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# Model GST Law

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AN ANALYSIS

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## PREFACE

Dear Reader,

*In what is a watershed event on the road to the Goods and Services Tax in India, the Government has released a draft version of the 'Model GST Law' into the public domain earlier this week. With this development, while the passage of the GST Constitution (122nd) Amendment Bill during the monsoon session is awaited, industry and other stakeholders will be able to provide their inputs and comments on the draft, which will form the basis for the eventual GST legislations.*

Spanning nearly 200 pages, comprising the CGST/ SGST Act, GST Valuation (Determination of Value of Supply of Goods and Services) Rules and the IGST Act, the model law has made a laudatory attempt to codify the existing indirect tax provisions under Customs law, Central Excise law, Service tax law, VAT laws, etc. Notably, some of the very latest amendments introduced as recently as in the Union Budget 2016-17 have found their way into the model law. And, it is also significant that certain new concepts that the GST, by its nature, necessitates, have been introduced (e.g. 'continuous supply of goods', 'business vertical', 'recipient', 'zero-rated supply' etc.) and varied scenarios/ transactions have been envisaged and legislatively addressed (e.g. taxability of intangibles, taxability of barter, job work, transactions in respect of deemed export etc.).

At the same time, there is some distance to cover in terms of ironing out the wrinkles in the draft and addressing areas of incompleteness, as well as absorbing inputs that industry will come to provide, especially where the particularities of a sector warrant special dispensation under the law. Industry must endeavor that an impactful contribution to the shaping of the GST law is made at this critical juncture, so as to transition to a statutory framework that is expected to govern all aspects of the levy (on all transactions) for the foreseeable future.

While the Empowered Committee has given its in-principle nod to the present draft of the model law, once the draft is in its final form, the next important challenge will lie in ensuring that States adopt and enact the model law in its fullest form, to ensure uniformity of the levy and its consistent administration, as also the concept of "unified market" that has been central to the proposed GST regime since its inception.

We, at ELP, have undertaken an analysis of the various provisions under the model law and we hope you find this analysis informative and useful. Please revert with your comments and questions.

Thank you, as always, for your support.

Warm Regards,

**Rohan Shah | Managing Partner**



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## PRELIMINARY

### SHORT TITLE, EXTENT AND COMMENCEMENT [SECTION 1]

The Model Goods and Services Tax Act, 2016 applies to the whole of India and the respective State, as the case may be.

#### Analysis

For the first time, the State of Jammu and Kashmir has not been excluded as regards the application of the tax regime that is applicable to the rest of India.

### DEFINITIONS [SECTION 2]

Some of the key and new definitions are:

Term	Definition	Analysis
address of delivery [Section 2(2)]	The address of the recipient of goods and/or services indicated on the tax invoice issued by the taxable person for delivery of such goods and / or services.	<ul style="list-style-type: none"> <li>Definition is now used in the Model law.</li> <li>The “address on record” may be different.</li> </ul>
aggregate turnover [Section 2(6)]	Aggregate value of all taxable and non taxable supplies, exempt supplies, and export of goods and / or services of a person having the same PAN, but excludes: <ul style="list-style-type: none"> <li>taxes paid under GST, if any,</li> <li>inward supplies (defined to mean receipt of goods and/or services whether by purchase, acquisition or any other means and whether or not for any consideration), and</li> <li>tax paid under reverse charge basis.</li> </ul>	<ul style="list-style-type: none"> <li>The definition is wide enough to include all the supplies by a person whether liable to tax or exempt.</li> <li>Such turnover is required to be computed on pan-India basis for a PAN.</li> </ul>
turnover in a State [Section 2(104)]	“turnover in a State” means the aggregate value of all taxable and non-taxable supplies, including exempt supplies and exports of goods and / or services made within a State by a taxable person and inter-state supplies of goods and / or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be.	<ul style="list-style-type: none"> <li>The definition is wide enough to include all the supplies by a person <u>within the State</u> and <u>inter-state supplies</u>.</li> </ul>
business [Section 2(17)]	Includes: <ul style="list-style-type: none"> <li>any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit,               <ul style="list-style-type: none"> <li>any transaction in connection with or incidental or ancillary thereto</li> <li>any transaction in the nature specified above, whether or not there is volume, frequency, continuity or regularity of such transaction.</li> </ul> </li> <li>supply or acquisition of goods including capital assets and services in connection with commencement or closure of business,</li> <li>provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members as the case may be,</li> <li>admission, for a consideration, of persons to any premises, and</li> </ul>	<ul style="list-style-type: none"> <li>While the definition of ‘business’ does not exist in the present Excise / Service tax Law, the same has been defined under the CST Act / State VAT legislations.</li> <li>The Model law appears to have borrowed the term from the latter. This definition assumes significance as the proposed levy is <i>qua</i> activities undertaken in the course or furtherance of business.</li> <li>Profession and vocation has also now been included within the definition of business.</li> </ul>

Term	Definition	Analysis
	<ul style="list-style-type: none"> <li>services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation.</li> </ul>	
business vertical [Section 2(18)]	The term 'business vertical' shall have the meaning assigned to a 'business segment' in the AS-17 issued by the Institute of Chartered Accountants of India.	<ul style="list-style-type: none"> <li>The AS-17 prescribes principles for segmental reporting in the financial information for different types of products and services that an enterprise produces. The said AS defined 'business segment' to mean a distinguishable component of an enterprise that is engaged in providing an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business segments. The said AS further provides factors that should be considered in determining whether products or services are related.</li> <li>This definition is relevant since there may be separate registrations for different business verticals.</li> <li>This definition is also relevant in respect of input service distribution.</li> </ul>
capital goods [Section 2(20)]	The definition of 'capital goods' under the Model law is similar to the definition under Rule 2(a) of the CCR.	
composite supply [Section 2(27)]	<p>Means a supply consisting of –</p> <ul style="list-style-type: none"> <li>Two or more goods;</li> <li>Two or more services; or</li> <li>A combination of goods and services.</li> </ul> <p>Provided in the course of furtherance of business, whether or not the same can be segregated</p>	<ul style="list-style-type: none"> <li>This is a new concept that has been introduced, which <i>inter alia</i> includes any combination of supplies of two or more goods and / or services.</li> <li>Relevance: Goods or services combined but bearing differential rates</li> <li>No usage of the definition in present draft</li> <li>This provision is silent in respect of transactions which include immovable property. In a recent decision of the Hon'ble Delhi High Court [<i>Suresh Kumar Bansal &amp; Others vs. Union of India &amp; Others, Judgement dated 03-06-2016 in W.P. (C) 2235/2011 and W.P. (C) 2971/2011</i>], it was held that there is no effective machinery provision to tax the service element in composite construction services, as the valuation provisions in their</li> </ul>

Term	Definition	Analysis
		present form refer to exclusion of goods from the value of composite contracts to arrive at the services value, but do not contain any provisions to exclude the value of immovable property while arriving at the value of services in a composite contract having elements of transfer of goods/immovable property and provision of services.
Consideration [Section 2(28)]	<p>The term 'consideration' has been defined to include:</p> <ul style="list-style-type: none"> <li>any payment made or to be made, whether in money or otherwise,</li> <li>the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person.</li> </ul> <p>A deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.</p>	<ul style="list-style-type: none"> <li>Deposits whether refundable or not will not be treated as consideration till the time such deposit is appropriated towards consideration for supply by the supplier.</li> <li>Payment made "otherwise" than in money would also constitute consideration.</li> </ul>
continuous supply of goods [Section 2(30)]	A supply of goods on a continuously or on recurrent basis under a contract whether or not, by means of a wire, cable, pipelines or other conduit the supplier issue invoices on regular or periodic basis.	This phrase has been defined for the first time.
deemed exports [Section 2(37)]	<p>'Deemed exports' as notified by the Central Government / State Government on the recommendation of the GST Council, refer to transactions:</p> <ul style="list-style-type: none"> <li>Where goods supplied do not leave India, and</li> <li>Payment for such supplies is received either in Indian Rupees, or in convertible foreign exchange.</li> </ul>	The definition of 'deemed exports' has been incorporated from the Foreign Trade Policy 2015-2020.
goods [Section 2(48)]	<p>Means every kind of movable property other than actionable claim and money, and 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.</p> <p>For the purpose of this clause, the term 'movable property' shall not include any intangible property.</p>	<p>This definition is identical to the definition of 'goods' contained in Section 2(7) of the Sales of Goods Act, 1930.</p> <p>Also by way of explanation, it has been clarified that intangible properties will not fall under the category of goods.</p>
Inputs [Section 2(54)]	Means any goods other than capital goods, subject to exceptions as may be prescribed, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business.	<p>This definition provides that the goods are to be actually used for the purpose of outward supply or are intended to be used for the purpose of outward supply to qualify as inputs. Further, similar to the present exclusion in the inputs as defined under Rule 2(I) of CCR, once a good qualifies as capital goods, it will not be considered as inputs. The requirement that inputs be used at the place of business has not been specified under the above definition.</p> <p>No exceptions have been prescribed</p>

