can be claimed as refund where accumulated due to export or where tax on input is higher than tax on output

Input Service Distributor (ISD)

Input Service Distributor has been introduced only for passing on credit of GST on services.

Every Input Service Distributor shall, for every calendar month or part thereof, furnish a return, electronically, in such form and in such manner as may be prescribed, **within thirteen days** after the end of such month.

RETURNS

Every taxable person required to file return-

Monthly Return: submitting details of outward Supply on or before 10th of the succeeding month (section 25)

Details of inward supplies need to be submitted Before 15th of the succeeding month (section 26)
Final return shall be submitted on or before 20th of the succeeding month.

Return for Composition Scheme: A registered taxable person paying tax under composition scheme shall have to furnish a return for each quarter or part thereof, electronically, within 18 days after the end of such quarter.

TDS Return: Every registered taxable person who is required to deduct tax at source shall furnish a return, electronically, within 10 days after the end of month in which deduction is made.

Return for Input Service Distributor: Every Input Service Distributor shall file return for every calendar month or part thereof, electronically, within 13 days after the end of such month.

First Return: Every registered taxable person shall have to furnish the first return from the date on which he became liable to registration till the end of the month in which the registration has been granted.

Annual return: Every registered taxable person except certain specified person shall have to furnish an annual return for every financial year electronically on or before the 31st day of December following the end of such financial year.

Final return: Every registered taxable person who applies for cancellation of registration shall have to furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in a prescribed form.

Section 33. Levy of late fee

1.) Any registered taxable person who fails to furnish the details of outward or inward supplies required under section 25 or section 26, as the case may be, or returns required under section 27 or section 31 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of rupees five thousand.

2.) Any registered taxable person who fails to furnish the return required under section 30 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of his aggregate turnover

Payment priority

Prioritization rule has been inserted for payment of taxes whereby taxes for the current period cannot be paid until the taxes/interest/late-fee/penalty in relation to returns of previous tax periods have not been deposited.

E-Commerce

- E-Commerce Operators are required to collect and deposit tax at source (TCS) on payments made to the vendors.

They are also required to file statement/return relating to the supplies made through their portal. These will be matched with the details given by the vendor in his Return for outward supplies and in case of mismatch, output liability of vendor will be re-determined.

- Supplies of branded services by aggregators have been deemed as a supply by the Aggregator.

Payment

Any tax, interest, penalty, fee, etc., shall be Paid via internet banking or by using credit /debit cards or NEFT or RTGS. This amount shall be credited to the electronic cash ledger of dealer.

TDS

CG or SG may mandate deduction of tax @ 1% on payment made or credited by:

- i. Department of CG or SG
- ii. Local authorities
- iii. Governmental agencies
- iv. Other notified categories

♣ It should be deducted on specified goods or service to be notified

♣ Applicable when total value of such supply under a contract exceeds Rs. 10 lacs

♣ TDS should be deducted within 10th of next month. Delay in payment would attract late fee of Rs. 100 per day. Person deducting TDS has to file the return within 10th of the succeeding month.

REFUND

A person can claim refund of any tax and interest by making an application in that regard to the prescribed officer of IGST/CGST/SGST. The application can be made before the expiry of two years from the relevant date as may be prescribed. It has been provided that the limitation of two years shall not apply where such tax or interest or the amount has been paid under protest.

REGISTRATION

The persons liable for taking Registration are specified in Schedule III. They include—

- a) Persons crossing threshold of aggregate turnover of Rs. 9 lakhs in a financial year. and Rs. 4 lakhs for North-Eastern States.
- b) Persons making inter-State taxable supply irrespective of threshold
- c) Persons liable to pay GST under reverse charge
- d) Input Service Distributor
- e) Aggregator
- f) E-Commerce Operator.

Separate registration is required to be taken in each State. There is no provision for centralized registration.

Existing taxpayers will be issued Registration Certificate on a provisional basis valid for 6 months.

Composition Scheme has been introduced in respect of taxable persons whose aggregate turnover does not exceed fifty lakhs.

However liability to pay GST will start after the aggregate turnover in a Financial Year exceeds Rs 10 Lakhs and Rs 5 Lakhs for businesses in North Eastern States including Sikkim.

Audit of accounts & records by a chartered accountant or a cost accountant (Sec 42)

Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant.

Special Audit by a chartered accountant or a cost accountant (Sec 50)

If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Dy/Asst. Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the [Commissioner], direct such taxable person by notice in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the [Commissioner] in this behalf...

