



# Model GST Law

- A Bird's Eye View



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## **Introduction**

In order to prepare the trade and industry on the provisions to be followed on introduction of the GST, the Government released a Draft Model GST law on June 14, 2016. Though the provisions of this draft is still raw and may differ from the actual law, it provides a broad framework for the trade and industry to plan their operations and compliances for future. It also provides guidance to the stakeholders as to what should be expected from a regulatory point of view once the GST becomes a reality.

The Draft Model GST law contains the Central/State Goods and Service Tax Act, 2016 which encompasses 25 chapters further divided into 162 clauses along with four schedules and the GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016. Also, the Integrated Goods and Services Tax, 2016 forms part of the Draft Model GST law and it consists of 11 chapters which comprises of 33 sections.

## **Levy and Collection of tax**

- a) CGST/SGST will be levied on all intra state supplies of goods and/or services at a rate to be prescribed.
- b) IGST will be levied on all inter-state supplies of goods and/or services at a rate yet to be prescribed.
- c) These will be collected in a manner yet to be prescribed and is required to be paid by every taxable person in accordance with the provisions of the Act.

## **Reverse charge**

The Central Government on recommendation of the GST council may notify the categories of goods/ service on which the tax will be payable by the recipient on reverse charge basis.

## **Supply**

- a) It includes all forms of supply for a consideration by a person in the furtherance of business.
- b) It also comprises of importation of service whether or not for a consideration or for business or not
- c) It will also constitute of matters specified in Schedule I if the same is made without consideration.
- d) Transaction between principal and agent for commission will also be treated as supply.

## **Goods and/or Services**

- a) Schedule II has been specified in respect of certain matters in order to determine what is treated as supply of goods or supply of services.

- b) The Government will also notify certain other transactions which will be treated as either supply of goods or services or neither of these.

### **Composition levy**

Subject to certain conditions, the Government may permit a taxable person to pay taxes at a specified percentage of his turnover if the aggregate turnover in a financial year is less than Rs. 50 lakhs.

### **Taxable Person**

- a) Any person carrying on business in India and is registered under Schedule III to the Act is included
- b) Any person required to be registered under Schedule III having a turnover of greater than Rs. 10 lakhs in a financial year will also be covered. For the North eastern states, this limit is Rs. 5 lakhs.
- c) Services under employer employee relationship, persons exclusively engaged in supply not liable to tax and persons receiving services for personal use upto a certain limit will be excluded here.

### **Time of supply**

Though the levy of GST is upon supply, liability to pay GST arises at the time of supply.

### **Time of supply of goods**

The time of supply of goods under forward charge for non-continuous supply will be the earliest of:

- a) The date of removal by the supplier when the goods are required to be removed
- b) The date when the goods are made available to the recipient where the goods are not required to be removed
- c) The date of issue of invoice by the supplier
- d) The date of receipt of payment by the supplier
- e) The date when the recipient shows the receipt of goods in his books of account

### **Time of supply of services**

Under forward charge and upon non-continuous supply of services, the time of supply will be:

- a) The date of issue of invoice or receipt of payment whichever is earlier if the invoice is issued within the prescribed period
- b) The date of completion of provision of service or receipt of payment whichever is earlier if the invoice is not issued within the prescribed period

- c) The date of receipt of services in his books of accounts if a) and b) are not applicable.

### **Valuation of taxable supply**

The value of a supply will be the transaction value, that is the price actually paid or payable, provided:

- a) The supplier and recipient are not related and
- b) The price is the sole consideration for the supply

If the valuation cannot take place as per the relevant section of the act, then the GST Valuation (Determination of the Value of supply of goods and services) Rules, 2016 needs to be referred.

### **Input Tax credit**

Similar to the Cenvat Credit Rules, the Input tax credit provisions contains restrictions and conditions subject to which the input tax credit is available. This states that the ITC will not be available unless:

- a) The recipient is in possession of a tax invoice or any other prescribed document under the law
- b) The recipient has actually received the goods and/or services
- c) The tax charged for such supply has been paid to the credit of the Government
- d) The return has been furnished under the law by the recipient

### **Registration**

- a) A person shall register in the state from which he supplies within 30 days from the date he becomes liable to do so.
- b) A person is liable to be registered if his aggregate turnover in a financial year exceeds Rs. 9 lakhs. This amount becomes Rs. 4 lakhs in case of North Eastern states including Sikkim.
- c) Certain prescribed persons will have to mandatorily register without any exemption limit.
- d) Persons engaged only in supplies not liable to tax will also be liable to be registered.

### **Tax invoice**

A tax invoice should show the description, quantity, value, tax charged and other particulars as prescribed and it should be issued within the prescribed time period.

**Returns**

- a) Details of outward supplies is to be given before the 10th of the month succeeding the tax period.
- b) Details of inward supplies is to be given before the 15th of the month succeeding the tax period.
- c) Every registered taxable person will file a return showing the inward/ outward supplies, input tax credit, tax payable, tax paid and other particulars within 20th of the end of the succeeding month.
- d) An annual return is to be furnished within 31st December following the end of the financial year.
- e) Persons deducting TDS shall furnish a return within 10 days after the end of that month.
- f) Input Service distributor needs to file a return within 13 days of the end of every calendar month.

**Input Tax Credit set off**

- a) Input CGST will first be adjusted against Output CGST and then against Output IGST.
- b) Input SGST will first be adjusted against Output SGST and then against Output IGST.
- c) Input IGST will be utilized against Output IGST, CGST and SGST in that preferential order.