Term	Definition	Analysis
market value [Section 2(67)]	Means full amount which a recipient of a supply is required to pay in order to obtain the goods and/or services of like kind and quality at or about the same time, and at the same commercial level where the recipient and the supplier are not related.	as yet.  This definition has been adopted from certain State VAT legislations.
place of business [Section 2(75)]	Includes: <ul style="list-style-type: none"> <li>a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or</li> <li>a place where a taxable person maintains his books of account; or</li> <li>a place where a taxable person is engaged in business through an agent, by whatever name called.</li> </ul>	Hitherto, place of business was not defined. The definition broadly borrows from the definition of 'place of removal' under the CE Act, while expanding the same to include a place where a person maintains his books of account.
Recipient (Section 2(80))	'Recipient of supply of goods and/or services' has been defined to mean: <ul style="list-style-type: none"> <li>where a consideration is payable for the supply of goods and/or services, the person who is liable to pay that consideration,</li> <li>where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and</li> <li>where no consideration is payable for the supply of a service, the person to whom the service is rendered,</li> </ul> and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply; Explanation.- The expression "recipient" shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied.	The term recipient has been defined for the first time. In the past there have been issues as regards who would be considered to be the service recipient where the beneficiary of services differs from the person making payment for such services. This definition puts to rest these issues, and is in line with the judgements of the CESTAT in the cases of Paul Merchants Ltd. v. CCE, Chandigarh [2013 (29) S.T.R. 257 (Tri. - Del.)], GAP International Sourcing (India) Pvt. Ltd. v. CST, Delhi [TS-61-Tribunal-2014-ST] and Vodafone Essar Cellular Ltd. vs. CCE, Pune-III [2013 (31) STR 738 (Tri-Mum)].
related persons [Section 2(82)]	Persons shall be deemed to be 'related persons' only if: <ul style="list-style-type: none"> <li>they are officers or directors of one another's businesses,</li> <li>they are legally recognized partners in business,</li> <li>they are employer and employee,</li> <li>any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them,</li> <li>one of them directly or indirectly controls the other,</li> <li>both of them are directly or indirectly controlled by a third person,</li> <li>together they directly or indirectly control a third person,</li> <li>they are members of the same family.</li> </ul> It is clarified that (i) the term 'person' also includes legal persons; and (ii) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related.	This definition has been adopted from the Customs Valuation Rules. The only modification appears to be that under the Customs Valuation Rules persons who are associated in the business of one another where one is the sole agent or sole distributor or sole concessionaire, have to meet one of the eight specified criteria to qualify as being 'related'; however, under the Model law persons associated in the business of one another shall qualify as 'related persons' merely by virtue of being the sole agent or sole distributor or sole concessionaire.
reverse charge [Section 2(85)]	Means the liability to pay tax by the person receiving goods and/or services instead of the person supplying the goods and/or services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify.	This term has been defined for the first time.

Term	Definition	Analysis
Services [Section 2(88)]	'Services' has been defined to mean anything other than goods. Explanation to the definition provides that services include transactions in intangible property and actionable claim but does not include money.	Whether a transaction in intangible property constitutes goods or services has been a recurring issue under the present indirect tax law. The Model law leaves no scope for such disputes, since the definition of 'goods' expressly excludes, and the definition of 'service's expressly includes, 'intangible property'. 'Intangible property' is defined to mean any property other than tangible property, and 'tangible property' has been defined to mean any property that can be touched or felt.
works contract [Section 2(107)]	Means an agreement for carrying out for cash, deferred payment or other valuable consideration, building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any moveable or immovable property.	The definition has been adopted from State VAT enactments.
zero-rated supply [Section 2(109)]	Refers to a supply of any goods and/or services on which no tax is payable but credit of the input tax related to that supply is admissible. It is clarified that exports shall be treated as zero-rated supply.	This term has been defined for the first time.

## MEANING AND SCOPE OF 'SUPPLY' [SECTION 3]

Supply of Goods and/or services to include:

- all forms of supply of goods/ services such as sale, transfer, barter, exchange, license, rental, lease or disposal, for consideration
- importation of services whether or not for a consideration, and whether or not in the course or furtherance of business
- supplies specified in Schedule I, made or agreed to be made without consideration, viz.
  - ♦ Permanent transfer/disposal of business assets
  - ♦ Temporary application of business assets to a private or non-business use
  - ♦ Services put to a private or non-business use
  - ♦ Assets retained after deregistration
  - ♦ Supply of goods and/ or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business
  - ♦ supply of goods by a registered taxable person to a job-worker not to be treated as supply of goods
- Schedule II is to be applied for determining '*what is or is to be treated as a supply of goods or services*'.

Particulars of Supply	Nature of Transactions	To be Treated as Supply of
Transfer	Title in goods.	Goods
	Goods or of right in goods or of undivided share in goods without the transfer of title thereof.	Services
	Title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed.	Goods
Transfer of business assets	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, whether or not for a consideration.	Goods



Particulars of Supply	Nature of Transactions	To be Treated as Supply of
	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, whether or not for a consideration.	Services
	Where any goods, forming part of the business assets of a taxable person, are sold by any other person to recover any debt owed by the taxable person.	Goods
	Where a person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— <ul style="list-style-type: none"> <li>the business is transferred as a going concern to another person; or</li> <li>the business is carried on by a personal representative who is deemed to be a taxable person.</li> </ul>	Goods
Land and Building	Any lease, tenancy, easement, licence to occupy land.	Services
	Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly.	Services
Treatment or process	Any treatment or process which is being applied to another person's goods.	Services
Declared list of services	Similar to clause 66E of the Finance Act, except for clause (j) of 66E introduced w.e.f 14.05.2016 stating that, assignment by the government of the right to use the radio frequency spectrum and subsequent transfer thereof.	Services
By unincorporated association or body of person to its members	Any supply of goods for cash, deferred payment or other valuable consideration.	Goods

- Where a person, acting as an agent, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.
- Subject to the provisions of Schedule II, the Central or a State Government may, upon recommendation of the Council, specify by notification, the transactions that are to be treated as—
  - a supply of goods and not as a supply of services; or
  - a supply of services and not as a supply of goods; or
  - neither a supply of goods nor a supply of services.
- The supply of any branded service by an aggregator under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.

## Analysis

- This is a critical provision which sets out the scope of transactions that qualify as supplies liable to tax under the GST regime (under Section 7 - charging Section).
- To fall within the scope of Section 3, all forms of supply in course or furtherance of business, require consideration for it. The exceptions, i.e. where consideration is not required for tax to apply are:
  - Supplies specified under Schedule I
  - Import of services, whether or not in the course or furtherance of business.
- Aggregators are liable for payment of tax on the services rendered under the brand / trade name of the aggregator, by suppliers to potential customers who are connected on the electronic platform owned and managed by such aggregator.

- ◆ This provision was also included under the Service Tax Rules, 1994 w.e.f. 1-3-2015, so as to bring to tax the amounts paid for the services provided under the brand/ trade name of the aggregator.
- Schedule I
  - ◆ A computer, company car, when put to non-business use would be covered under the schedule. Similarly, any services provided by the company for private or non-business use, for which no consideration is received, will be treated as supply.
  - ◆ The assets retained after deregistration of the company under GST regime, would be considered as supply.
  - ◆ Supply of goods / service by a taxable person to another taxable or non-taxable person in course of business, is treated as supply. The supply of goods / service to self i.e. inter-unit supply or branch transfers will not be considered as supply. However, free of cost supplies, such as a supply of physician samples, distribution of goods for sales promotion, etc. will be considered supplies.
- Schedule II
  - ◆ Schedule II demarcates supply of goods and supply of services. This will hopefully put to rest some of the current tax issues involving dual levy of Service tax and VAT on certain transactions.

# LEVY OF, AND EXEMPTION FROM, TAX

## CHARGING PROVISION [SECTION 7]

CGST and SGST will be levied and collected on all 'intra-state supplies' of goods and/ or services at the specified rate. CGST/ SGST will be paid by the 'taxable person'. For certain notified categories of goods/ services, per the recommendation of the GST Council, the tax will be payable on reverse charge basis.

### Analysis

- The charging provision levies CGST/ SGST on all 'intra-State supplies'; however, this term is undefined under the CGST/ SGST Act and instead is defined in the IGST Act.
- Importantly, the rate of GST continues to remain a mystery.
- The reverse charge mechanism, which shifts the liability to discharge tax to the recipient, has been extended to supplies of goods, unlike the existing regime where the reverse charge only extends to services.

### ELP Comments

The reverse charge mechanism for goods marks an important deviation, whereby businesses may be required to discharge a levy akin to the 'purchase tax' imposed by certain States under the extant VAT laws.

## TAXABLE PERSON [SECTION 9]

Taxable person has been defined to mean a person carrying on any business at any place in India/ State of India who is registered or required to be registered for CGST/ SGST, subject to the following exclusions:

- Person with an aggregate turnover equal to or less than INR 10,00,000 in a financial year (INR 5,00,000 for NE States including Sikkim).
- Government or local authorities to be considered a 'taxable person' qua activities or transactions carried out by them as public authorities subject to specified exceptions under Schedule IV.
- Services provided by an employee to the employer in the course of/ in relation to employment, or by any other ties creating a relationship of employer and employee as regards working conditions, remunerations and employer's liability.
- Persons engaged in the business of exclusively supplying goods and/or services that are not liable to CGST/ SGST.
- Persons receiving services of value not exceeding an annual threshold (to be specified) for personal use, other than for use in the course of furtherance of business.

### Analysis

- The exclusion for services provided by an employee to employer, which was previously under the definition of 'service', now finds place under the concept of 'taxable person'.
- Various other exclusions from the requirement to register, such as the threshold exemption and exemptions for persons engaged solely in non-taxable activity, have been continued under the concept of 'taxable person'.

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## POWER TO GRANT EXEMPTION FROM TAX [SECTION 10]

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- The Central/ State Governments are empowered to grant exemptions from CGST/ SGST by way of issuance of notification (or by special order in circumstances of an exceptional nature), on the recommendation of the GST Council.
- Where exemptions are granted absolutely, no tax shall be paid on such goods/ services.
- For the purpose of clarifying the scope or applicability of any notification, an explanation may be inserted within one year of issuance of the notification, which will have effect as if it had always been part of the said notification.