Access to business premises (Sec 64)

Every person in charge of premises referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or the Comptroller and Auditor General of India or a cost accountant or chartered accountant nominated under section 50, as the case may be,-

Appearance by authorized representative (Sec 86)

Any person who is entitled or required to appear before a GST Officer appointed under this Act, or the First Appellate Authority or the Appellate Tribunal in connection with any proceedings under the Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative includes any chartered accountant, a cost accountant or a company secretary, who holds a valid certificate of practice and who has not been debarred from practice;

GST compliance rating score

**Every taxable person shall be assigned
A GST compliance rating score based
on his record of compliance with the
Provisions of this Act.**

**The GST compliance rating score shall
Be updated at periodic intervals and
intimated to the taxable person and
also placed in the public domain.**

Other provisions

- Constitution of a National Goods and Services Tax Appellate Tribunal by Centre on the recommendation of the GST Council
- The Tribunal shall be headed by a national president, with a branch in each state.
- The state GST tribunal will be headed by a state President and consist of Members (Judicial), Members (Technical – CGST) and Members (Technical – SGST)
- Every appeal has to be filed within three Months from the date on which the order sought to be appealed against is communicated to the person.

- A National GST Settlement Commission to be set up by the Centre has also been proposed
- The National Commission chairman will be a High Court judge and the commission will have one bench for one or more states.
- The authority for advance ruling in GST will be established in each state for taxpayers seeking advance rulings.
- The draft law also seeks to establish a Consumer Welfare Fund.

Destination Based Taxation

Destination Based Taxation as the name suggests is the taxation based on destination or consumption of the goods or services.

This principle seeks to tax the goods and services on simple theory that the goods or services should be taxed at the stage where their consumption takes place rather than the point where their origin takes place i.e. production and the entire revenue relating to the goods or services should accrue in the jurisdiction where they are being ultimately consumed.

For Example If A in Gujarat produces the goods and sells the goods to B in Rajasthan, then in such case the tax should be levied and collected and should accrue on the goods in the State of Rajasthan and not in the State of Gujarat. The revenue in the case of destination based taxation belongs to the place, where the goods are finally consumed and not to the State where the goods are produced.

Origin Based Taxation:

Origin Based Taxation as the name suggests is the taxation based on origin or source where the goods and services are produced. This principle seeks to tax the goods and services on the basis of the principle that the goods and services should be taxed at the stage where their production or origination takes place rather than where their consumption takes place. Therefore, in case of origin based taxation, the revenue accrues to the jurisdiction where goods and services are produced.

For Example If A in Gujarat produces the goods and sells the goods to B in Rajasthan, then in such case the tax should be levied and collected in the State of Gujarat and not in the State of Rajasthan. The revenue in the case of origin based taxation should accrue to the place, where the goods or services are produced and not to the State where they are consumed.

The basic difference between the two lies in the fact that origin based taxation seeks to levy and collect tax on the basis of location of production and destination based taxation seeks to levy and collect tax on the basis of location of consumption

OUR ROLE IN GST

Strategic Consultancy

Functional Support

IT & ERP Systems

Audit, Assurances & Legal Compliances

Accounting & Taxation

Partners in Transition

Strategic Consultancy

Impact study of GST on business

Crafting business plans in the changed environment

Contract Review for Cost Reduction / Price Revisions

Transaction Structuring by mapping existing business model

Opinion and other advisory

Comparative pricing & valuation under existing Law & GST

Functional Support

Being Destination based Tax, deciding the Principles of levy considering Point of Taxation, Time & Place of Supply of Goods & Services

Price & Cost Analysis for each transaction

Outsourcing for various operational matters, statutory compliances & documentation

Developing SOPs for your business in the changed tax regime

Suggesting best possible alternative for Working Capital Management

Continuous training & Updation with changes in law

IT & ERP Systems

Harmonizing current ERP data as per changed GST Law

Reconciliation between systems

Record Maintenance & Returns

Amendment in systems as and when required

Processing of required information for Management

Audit, Assurances & Legal Compliances

Review of record & procedural aspects

Changes in registrations

Verification of Returns

Reconciliation between submissions to various authorities

Analysis of benefits & incentives

Statutory compliances & audit

Internal Audit & Systems improvement

Accounting & Taxation

Accurate computation of liability & credits

Refund & Rebate

Appeals & Adjudications

Integration of Material Accounting with financial accounting

Location wise, party wise maintenance of ITC records.

Partners in Transition

Review of existing cenvat credit and set-off balances to be carried forward

Analysis of inventory lying at different locations on the implementation day

Cenvat Refund / VAT Refund / Rebates / Drawbacks already filed or to be filed.

Projects in hand / WIP – normal business model and works contract model.

Audit under Old Regime & New Regime

De-Registration & Compliances under existing Laws

Pending adjudications & litigations

ANY QUESTIONS?

THANK YOU !!!