**Tax deduction at source**

In respect of goods and/or services which will be notified, certain prescribed category of persons will be required to deduct 1% of the payment/credit where the total value exceeds Rs. 10 lakhs.

**Refund**

- a) A refund application is to be made before the expiry of two years from the relevant date.
- b) The refund of unutilised input tax credit will be allowed only in cases of export and where the rate of tax on inputs is higher than rate of tax on outputs.
- c) On receipt of the application, 80% of the claim will be refunded on provisional basis and the rest after due verification.
- d) The order is to be issued within 90 days of the date of receipt of application.
- e) The refund will be paid to the Consumer Welfare Fund unless an evidence is shown that the refund is due to the applicant.

## **Electronic Commerce**

Any electronic commerce operator at the time of payment to the supplier or credit to the account of supplier whichever is earlier, will collect a certain percentage of the consideration towards the supply and he will deposit the same within 10 days after the end of the month of such collection.

## **Assessments and Audit**

This contains multiple layer of actions to be taken by the Department including self-assessment, provisional assessment, scrutiny of returns, assessment of non-filers of return, assessment of unregistered persons, summary assessment in certain special cases, audit by tax authorities and special audit by Chartered Accountants.

## **Demand and recovery**

- a) Where a notice is served in cases where there is an intent to evade payment of duty, the order will be passed within 5 years from the earlier of the due date or actual date for filing annual return.
- b) Where a notice is served in cases where there is no intent to evade payment of duty, the order will be passed within 3 years from the earlier of the due date or actual date for filing annual return.
- c) No due date for issue of showcause notice has been prescribed in either of the above 2 cases.
- d) If there is any tax due by a taxable person, recovery proceedings for the same may be initiated.

## **Powers of Officers**

The relevant officers of the Department have the powers of inspection, search and seizure, arresting, summoning persons to give evidence and produce documents, accessing the business premises, levying interest and penalties, detaining the goods and conveyances, confiscating goods and conveyances etc.

## **Appeals and Revisions**

Appellate provisions with regard to appeals to the First Appellate Authority, constitution of the National Appellate Tribunal, appeals to the Appellate Tribunal, revisional powers of the Commissioner, appeal to the High Court and Supreme Court etc. have been prescribed. Predeposit of an amount equal to 10% of the amount in dispute is required for an appeal upto the Tribunal level.

## **Advance Ruling**

Advance Ruling can be sought on questions relating to classification of goods/services, applicability of a notification, principles for determining value, admissibility of input tax credit, determination of liability to pay tax, requirement of registration, whether anything amounts to supply etc. Appeal provisions against the orders of the Advance Ruling Authority have also been prescribed.

## **Settlement of cases**

A taxable person who has not disclosed the full particulars of his tax to the jurisdictional IGST officer may disclose the same to the Settlement commission and have his case settled. Other conditions for application, procedures and powers of Settlement Commission has also been prescribed in the law.

## **GST Compliance rating**

On the basis of certain parameters, every person will be assigned a GST compliance rating score. This will be updated at periodic intervals and will be placed in the public domain.

## **Transitional provisions**

It deals with the provisions which will be applicable during the transitional phase from the existing indirect tax law to the GST regime. This is probably the most important provision from the perspective of tax planning. The major provisions are

- migration of existing taxpayers to GST,
- carrying forward of Input tax credit in GST as per the last return under earlier law,
- allowance of unavailed input tax credit on capital goods not carried forward in a return,
- credit of inputs held in stock when the taxable person was not liable to tax or was liable under the composition scheme under the earlier law,
- amount payable for inputs in stock when switching from the composition scheme,
- exempted goods or duty paid goods returned to the place of business after the applicability of GST,
- inputs, semi-finished goods and finished goods removed for job work and returned after the applicability of GST,
- issuance of supplementary invoice where price is revised in a contract,
- proceedings relating to pending refund claims, input tax credit claims, output duty liability,
- recovery or refund of amount in pursuance of assessment proceedings or revision of returns, treatment of long term construction/works contract,
- periodic supply of goods or services and retention payments,



- credit distribution by Input Service Distributor,
- tax paid on goods/ capital goods lying with agents,
- treatment of branch transfers,
- goods sent on approval or return basis,
- deduction of tax at source and
- import of services or interstate supply after the applicability of GST

### **Place of supply of goods**

In a general scenario, where there is movement of goods, the place of supply of goods will be the location at which the movement of goods terminates for delivery to the recipient.

### **Place of supply of services**

Subject to certain specific services, most of the businesses will be falling within the general provisions of the place of supply of services. Under the general provisions:

- a) If the services are supplied to a registered person, the place of supply will be the location of that person.
- b) If the services are supplied to any person other than the registered person, then the place of supply will be the location of the recipient where the address on record exists.
- c) If no address on record exists, the place of supply will be the location of the supplier.

### **Interstate/ Intrastate supplies of goods and/or services**

Where the location of the supplier and the place of supply are in different states, then it will be considered as an interstate supply. If they are within the same state, it will be an intrastate supply.

### **Conclusion**

Since the major political hurdles for smooth implementation of GST is getting cleared now, it is imperative that the GST will be implemented sooner rather than later. So, every business should equip itself to not only comply with the law but draw maximum benefits from it through strategic planning.

*(This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. S. Khaitan & Associates or any of its officials do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication)*





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