### Analysis

- The mandate under Section 5A of the CE Act has been extended to this law to ensure that no tax is collected and paid on certain goods/ services enjoying absolute exemption (i.e. such exemptions will have to be compulsorily availed).
- The power to insert an Explanation within one year of issuance of a Notification, which would apply *ab initio*, runs counter to the law declared by the Supreme Court in ***Union of India vs. Martin Lottery Agencies Ltd.* [2009 (14) S.T.R. 593 (S.C.)]** and ***SEDCO Forex International Drill Inc. vs. Commissioner of Income Tax* [(2005) 12 SCC 717]**, which is to the effect that an Explanation does not automatically take effect retrospectively even if it is stated to be “for the removal of doubts”. On the contrary, where an Explanation effects a substantive alteration of the provision, it can only apply prospectively. This amendment has similarly been enacted *vide* the Finance Act, 2016.

## TIME AND VALUE OF SUPPLY

### TIME OF SUPPLY [SECTIONS 12 & 13]

Time of supply is to be the earliest of the following:

Category	Goods	Services
Forward charge	<ul style="list-style-type: none"> <li>▪ Date of removal of goods / making available the goods to the buyer (where not required to be removed)</li> <li>▪ Date of issuance of invoice</li> <li>▪ Date of receipt of payment</li> <li>▪ Date on which recipient shows receipt of goods in books of account</li> </ul>	<ul style="list-style-type: none"> <li>▪ Date of issuance of invoice</li> <li>▪ Date of receipt of payment</li> <li>▪ Date of completion of service (if invoice not issued within prescribed period)</li> <li>▪ Date on which recipient shows receipt of service in books of account (where there is no invoice or payment)</li> </ul>
Reverse charge	<ul style="list-style-type: none"> <li>▪ Date of receipt of goods</li> <li>▪ Date of receipt of invoice</li> <li>▪ Date of making payment</li> <li>▪ Date of debit in the books of accounts</li> </ul>	<ul style="list-style-type: none"> <li>▪ Date of receipt of services</li> <li>▪ Date or receipt of invoice</li> <li>▪ Date of making payment</li> <li>▪ Date of debit in the books of accounts</li> </ul>

For the following cases the time of supply is as specified:

Scenario	Goods	Services
<b>Continuous supply</b>	<ul style="list-style-type: none"> <li>▪ Where successive statements of accounts/ payments are involved - date of expiry of period to which such statements relate</li> <li>▪ Where no such statements of account are involved – date of issuance of invoice or receipt of payment, whichever is earlier</li> </ul>	<ul style="list-style-type: none"> <li>▪ Where due date of payment is ascertainable from the contract – date on which payment is liable to be made by recipient, whether or not invoice issued or payment received by supplier</li> <li>▪ Where due date of payment is not ascertainable from the contract – each time when the supplier receives payment or issues an invoice, whichever is earlier</li> <li>▪ Where payment is linked to completion of an event – time of completion of event</li> </ul>
<b>Specific scenarios</b>	<ul style="list-style-type: none"> <li>▪ Where it is not possible to determine when the supply will take place (e.g. sale on approval basis) – when it becomes known that the supply has taken place or, 6 months from date of removal, whichever is earlier</li> </ul>	<ul style="list-style-type: none"> <li>▪ Where supply of services ceases under a contract before the completion of the supply – when the supply ceases</li> </ul>
<b>Residuary</b>	<ul style="list-style-type: none"> <li>▪ Where a periodical return is to be filed, the date on which such return is to be filed</li> <li>▪ In any other case, the date on which CGST/ SGST is paid</li> </ul>	

*Note: In all the above cases, receiving/ making payment refers to the date on which the payment is entered into books of account or date on which payment is credited/ debited to bank account, whichever is earlier.*

### CHANGE IN RATE OF TAX FOR SERVICES [SECTION 14]

The existing Rule 4 of the POT Rules is incorporated in the model law. For the purpose of this Section, the date of receipt of payment is the date of credit in the bank account if such credit occurs after 4 working days from the date of change in effective rate of tax.

#### Analysis

It is important to note that the aforesaid provision applies only to services. Hence, *qua* goods, it appears that scenarios of rate change will fall under the default provision for time of supply of goods, *viz.* Section 12.

## VALUE OF TAXABLE SUPPLY [SECTION 15]

- The value of a supply of goods and/or services will be the 'transaction value', i.e. price actually paid or payable for the said supply of goods and/or services, subject to the condition that:
  - ♦ the supplier and recipient of the supply are not related; and
  - ♦ the price is the sole consideration for the supply.
- Specific inclusions which shall form part of the 'transaction value':
  - ♦ any amount the supplier is liable to pay but which has been incurred by the recipient of the supply, to the extent not already included;
  - ♦ the value, apportioned as appropriate, of goods and/or services supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent not already included;
  - ♦ royalties and license fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent not already included;
  - ♦ any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act
  - ♦ incidental expenses such as commission, packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods/ services;
  - ♦ subsidies provided in any form or manner, linked to the supply;
  - ♦ any reimbursable expenditure or cost incurred by or on behalf of the supplier and charged in relation to the supply of goods and/ or services;
  - ♦ any discount or incentive that may be allowed after the supply has been effected.
- Specific exclusions from 'transaction value':
  - ♦ any discount allowed before or at the time of supply, provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply;
  - ♦ Post-supply discount which is established as per the agreement and is known at or before the time of supply and specifically linked to the relevant invoices;

### Analysis

- Valuation for goods and services is pegged to transaction value, which concept has been taken from the existing provisions under the Customs/ Central Excise laws. Further, the specific inclusions are largely aligned with Rule 10 of the Customs Valuation Rules.
- The requirement that pre-supply discounts should be reflected in the invoice is currently envisaged under various VAT statutes.
- As regards reimbursable expenditure or cost being included in the transaction value, this is in line with the recent amendment to Section 67 of the Finance Act.

### ELP Comments

Service providers, who were hitherto taxable on the basis of 'gross amount', will, under the GST regime, be subjected to tax on the 'transaction value' concept; which concepts are un-tested in the context of rendition of services.

## GST VALUATION (DETERMINATION OF THE VALUE OF SUPPLY OF GOODS AND SERVICES) RULES, 2016

- Value of goods and /or services would be the “transaction value” viz. the value of goods and/or services within the meaning of Section 15 of the CGST Act.
- The transaction value is to be determined in monetary terms.
- In cases where the supply consists of both taxable and non-taxable supply, the monetary consideration attributable to the taxable supply will constitute the transaction value.
- Transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.
- Value of goods transferred from one place of business to another place of the same business and from the principal to an agent or from an agent to the principal whether or not situated in the same State shall be the transaction value.
- The value of supplies in cases prescribed under Section 15(4) shall be determined by proceeding sequentially through Rules 4 to 6 which have been summated below:

Rule	Determination of Value
Determination of value of supply by comparison – Rule 4	The value shall be determined on the basis of the transaction value of goods and/or services of “like kind and quality” supplied at or about the same time to other customers, adjusted taking into consideration the relevant factors, including- <ul style="list-style-type: none"> <li>a) difference in the dates of supply,</li> <li>b) difference in commercial levels and quantity levels,</li> <li>c) difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,</li> <li>d) difference in freight and insurance charges depending on the place of supply.</li> </ul>
Computed value method – Rule 5	Value shall be based on a computed value which shall include the following:- <ul style="list-style-type: none"> <li>a) the cost of production, manufacture or processing of the goods or, the cost of provision of the services;</li> <li>b) charges, if any, for the design or brand;</li> <li>c) an amount towards profit and 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.</li> </ul>
Residual method - Rule 6	The value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

- Rejection of declared value [Rule 7] - The proper officer may query the truth or accuracy of the value declared in relation to any goods and/or services and after providing an opportunity to the supplier, may proceed to determine the value afresh in accordance with the provisions of Rule 4, 5 or 6 proceeding sequentially.
- Rule 8 deals with valuation in case of pure agents and money changers.

### Analysis

- These rules are largely based on Customs Valuation Rules, 2007 and provide for determining value on the basis of comparison with like goods/services, computed method, and, rejection of declared value.
- The Rules do not include any special valuation mechanisms, such as composition schemes for hotels and restaurants and insurance services.
- No specific valuation provisions have been prescribed in respect of transactions in the nature of barter/exchange which are treated as taxable supplies.

- The pure agent conditions and valuation mechanism for money changes is identical as existing under the Service tax legislation.

**ELP Comments**

- Currently, a number of products are covered under MRP based assessment under Section 4A of CE Act. These products will now be taxed on their transaction value.
- Under the present indirect tax regime, varied valuation mechanisms are prescribed. With the above Rules, the valuation processes places far greater onus on the supplier.



# INPUT TAX CREDIT

## MANNER OF TAKING INPUT TAX CREDIT (SECTION 16)

Every registered taxable person shall be entitled to take credit of input tax admissible to him, subject to such conditions as may be prescribed. The key aspects in this regard are set out below:

- **Timelines:**
  - ♦ Credit in respect of any invoice pertaining to a financial year can be taken only up to:
    - the filing of return for the month of September following the said financial year; or
    - filing of the relevant annual return
 whichever is earlier
- **Conditions:**
  - ♦ Possession of a tax invoice, or other tax-paying document issued by a supplier
  - ♦ Goods / services have been received or deemed to be received by the registered taxable person
  - ♦ Tax charged in respect of said supplies has been actually paid to the credit of the appropriate Government
  - ♦ Return has been furnished by the registered taxable person
  - ♦ Credit for goods against an invoice, which are received in lots or installments can be taken only upon receipt of the last lot or installment
- **Restrictions:**

Particulars	Restrictions
<b>Goods or services used partly for business and partly for non-taxable / exempted / other purposes</b>	Credit shall be restricted to input tax attributable to the purposes of business, in the manner as may be prescribed by notification. Restriction does not apply to credits pertaining to zero-rated supplies
<b>Motor vehicles</b>	Credit not available in respect of motor vehicles, except when supplied in the usual course of business or are used to provide taxable services viz., transportation of passengers, transportation of goods and imparting training on motor driving skills
<b>Goods / services used for personal consumption</b>	Credit not available in respect of: <ul style="list-style-type: none"> <li>- goods or services (such as outdoor catering, beauty treatment, health services, membership of a club, life and health insurance etc), when used primarily for personal use or consumption of any employee</li> <li>- goods or services used for private or personal consumption</li> </ul>
<b>Works contract resulting in immovable property (other than plant and machinery)</b>	Credit not available in respect of: <ul style="list-style-type: none"> <li>- Goods / services acquired by a principal in the execution of works contract resulting in the construction of an immovable property</li> <li>- Goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, used in the construction of immovable property</li> </ul>
<b>Capital Goods</b>	<ul style="list-style-type: none"> <li>- Credit not admissible on such tax component of the cost of capital goods, for which depreciation has been claimed under the Income Tax Act, 1961</li> <li>- In case of supply of capital goods on which input tax credit has been taken, payment is required to be made for an amount equal to input tax credit reduced by percentage as may be specified or tax on the transaction value of such capital goods, whichever is higher</li> </ul>

Particulars	Restrictions
<b>Goods / services suffering composition levy</b>	Credit is not available on procurement of goods / services, on which tax has been paid under composition scheme as per Section 8

## INPUT TAX CREDIT IN RESPECT OF INPUTS / CAPITAL GOODS SENT FOR JOB WORK (SECTION 16A)

- Principal shall be entitled to take credit of input tax on inputs / capital goods sent to a job-worker (either by principal or directly), if the said inputs / capital goods, after completion of job-work, are received back by the principal:
  - ♦ within 180 days in case of inputs
  - ♦ within 2 years in case of capital goods
- In case inputs / capital goods are not received in the aforesaid time frame, credit shall be reversed (along with interest), which can be re-claimed at the time when inputs / capital goods are received back.

## MANNER OF DISTRIBUTION OF CREDIT (SECTION 17)

- Input service distributor may distribute the credits by way of prescribed document in the following manner:

Nature of input tax	Credit may be distributed as	Situation
CGST or SGST or IGST	IGST	Where the distributor and the recipient of credit are located in the different States
CGST or IGST	CGST	Where the distributor and the recipient of credit, being a business vertical, are located in the same State
SGST or IGST	SGST	

- Distribution of credits by an input service distributor is subject to the following key conditions:
  - ♦ Credit of input services attributable to a supplier shall be distributed only to that supplier
  - ♦ Credit of input services attributable to more than one supplier shall be distributed on pro-rata basis amongst such supplier(s) to whom the input service is attributable

## ORDER OF UTILIZATION (SECTION 35)

- Amount of credit available with the taxable person shall be credited to his 'electronic credit ledger' and is permitted to be utilized in the following order:

Particulars	Order of Utilization of ITC
IGST	- IGST - CGST - SGST
CGST	- CGST - IGST
SGST	- SGST - IGST

- Input tax credit of CGST shall not be utilized towards payment of SGST and similarly input tax credit of SGST shall not be utilized towards payment of CGST.

### Analysis

- The amalgam of existing CENVAT Credit and State VAT laws would ensure greater availability of credits since deficiencies existing in the contemporary Central laws, such as reversal with respect to trading of goods or the State VAT laws, such as retention of credit pertaining to inter-state branch transfer of goods, will be eliminated.
- Condition of “receipt of services” for availment of credit is a departure from the present CENVAT Credit provisions which, for input services, allows availment of credit on the basis of “receipt of invoice / bill”.
- Credit continues to be restricted for non-taxable and exempted services except in case of exports.
- Outer timelines for availment credit continue to exist under the model law, with certain modifications as compared to the present scheme. The present CENVAT Credit provisions prescribe a time limit of one year from the date of tax invoice and the State VAT laws of certain States (such as Maharashtra) require setting off of input tax credits in the same financial year.
- Credit records have to be maintained on a electronic register (*which appears will be facilitated by the GSTN*).
- Various important aspects of existing CENVAT credits / VAT credit laws such as, credit on capital goods on 50:50 basis, sector specific provisions such as banking sector / financial sector, negative list / retention items under the State VAT laws, etc. are presently absent in the model law.

### ELP Comments

The model law prescribes onerous condition for availability of credits only when tax has been actually paid into the coffers of the respective Government. Imposing such a condition is a clear departure from the present practice under the Central laws and seeks to follow the scheme provided under the certain State VAT laws.

## COMPLIANCES

### REGISTRATION [SECTION 19 – 22]

- The threshold limit for registration has been prescribed to be INR 9 lakhs. A reduced threshold limit of INR 4 lakhs has been prescribed for North Eastern States including Sikkim. This limit includes all supplies, whether on own account or on behalf of principal, except supplies in the capacity of a registered job-worker, which shall be treated as supplies by the principal. The said threshold is to be computed on an all India basis.
- A person shall not be liable to registration if his aggregate turnover consists of only goods and / or services which are not liable to tax.
- A person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.
- A person, though not liable, may get himself registered voluntarily.
- Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961, in order to be eligible for grant of registration.
- The following categories of persons shall be mandatorily required to obtain registration, irrespective of the threshold limit-
  - ♦ persons making any inter-State taxable supply;
  - ♦ casual taxable persons;
  - ♦ persons who are required to pay tax under reverse charge;
  - ♦ non-resident taxable persons;
  - ♦ persons who are required to deduct tax under section 37;
  - ♦ persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise;
  - ♦ input service distributor;
  - ♦ persons who supply goods and/or services, other than branded services, through electronic commerce operator;
  - ♦ every electronic commerce operator;
  - ♦ an aggregator who supplies services under his brand name or his trade name;
  - ♦ Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.
- If a person, other than an Input Service Distributor, is already registered under an earlier law, it shall not be necessary for him to apply for fresh registration and he shall follow the procedure as may be prescribed in this regard.
- A casual taxable person or a non resident taxable person shall, at the time of submission of application for registration, make an advance deposit of tax of an amount equivalent to the estimated tax liability for the period for which the registration is sought. The certificate of registration issued to such class of persons shall be valid for a period of 90 days, which may be extended upto 90 days.
- Powers have been provided for cancellation of registration if the assessee contravenes the provisions or obtains the registration by fraudulent means. However, such cancellation may be revoked, in terms of the prescribed procedure.

### Analysis

- The concept of a single/centralised registration for multiple places of business has not been provided.

- Inapplicability of threshold limits to inter-state supplies runs counter to having uniform taxing principles for intra-state and inter-state transactions.

## TAX INVOICE, CREDIT AND DEBIT NOTES [SECTION 23 – 24]

- A registered taxable person supplying taxable goods, shall issue, at the time of supply, a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.
- A registered taxable person, supplying services, shall issue a tax invoice within the prescribed time; showing the description, the tax charged thereon and other such particulars as may be prescribed.
- A registered taxable person supplying non-taxable goods and/or services or paying tax under the provisions of Section 8 shall issue, instead of a tax invoice, a bill of supply containing such particulars as may be prescribed.
- Provisions for issuance of credit/debit notes have been introduced subject to fulfilment of certain conditions.

### Analysis

- The concept of debit and credit notes has been part of various VAT legislations. However, in the said legislations, such documents have also been recommended for situations where goods are returned post sale. The model law however does not prescribe issuance of debit/credit notes in such situations.

## RETURNS [SECTION 25 – 34]

- The provisions pertaining to the filing of various returns are tabulated below-

Particulars	Applicability	Periodicity and due date	Particulars to be disclosed	Methodology/ Other comments
Return of outward supplies (Section 25)	Taxable person other than those paying tax under Composition levy (Section 8) or those deducting tax at source (Section 37)	Monthly and to be filed by 10 <sup>th</sup> of the succeeding month	Details of outward supplies# of goods and/or services effected during the said tax period	The details provided by the supplier shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed
Return of inward supplies (Section 26)		Monthly and to be filed by 15 <sup>th</sup> of the succeeding month	The details of inward supplies of taxable goods and/or services, received during the tax period	The taxable person shall verify, validate, modify or, if required, delete the details relating to outward supplies and credit or debit notes communicated in terms of the return filed by the corresponding supplier under (1) above, to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under (1) above
Periodic return (Section 27)		Monthly and to be filed by 20 <sup>th</sup> of the succeeding month	Details of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid	-

Particulars	Applicability	Periodicity and due date	Particulars to be disclosed	Methodology/ Other comments
			and other particulars as may be prescribed	
<b>Periodic return</b> (Section 27)	Taxable person paying tax under Composition levy (Section 8)	Quarterly and to be filed by 18 <sup>th</sup> of the succeeding month	Prescribed details	-
<b>Periodic return</b> (Section 27)	Person deducting tax at source (Section 37)	Monthly and to be filed by 10 <sup>th</sup> of the succeeding month	Prescribed details	The return has to be filed for the month in which such deductions have been made along with the payment of tax so deducted
<b>Periodic return</b> (Section 27)	Input service distributor	Monthly and to be filed within thirteen days after the end of such month	Prescribed details	-
<b>Annual return</b> (Section 30)	Every registered taxable person, other than an input service distributor, a deductor under section 37, a casual taxable person and a non-resident taxable person	Annual and to be filed by 31 <sup>st</sup> December of the succeeding year	Prescribed details	Every taxable person who is required to get his accounts audited shall furnish the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed

*#Details of outward supplies shall include details relating to zero-rated supplies, inter-state supplies, return of goods received in relation to/ in pursuance of an inward supply, exports, debit notes, credit notes and supplementary invoices issued during the said tax period*

- Any error or omission may be rectified in the tax period in which it is discovered. No rectification shall be allowed after filing of the periodic return for the month of September following the end of the financial year to which such details pertain or filing of the relevant annual return, whichever is earlier. For periodic returns, only such errors or omissions other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, can be so rectified.
- A return furnished under Section 27 by a registered taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.
- Every taxable person shall, subject to specified conditions, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed. However, a taxable person who has not furnished a valid return under Section 27 shall not be allowed to utilize such credit till he discharges his self-assessed tax liability.
- The details of every inward supply furnished by a receiver would be matched with the corresponding details of the outward supply furnished by the corresponding supplier. The claim of input tax in respect of invoices and/or debit notes relating to inward supply that match with the details of corresponding outward supply shall be finally accepted and such acceptance shall be communicated, in the manner as may be prescribed, to the recipient.
- Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons. Where such discrepancy is not rectified by the supplier,

the corresponding tax value shall be added to the output tax liability of the recipient. The amount so added may be subsequently reduced if the supplier declares the details of the invoice and/or debit note in his valid return within the prescribed time limit.

- The duplication of claims of input tax credit shall be communicated to the recipient and the corresponding tax value shall be added to the output tax liability of the recipient.
- Similar matching will be carried out qua the credit notes relating to an outward supply, issued by the supplier, with the corresponding reduction in the claim for input tax credit by the corresponding receiver, with similar consequences, with the exception that additions to liability, owing to any mismatches, shall be to the account of the supplier.
- Every registered taxable person who applies for cancellation of registration shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in such form and in such manner as may be prescribed.

### Analysis

- Specific mechanism is being proposed for matching of input tax credit claimed by the recipient and tax paid by the supplier. The said requirement was never prevalent under Central tax laws, though certain State VAT legislations (including Maharashtra and West Bengal) incorporated such requirements. Even in such States, practically, such requirement has resulted in denial of huge eligible input tax credits for want of documentary requirements (pertaining to payment of tax at supplier's end) not within the control of the assessee or owing to errors in the Departmental database. Such conditions for availment of credit, not within the control of the credit claiming dealer, would be detrimental to the vision of seamless GST.

### PAYMENT OF TAX AND INTEREST ON DELAYED PAYMENTS [SECTION 35 – 36]

- All deposits /payment made with respect to tax, interest, penalty, fee or any other amount by a taxable person shall be through electronic means and shall be credited to the electronic cash ledger of such person.
- The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit.
- The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.
- Every taxable person shall discharge his tax and other dues in the following order:
  - ♦ self-assessed tax, and other dues related to returns of previous tax periods;
  - ♦ self-assessed tax, and other dues related to return of current tax period;
  - ♦ any other amount payable under the applicable provisions.
- The rate of applicable interest shall be notified, on the recommendations of the GST Council, by the Central and State Government.

### TAX DEDUCTION AT SOURCE [SECTION 37]

- Tax may be mandated to be deducted @ 1% from the payment made to the supplier of taxable goods and/or services by the Central or State Government, Local authority, Governmental agencies, or such category of persons as notified, if total value of such supply, under a contract, exceeds INR 10 Lakhs
- Procedure for deposit of such tax and issuance of a credit certificate has been prescribed.

## ACCOUNTS AND RECORDS [SECTION 42 –43]

- Every registered taxable person shall be required to keep and maintain at his place of business [including the principal place of business] a true and correct books of account including the following:
  - ♦ Production or manufacture of goods
  - ♦ Inward or outward supply of goods and/or services
  - ♦ Stock of goods
  - ♦ Input tax credit availed
  - ♦ Output tax payable and paid
  - ♦ such other particulars as may be prescribed in this behalf
- 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
- The time period for retaining accounts is prescribed as follows:

Particulars	Time Limit
Records including books of accounts pertaining to the appeal [or revision] or any other proceeding before any Appellate Authority or Tribunal or Court	One year after final disposal of such appeal or revision or proceeding or for a time period, as may be prescribed, whichever is later
Any other case	Sixty months [i.e. 5 years] from the date of filing of annual return for the year



## REFUNDS

### REFUND OF TAX [SECTION 38 – 41]

- An application for refund of tax and/or interest shall be made to the proper officer of IGST / CGST /SGST within 2 years from the relevant date in a prescribed form. However, the limitation of 2 years shall not apply where such tax or interest is paid under protest.
- Refund would be allowed only under the following cases:
  - ♦ Where the unutilized input tax credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output;
  - ♦ Where the unutilized input tax credit pertains to export activity (except where the goods exported out of India are subjected to export duty).
- An order for refund shall be issued within ninety days from the date of receipt of application.
- The refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –
  - ♦ refund of tax on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India;
  - ♦ refund of unutilized input tax credit owing to an inverted duty structure;
  - ♦ the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person;
  - ♦ the tax or interest borne by such other class of applicants as the Central or a State Government may, on the recommendation of the GST Council, by notification, specify.
- The proper officer may, in the case of any claim for refund on account of export of goods and/or services made by specified exporters, refund eighty percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, on a provisional basis, in the manner and subject to such conditions, limitations and safeguards as may be prescribed and the remaining twenty percent may be refunded after due verification of documents furnished by the applicant.
- In case the applicant has defaulted in furnishing any return or who is required to pay any tax, interest, or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority, the proper officer may-
  - ♦ Withhold payment of such refund until the said person has submitted the return or paid the tax, interest or penalty, as the case may be;
  - ♦ Deduct from the refund due, any tax, interest or penalty which the taxable person is liable to pay but remains unpaid.
- If any tax refundable is not refunded within three months from the date of receipt of application, interest shall be payable immediately after the expiry of the due date for sanction of the refund, till the date of refund of such tax.

### Analysis

- It is important to note that in terms of the envisaged GST regime, registration would have to be applied individually for each State and similarly reporting and return filing would be correlated to each individual registration. This would further complicate and dilute the refund process as for each export transaction, there may be different refund sanctioning authorities, leading to, among other things, duplication of the entire refund processing exercise for the same transaction.
- There is a conscious move to withhold the option of procuring duty free inputs for exported goods under the GST regime. This is in terms of the rationale laid down in the report on refund processes issued earlier by the

Empowered Committee, in terms of which refund based schemes would obviate the requirement of submission of statutory form and the supplier of goods to the actual exporter would be required to pay the GST and will not be required to comply with various formalities presently required for making tax free supplies.

- Refund has only been allowed under two instances – i.e. when goods / services are exported and for instances of inverted duty structure. These instances are in line with the existing provisions governing the Service tax legislation but are restrictive when compared to the refund mechanism under Value Added Tax.

## ELECTRONIC COMMERCE

### RELEVANT DEFINITIONS AND COLLECTION OF TAX AT SOURCE [SECTION 43B AND SECTION 43C]

- The term 'electronic commerce operator' is defined to include any person who directly or indirectly owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and / or services or in providing any information or any other services incidental to or in connection there with.
- An electronic commerce operator will be required to:
  - ♦ **Collect tax** at prescribed rates from the amount payable or paid to the supplier towards the supply of goods and /or services made through the said operator and pay the said tax to the credit of the appropriate Government within ten days after the end of the month in which such collection is made;
  - ♦ **Furnish a statement electronically** containing all prescribed particulars of amounts collected towards outward supplies of goods and / or services effected by the said operator, within ten days after the end of such calendar month.
- The amount of tax so collected and paid by the electronic commerce operator shall be deemed to be a payment of tax on behalf of the concerned supplier and the supplier shall claim credit of the same in his electronic cash ledger.
- The term 'aggregator' is defined in a more restrictive manner to cover only transactions of supply of service. 'Aggregator' is defined to mean a person who owns and manages an electronic platform and enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the aggregator himself.

#### ELP Comments

- The fact that separate provisions are introduced in respect of e-commerce transactions indicates that this sector has received special attention in drafting of the model law;
- The requirement to collect tax at source on all transactions of supply of goods and services by suppliers will significantly increase the onus and compliance burden on electronic commerce operators. It is noteworthy that hitherto, electronic commerce operators only act as service providers to the suppliers / sellers.
- Given that the suppliers will be required to pay tax on supply to the destination State, it remains to be seen whether an appropriate mechanism is devised to ensure a seamless and un-hindered flow of the credit of the tax collected at source to the supplier;
- Furthermore, the rate at which tax is required to be collected at source should be benign to ensure that there is no pile-up of unutilized credit in the hands of the suppliers.
- As regards aggregators, it is noteworthy that in terms of Section 3(4), the supply of service under a brand name or trade name owned by an aggregator is deemed to be a supply of the said service by the said aggregator and the aggregator is the person liable to pay tax on such supplies. This is in line with the existing provisions under the Service tax law.

## ASSESSMENT AND AUDIT

Provision / Section	Particulars / Description
Self Assessment [Section 44]	<ul style="list-style-type: none"> <li>A registered taxable person shall undertake <b>self assessment</b> of the taxes payable and furnish a return for each tax period as specified in Section 27 which deals with returns. The usual tax period for this purpose is a calendar month.</li> </ul>
Provisional Assessment [Section 44A]	<ul style="list-style-type: none"> <li>Where taxable person is unable to determine (i) the value of goods and/or services or (ii) the rate of tax applicable, he may request the proper officer for payment of tax on a provisional basis, who shall pass an order in permitting so. Provisional assessment shall be subject to fulfilment of prescribed conditions.</li> </ul>
Scrutiny of Returns [Section 45]	<ul style="list-style-type: none"> <li>The proper officer may scrutinize the return and shall inform the taxable person of the discrepancies noticed, if any, and seek his explanation.</li> <li>No further action shall be taken in case of a satisfactory response. However, in case of unsatisfactory response, the proper officer may undertake audit, special audit, inspection, search and seizure. The proper officer may subsequently determine the tax, interest and penalty due from the taxable person.</li> </ul>
Assessment of Non – filers of Return [Section 46]	<ul style="list-style-type: none"> <li>The proper officer may after allowing prescribed time to furnish the return, assess the tax liability to the best of his judgment and issue an assessment order.</li> <li>In case a valid return has been furnished within thirty days of passing of the order, the proper officer may withdraw the said assessment order.</li> </ul>
Assessment of Unregistered Persons [Section 47]	<ul style="list-style-type: none"> <li>Best judgment assessment may be undertaken in respect of taxable persons who fail to obtain registration.</li> </ul>
Summary Assessment in Certain Special Cases [Section 48]	<ul style="list-style-type: none"> <li>The proper officer may, in case of sufficient grounds to believe that delay in assessment will adversely affect the interest of revenue, may proceed to assess the tax liability.</li> </ul>
Audit [Section 49]	<ul style="list-style-type: none"> <li>The Commissioner of CGST/ SGST or any officer authorized by him, at the place of business of the taxable person, may undertake audit of the business transactions.</li> <li>The audit shall be completed within a period of 3 months or under certain conditions, extend the period.</li> <li>On conclusion of audit, the proper officer shall notify its findings to the taxable person.</li> <li>Where the audit results in detection of tax not paid or tax short paid or tax erroneously refunded or input tax credit erroneously availed, the proper officer may initiate suitable action for recovery.</li> </ul>

## INSPECTION, SEARCH, SEIZURE, ARREST; OFFENCES & PENALTIES; PROSECUTION & COMPOUNDING

### INSPECTION, SEARCH, SEIZURE, SUMMONS AND ACCESS TO BUSINESS PREMISES [SECTIONS 60, 63 AND 64]

Powers in relation to inspection, search, seizure, summons and access to business premises:

- Section 60(1) deals with the power of CGST/SGST officers to inspect the places of business of - (i) taxable person, or, (ii) persons engaged in business of transporting goods or owner or operator of warehouse or godown or any other place, in certain circumstances.
- Section 60 (2) provides that certain CGST/SGST officers who have reason to believe that goods liable to confiscation or any documents or books or things relevant to any proceedings under the model law, are secreted, then search and seizure can be carried out in respect of such goods, documents or books or things. The person from whose custody any documents are seized during search and seizure shall be entitled to make copies thereof or take extracts therefrom in presence of a CGST/SGST officer.
- Section 63 empowers the CGST/SGST officers to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in an inquiry which such officer is making.
- Section 64 provides for access to business premises to authorized CGST/SGST officers to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as may be required for carrying out audit, scrutiny, verification and checks necessary to safeguard the interest of revenue. Every person who is in charge of the business premises is required to make available relevant records to the authorized CGST/SGST officers, the audit authorities, CAG, or a cost accountant/chartered accountant nominated to undertake a Special Audit.

#### Analysis

- These provisions deal with certain powers of the CGST / SGST officers which are generally exercised in the course of investigation. The provisions in relation to summons, search and seizure are similar to the existing provisions under the CE Act. The specific provisions in relation to inspection of business premises and access to business premises are being newly introduced under the model law. The provision in relation to access to business premises is similar to power of survey under Section 133A of the Income Tax Act, 1961.

### POWERS TO ARREST [SECTION 62]

- Section 62 provides that where the Commissioner of CGST/SGST has a reason to believe that any person has committed an offence wherein the amount of tax evaded is INR 50 lakhs [approx. USD 76,900] or above, or if a person is a repeat offender, the Commissioner may authorize any CGST / SGST officer to arrest such person.
- The position in relation to whether the offences in respect of which tax officer has power to arrest are cognizable/non-cognizable and non-bailable/bailable, is set out below:

Amount involved in relation to the offence	Whether cognizable/non-cognizable and non-bailable/bailable
Where amount of tax evaded exceeds INR 2.5 crores [approx. USD 3,84,600]	Cognizable and non-bailable
Where amount of tax evaded exceeds INR 50 lakhs [approx. USD 76,900] but does not exceed INR 2.5 crores [approx. USD 3,84,600]	Non-cognizable and bailable

## Analysis

- Presently, in terms of the provisions of the CE Act and the Finance Act, 1994 and the relevant circulars issued in this regard, the monetary threshold for the tax authorities to conduct arrest is INR 1 crore [approx. USD 1,53,850] in case of an offence under Central Excise and INR 2 crores [approx. USD 3,07,700] in case of an offence under Service tax. It appears that the monetary threshold for tax authorities to arrest would be reduced to INR 50 lakhs [approx. USD 76,900].
- In terms of the said provision under the model law the power to arrest can be exercised where the Commissioner has a “reason to believe” that any person has committed an offence. As regards the purport of the term “reason to believe”, the Hon’ble Supreme Court has repeatedly held as recently in the case of **Tata Chemicals [2015 (320) E.L.T. 45 (S.C.)]** that the “reason to believe” cannot mean subjective / arbitrary satisfaction of the officer concerned.
- Although, the monetary threshold for the tax authorities to arrest is reduced to INR 50 lakhs [approx. USD 76,900], with the increase in monetary threshold for the offences to be considered as cognizable and non-bailable, this could restrict the use / threat of use of the power of arrest by the tax officers. In case of offences which involves tax amount less than INR 2.5 crores [approx. USD 3,84,600] which are categorized as non-cognizable and bailable offences, the tax officers cannot proceed to arrest without a warrant from the magistrate and the tax officers are required to release the arrested person on bail, when it is offered.

### ELP Comments

*Vide* the Finance Act, 2016, the power to arrest under the Finance Act, 1994 (dealing with Service tax law) was restricted only to situations where the assessee had collected tax but not deposited it with the Central Government, and the amount of such tax is more than INR 2 crores [approx. USD 3,07,700]. On a joint reading of said Section 62 with Section 73, the power to arrest person has been sought to be expanded to 12 situations under the model law.

## OFFENCES AND PENALTIES [SECTION 66 – 69]

- Section 66 (1) provides for imposition of penalty on a taxable person in respect of 20 situations set out in the section. The quantum of penalty would be either INR 10,000/- [approx. USD 154], or, the amount equivalent to the tax amount involved in relation to the offences (for example, the amount of tax evaded, the tax not deducted or short deducted or deducted but not paid to the Government, input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently), whichever is higher.
- Section 66 (2) provides for imposition of penalty on a taxable person who repeatedly makes short payment of tax. The quantum of penalty would be INR 10,000/- [approx. USD 154] or ten percent of the tax short paid, whichever is higher. A person is deemed to have made short payments repeatedly if there were short payments in any three returns during any six consecutive periods.
- Section 66(3) provides for imposition of penalty on any person in respect of certain offences such as – (i) aiding or abetting any of the offences by a taxable person which are set out in Section 66(1), (ii) dealing with goods which he knows or has reason to believe are liable to confiscation, (iii) dealing with supply of services which he knows or has reason to believe are in contravention of the provisions of the Model law or the rules, (iv) failing to appear pursuant to a summons, and (v) failing to issue invoice in accordance with the provisions of the Model law and the rules or failing to account for an invoice in his books of account. The quantum of penalty would be upto INR 25,000/- [approx. USD 385].

- Section 67 provides for imposition of penalty upto INR 25,000/- [approx. USD 385] on any person who contravenes any provisions of the model law or the rules in respect of which no penalty is separately provided.
- Section 68 provides for following guiding principles to be considered for imposition of penalties where the penalty prescribed under the model law is not a fixed sum or expressed as a fixed percentage:
  - ♦ No substantial penalties to be imposed for minor breaches of tax regulations or procedural requirements. What is 'minor breach' has been provided for in the Model law.
  - ♦ The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
  - ♦ Voluntary disclosure to tax authority can be considered as a potential mitigating factor when imposing penalty.
  - ♦ No penalty shall be imposed without giving show cause notice and without giving the person reasonable opportunity of being heard.

### Analysis

- The said Section revamps the provisions for imposition of penalties as existing under the CE Act (i.e. Section 11AC) and the Finance Act, 1994 (i.e. Section 78). The conditions for imposition of penalties under the said sections of the CE Act and the Finance Act in relation to fraud, collusion, willful misstatement, suppression of facts, contravention of provisions with intent to evade payment of tax, will be replaced by 20 situations specifically listed under Section 66(1). Only those cases as are prescribed in statutory provision can be visited with penalty.
- Where any of the twenty situations listed under Section 66(1) are established, there would be a mandatory penalty of INR 10,000/- [approx. USD 154] or amount equivalent to the tax involved, whichever is higher. It is now well settled that in such cases, the quantum of penalty cannot be reduced than the prescribed penalty.

## CONFISCATION OF GOODS, LEVY OF PENALTY AND IMPOSITION OF FINE IN LIEU OF CONFISCATION [SECTION 70 – 72]

- Section 70 (1) provides that goods will be liable to confiscation and a person will be liable to penalty under Section 66, where the person –
  - ♦ supplies any goods in contravention of any of the provisions of this Act or rules leading to evasion of tax; or
  - ♦ does not account for any goods on which he is liable to pay tax under this Act; or
  - ♦ supplies any goods liable to tax under this Act without having applied for the registration; or
  - ♦ contravenes any of the provisions of this Act or rules with the intent to evade payment of tax,
- Section 70(2) provides for imposition of fine in lieu of confiscation on the owner of the goods or where the owner is not known, the person from whose possession or custody such goods have been seized. The quantum of fine can be upto market price of the goods confiscated. The owner or such other person can also be made liable to tax and other charges payable in respect of the goods.

### Analysis

- The said provision is similar to the provisions under the Customs Act and CE Act dealing with confiscation of goods and imposition of fine in lieu of confiscation.

## PROSECUTION AND COMPOUNDING OF OFFENCES [SECTION 73 – 78]

- Section 73 (1) lists down following 12 offences for which a person can be prosecuted:

Offences under Section 73(1)	
<ul style="list-style-type: none"> <li>▪ Supplying goods and/or services without issue of invoice or issue of incorrect/false invoice</li> <li>▪ Issuing invoice without supply of any goods/services</li> </ul>	<ul style="list-style-type: none"> <li>▪ Obstructing or preventing any officer in discharge of his duty</li> <li>▪ Dealing with any goods which ones knows or has</li> </ul>

<ul style="list-style-type: none"> <li>Collection of any amount as tax but not crediting to appropriate Government</li> <li>Collection of any tax in contravention of the provisions of the Model law but not crediting to appropriate Government</li> <li>Taking or utilizing input tax credit without actual receipt of goods/services</li> <li>Obtaining refunds of any CGST/SGST fraudulently</li> <li>Falsification or substitution of financial records or producing fake accounts and/or documents or furnishing any false information with an intention to evade payment of tax</li> </ul>	<ul style="list-style-type: none"> <li>reason to believe are liable to confiscation</li> <li>Dealing with any supply of services which one knows or has a reason to believe are in contravention of provisions of the Model law</li> <li>Failing to supply any information</li> <li>Attempting to commit or abetting the commission of any of the offences mentioned in this section</li> </ul>
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- The prescribed punishment for the offences is as follows:

Amount involved in relation to the offence	Punishment
Where amount of tax evaded exceeds INR 2.5 crores [approx. USD 3,84,600]	Imprisonment for a term which may extend to 5 years and fine
Where amount of tax evaded exceeds INR 50 lakhs [approx. USD 76,900] but does not exceed INR 2.5 crores [approx. USD 3,84,600]	Imprisonment for a term which may extend to 3 years and fine
Where amount of tax evaded exceeds INR 25 lakhs [approx. USD 38,460] but does not exceed INR 50 lakhs [approx. USD 76,900]	Imprisonment for a term which may extend to 1 years and fine

- Section 75 provides that the Court shall presume culpable mental state of the accused and it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the model law charged as an offence in that prosecution.
- Section 77 contains provisions dealing with the liability of person in charge of the company or the director, manager, secretary, etc. of the company for offences committed by the company. The said provision under the model law is similar to the present provision under the CE Act. Where an offence is committed by the company, any person who at the time the offence was committed was in charge of, and was responsible to, the company for conduct of business of the company, would be deemed to be guilty of the offence. Further, where an offence committed by the company is proved to have been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, then such person would also be deemed to be guilty of the offence. In such case it would be a defence for the director, manager, secretary, etc. to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- Section 78 provides that any offence under the model law can be compounded by the competent authority, either before or after the institution of prosecution. The amount for compounding offences would be prescribed under the relevant rules to be issued but which would be subject to minimum amount not being less than INR 10,000/- [approx. USD 154] or 50% of the tax involved, whichever is greater, and, the maximum amount not being more than INR 30,000/- [approx. USD 462] or 150% of the tax, whichever is greater.



## APPEALS & REVISION

### APPEALS [SECTION 79, 81 – 93]

- Appeals/Application to be filed in the prescribed form after payment of applicable filing fees.
- Distinct provisions have been prescribed with respect to appeals to be preferred under the CGST and SGST laws. However, the provisions for appeals to High Courts and Supreme Court are common.
- Appeal before the First Appellate Authority or Appellate Tribunal to be filed within three months from the date of receipt of order by the person preferring the appeal or receipt of order by GST Commissioner.
  - ♦ Such time period may be extended by one month.
- 10% of the 'amount in dispute' in an order shall be the pre-deposit for filing an appeal before the First Appellate Authority or the Appellate Tribunal.
  - ♦ 'Amount in dispute' to include:
    - Assessed amount as determined in terms of the Act;
    - Amount payable under rule \_\_ of the GST Credit Rules 20\_\_; and
    - Amount of fees or penalty imposed.
- Under SGST law, the appellant is also required to discharge the amount of tax, interest, fine or penalty arising from the impugned order, as is admitted by him.
- Under SGST law, Departmental Authorities may apply to the First Appellate Authority or the Appellate Tribunal for a higher pre-deposit in a matter that is regarded as a 'serious case' by GST Commissioner.
  - ♦ The expression 'serious case' means a case involving a disputed tax liability of not less than INR 25 crores (approx. USD 4 million) where the GST Commissioner is of the opinion (for reasons to be recorded in writing) that the Department has a very good case against the taxpayer.
- No appeal shall lie before the High Court if the order relates to a matter where two or more States or State and Centre have difference of opinion regarding:
  - ♦ The treatment of transaction(s) being inter-state or intra-state; or
  - ♦ Place of supply
- No appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any of the following matters:
  - ♦ Transfer of proceedings from one officer to another officer;
  - ♦ Seizure or retention of books of account, register and other documents;
  - ♦ Sanctioning prosecution under the Act;
  - ♦ For payment of tax and other amounts in installments.

### REVISIONAL POWERS OF COMMISSIONER [SECTION 80]

- Under SGST law revisional powers granted to the Commissioner if he considers that any decision or order passed under the Act by any officer subordinate to him is erroneous so far as it is prejudicial to the interest of the revenue.

#### Analysis

- Hierarchy of appellate fora is in line with the system followed under the existing indirect taxes regime.
- 'Amount in dispute' for purposes of pre-deposit structured to include penalty.

- The provisions are silent on whether previous deposits (e.g. deposits made under protest and in the course of investigations) will be taken into account while computing the pre-deposit for this provision.

**ELP Comments**

The concept of eliminating a stay proceeding and replacing the same with a mandatory pre-deposit has been carried forward into the GST regime.

## ADVANCE RULING

- Advance Ruling may be sought in respect of the following matters:
  - ♦ Classification of goods and/or services;
  - ♦ Applicability of a notification having a bearing on the rate of tax;
  - ♦ Principles to be adopted for determination of value of the goods and/or services;
  - ♦ Admissibility of input tax credit of tax paid or deemed to have been paid;
  - ♦ Determination of the liability to pay tax on any goods and/or services;
  - ♦ Whether applicant is required to be registered under the Act;
  - ♦ Whether any particular thing done with respect to any goods and/or services would amount to 'supply'.
- Application for Advance Ruling not to be admitted if the question raised in the application is:
  - ♦ Pending in the applicant's case before any First Appellate Authority, Appellate Tribunal or Court;
  - ♦ The same as in a matter already decided by any First Appellate Authority, Appellate Tribunal or Court;
  - ♦ The same as in a matter already pending in any proceedings in the applicant's case under any of the provisions of the Act;
  - ♦ The same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable.
- The applicant or the jurisdictional CGST/SGST officer may, if aggrieved by the advance ruling, appeal before the Appellate Authority for Advance Ruling within a period of 30 days.
  - ♦ Where the members of the Appellate Authority of Advance Ruling differ on any point referred to in the appeal, it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

### ELP Comments

Provisions for appeal against an advance ruling have been introduced for the first time, whereas in the present regime, advance rulings are challenged before the jurisdictional High Courts by way of a writ petition. [*Columbia Sportswear Co. vs. Director of Income Tax, Bangalore 2012 (283) E.L.T. 321 (S.C.)*]

## SETTLEMENT OF CASES

*The provisions for settlement of cases are incorporated under Chapter VIIA of the IGST Act – Refer page 41*

## OTHER PROVISIONS

- Section 106 and 107 deal with “Presumption as to Documents” and admissibility of other evidences.
- Sections 108 to Section 115 deal with liability to pay tax in certain cases. There are 8 instances enumerated.
- Miscellaneous provisions including that dealing with GST compliance rating have been prescribed.
- Section 140 deals *inter alia* provides for applicability of existing indirect taxes viz. Excise Duty and Sales Tax on products covered under Entry 84 and Entry 54 of the Union List and State List respectively. AS per the Constitution 122<sup>nd</sup> Amendment Bill, this would cover:
  - ♦ Entry 84 of the Union List: (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products.
  - ♦ Entry 54 of the State List: petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption.

## TRANSITIONAL PROVISIONS

- The Central/ State Government may issue orders or make rules for smooth transition to GST including on matters not specifically covered in the CGST/SGCT Acts, provided these are not in conflict with the CGST/SGCT Acts.
- Every person registered under the earlier laws shall be issued a certificate of registration on provisional basis, which will be valid for a period of six months. Thereafter, upon information being furnished, certificate of registration will be granted on a final basis.
- Credit can be taken of the Cenvat Credit/ Value Added Tax carried forward in a return furnished under earlier law.

### ELP Comments

Though credits are allowed to be carried forward under this provision, since refund is not permissible in case of accumulation of credits (under Section 38 of the CGST/SGCT Acts), such credit carried forward if not utilized, may lapse. Further, such credit cannot be taken unless the said amount was admissible as Cenvat Credit under the earlier law and is also admissible as input tax credit under the CGST/SGCT Acts.

- Unavailed credit in respect of capital goods under the earlier law shall be allowed to be taken.
- Credit can be taken of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on the appointed day, in case of a registered taxable person who was not liable to be registered under the earlier law or was engaged in the manufacture of exempted goods, but are taxable under the CGST/SGCT Acts. This is subject to certain conditions including possession of invoices.

### ELP Comments

No corresponding benefits are provided for input services.

- A composition tax payer [paying tax paid at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law], is entitled to take credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date, subject to certain conditions including that the tax payer now makes taxable supplies and is eligible for input tax credits.
- No tax shall be payable on return of the goods within six months from the appointed day in various circumstances such as in relation to exempted goods, duty paid goods, inputs and semi finished goods removed for job work, finished goods removed for carrying out certain processes or goods sent on approval basis.
- Where in pursuance of contract entered prior to the appointed date and wherein the price of any goods and/or services are revised after the appointed date, then the taxable person who has removed/provided the goods and/or service may issue to the recipient a supplementary invoice or debit note/credit note within thirty days of such price revision and such supplementary invoice or debit note/credit note shall be deemed to have been issued in respect of an outward supply made under the CGST/SGCT Acts.
- Refund claims filed before the appointed day shall be disposed off in accordance with the provisions of the earlier law and shall be paid in cash.
- Proceedings of appeal, revision, review or reference relating to a claim for CENVAT credit/ input tax credit or output duty/tax liability under the earlier law shall be disposed of in accordance with the earlier law.
- Treatment in respect of specified scenarios:

Scenarios	Event before appointed date	Event after appointed date	Treatment
Long term construction/works contract – Section 159	contract entered into	Supply of goods and/or services	Taxed under model GST law
Progressive or periodic supply of goods or services – Section 160	Consideration received and Duty/ tax paid under the earlier law	Supply of goods and/or services	No tax payable under the Model GST law, notwithstanding Sections 12 and 13 of the Model GST law.
Treatment of retention payments – Section 161	Supply of goods and services and full duty or tax paid	Part consideration received	No tax payable under the Model GST law, notwithstanding Sections 12 and 13 of the Model GST law.

- An ISD shall distribute credit as per the CGST/SGST law even in respect of services which were received before the appointed date but invoices are received after the appointed date.
- Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the earlier law and has also issued an invoice for the same before the appointed day, no deduction of tax at source under Section 37 shall be made by the deductor under the said section, where payment to the said supplier is made on or after the appointed day.

## SCHEDULES

### SCHEDULE I

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*Refer page 8 - MEANING AND SCOPE OF 'SUPPLY'.*

### SCHEDULE II

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*Refer page 8 - MEANING AND SCOPE OF 'SUPPLY'.*

### SCHEDULE III

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Schedule III provides for the liability of the supplier to be registered under the GST framework. *Refer page 20*

### SCHEDULE IV

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- Schedule IV provides for transactions in respect of which the Central Government, State Government or any local authority shall not be regarded as taxable person.
- The Schedule mentions the list to be indicative and hence has the possibility of undergoing a change.



## THE INTEGRATED GOODS AND SERVICES TAX ACT, 2016

- IGST is a tax levied on supply of goods and/or services in the course of inter-state trade and commerce, which includes export and import transactions.
- Supply of goods and / or services shall be in the course of inter-state trade or commerce if location of the supplier and the place of the supply are in different states.
- Supply of goods and / or services shall be in the course of intra-state trade or commerce if location of the supplier and the place of the supply are in same state.
- IGST shall be levied on inter-state transactions by a taxable person at the specified rate.
- Place of supply of goods [Section 5]

Particulars	Place of Supply of Goods
Where supply involves movement of goods.	Location at which movement of goods terminates for delivery.
Where goods are delivered before or during their movement either by way of transfer of documents of title to the goods or otherwise, to a recipient or any other person on the direction of a third person.	Principal place of business of third person (the place which is mentioned in the registration certificate).  <b>ELP Comments</b>  An example for this provision is a 'bill to ship to' model. This is a departure from the present regime where taxes are paid in the origination state.
Where supply does not involve movement of goods.	Location of such goods at the time of delivery.
Installation / assembly at site.	Place of such installation or assembly.
Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle.	Location at which such goods are taken on board.
In any other case (not covered above).	Determined by law made by the Parliament in accordance with the recommendations of the Council.

- Place of supply of services [Section 6]

Nature of Service	Place of Supply of Service
Services in relation to immovable property including ancillary services.	Location at which the immovable property is located.
<ul style="list-style-type: none"> <li>■ Lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel.</li> <li>■ Accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property.</li> </ul>	Location at which the immovable property, boat or vessel is located.
Restaurant and catering, personal grooming, fitness, beauty treatment, health services, cosmetic and plastic surgery.	Location where the services are actually performed.
Services in relation to training and performance appraisal.	<ul style="list-style-type: none"> <li>■ In case of registered person – location of such person.</li> </ul>

Nature of Service	Place of Supply of Service
	<ul style="list-style-type: none"> <li>Other than registered person - location where the services are actually performed.</li> </ul>
Admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto.	Location of the event or park or other place, as the case may be.
<ul style="list-style-type: none"> <li>Services provided by way of organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events.</li> <li>Services ancillary to organization of any of the above events or services.</li> <li>Assigning of sponsorship of any of the above events.</li> </ul>	<ul style="list-style-type: none"> <li>When provided to a registered person – location of such person.</li> <li>When provided to other than registered person - location where the services are actually performed.</li> </ul>
Transportation of goods including mail or courier.	<ul style="list-style-type: none"> <li>When provided to a registered person – location of such person.</li> <li>When provided to other than registered person - location at which the goods are handed over for their transportation.</li> </ul>
Passenger transportation service.	<ul style="list-style-type: none"> <li>When provided to registered person – location of such person.</li> <li>When provided to other than registered person - place where the passenger embarks on the conveyance for the continuous journey.</li> <li>Other than above – as specified.</li> </ul>
Service on board a conveyance such as vessel, aircraft, train or motor vehicle.	Location of the first scheduled point of departure of that conveyance for the journey.
<p>Telecommunication services including data transfer, broadcasting, cable and direct to home television services:</p> <ul style="list-style-type: none"> <li>Services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna;</li> <li>Mobile connection for telecommunication and internet services provided on post-paid basis;</li> <li>Mobile connection for telecommunication and internet services are provided on pre-payment through a voucher or any other means.</li> </ul>	<ul style="list-style-type: none"> <li>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed.</li> <li>Location of billing address of the service receiver on record of the service provider.</li> <li>Location where such pre payment is received or such vouchers are sold. If prepaid service is availed through electronic network – the location of the service recipient as per the record of the service provider.</li> </ul>
Banking or other financial services including stock broking.	<ul style="list-style-type: none"> <li>Location of the service receiver on the record of the service provider.</li> <li>Where the service is not linked to the account of the recipient of services, the place of supply shall be location of the supplier of services.</li> </ul>
Insurance services.	<ul style="list-style-type: none"> <li>In case of registered person – location of such person</li> <li>Other than registered person - location of the service receiver available on the records of the service provider.</li> </ul>
Advertisement services to the central government, state government, a statutory body or a local authority meant for identifiable states.	Each such State.
Services not covered above.	<ul style="list-style-type: none"> <li>When provided to registered person – location of such person.</li> <li>When provided to other than registered person -</li> </ul>

Nature of Service	Place of Supply of Service
	location of the service receiver available on the records of the service provider or location of the service provider.

- A taxable person can make an application for settlement of cases in respect of a case or identical cases involving periodical notices and pending before the adjudicating authority or the First Appellate Authority. An application for settlement cannot be made if the case is pending before Appellate Tribunal or any Court; or if the application is for determination of question in respect of rate of tax / determination of liability on any goods and / or services.
- Import of services / inter-state supply of goods and / or services ***made after appointed day*** shall be liable to IGST regardless of whether the transaction was initiated before the appointed day.
  - ♦ If the tax on such import of services / inter-state supply of goods and / or services had been paid in full under earlier law, no tax shall be payable on such transaction under the IGST Act. If the tax on import of services is paid in part under the earlier law, the balance amount shall be payable under the IGST Act.
  - ♦ The transaction shall be deemed to have been initiated prior to appointed day if either the invoice relating to such supply or payment (in full or in part) has been received or made prior to such date.

#### ELP Comments

- The place of supply for goods has moved away from origin principle to destination principle.
- The default for determining the place of supply of services continues to be the location of the service recipient.
- In some cases, there is a differential treatment for determining the place of supply of services when provided to a registered and unregistered persons such as in case of transportation of goods.

## GLOSSARY OF TERMS

Abbreviation	Meaning
AE	Associated Enterprise
ALP	Arms Length Price
AOP	Association of Persons
AS	Accounting Standard
BOI	Body of Individuals
CBEC / Board	Central Board of Excise and Customs
CCR	CENVAT Credit Rules, 2004
CE Act	Central Excise Act, 1944
CE Removal Rules	Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001
CE Rules	Central Excise Rules, 2002
CET Act	Central Excise Tariff Act, 1985
CETH	Central Excise Tariff Heading
CGST	Central Goods and Services Tax
CGST Act	Central Goods and Services Tax Act
CST	Central Sales Tax
CST Act	Central Sales Tax Act, 1956
CTA	Customs Tariff Act, 1975
CTH	Customs Tariff Heading
Customs Act	Customs Act, 1962
Customs Valuation Rules	Customs Valuation (Determination of Price of imported Goods) Rules, 2007
E Cess	Education Cess
FY	Financial Year
GST	Goods and Services Tax
GTA	Goods Transport Agency
HC	High Court
HSN	Harmonized System of Nomenclature
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act
INR	Indian Rupees
IT Act	Income Tax Act, 1961
ITC	Input Tax Credit
model law	Model GST Law
MRP	Maximum Retail Price
PAN	Permanent Account Number
PoT Rules	Point of Taxation Rules, 2011
PPSR	Place of Provision of Service Rules, 2012
RSP	Retail Sale Price
SGST	State Goods and Services Tax
SGST Act(s)	State Goods and Services Tax Act(s)
SHE Cess	Secondary and Higher Education Cess
STR	Service Tax Rules, 1994
TDS	Taxes Deducted at Source
Finance Act	Finance Act, 1994
TP	Transfer Pricing
w.e.f.	with effect from
w.r.t.	with respect to



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