



Place of Supply

Revised Model GST Law



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Introduction

Place of supply is one of the key aspects to have an understanding of GST. In order to determine whether a supply is interstate or intra state, both the location of the supplier and the place of supply are relevant. If the location of the supplier and the place of supply are in different states, then it will be considered as an Inter-state supply and IGST will be levied. If the location of the supplier and the place of supply are in the same state, then in that case it will be considered as an intra state supply and CGST and SGST will be levied.

The Revised Model GST law has been brought out by the Government in the public domain on November 25, 2016. There have been mammoth changes since the First Draft of the Model GST law was published in June, 2016. The most encouraging fact was that these changes have mostly been in the favour of stakeholders. The Government has accepted a number of suggestions which they received from different trade association, chambers of commerce, bodies like ICAI, ICSI etc. The Revised Model GST Law have been issued in three parts:

- a) Revised Draft CGST + SGST Law
- b) Revised Draft IGST Law
- c) Revised GST Compensation Law

The place of supply has been discussed in the Revised Draft IGST Law. This article has been based on this revised law.

In case of goods, the definition of the location of supplier and recipient are not given. As a result, this presents a challenging situation in cases of a number of supplies especially where billing is made from one place of business while the goods are dispatched from another place of business. There have been varied opinions among experts as to whether the location of supplier should be from the place where the billing is made or the place from where the goods are dispatched. Also, there are disputes with regard to the place of supply and movement of input tax credit in case of 'bill to ship to' transactions i.e. wherein the destination of goods and the place which accepts the invoice/ places the order are different. Clarity in the final law with regard to these kind of transactions will do a world of good for all the taxable persons at large.

The place of supply has been depicted on a case wise basis along with illustrations below:

1. Where the supply involves movement of goods whether by the supplier or the recipient or any other person, the place of supply will be where the movement of goods terminates for delivery.

Illustration 1: A distributor in West Bengal procures LED lights from a wholesaler in Gujarat on FOR basis. The terms of the contract requires the carrier to be arranged by the supplier and the supply will be complete only if the goods reach the destination safely. Here, the movement of goods is made by the supplier. So, the location where the movement terminates i.e. West Bengal will be the place of supply.

Illustration 2: A wholesaler buys refrigerators directly from the factory of the manufacturer at Bihar on an ex-factory basis. The wholesaler obtains delivery of the same at the factory gate and declares the destination of goods as Madhya Pradesh. Thereafter, he takes the refrigerators to his godown for supply at Madhya Pradesh. This refers to the situation of movement of goods by the recipient. Hence, the place of supply will be the place where the movement of goods terminates for delivery to the recipient i.e the godown at Madhya Pradesh.

2. Where the goods are delivered on direction of a third person whether acting as an agent or otherwise, it will be deemed that the third person has received the goods. The place of supply in that case will be the principal place of business of the third person.

Illustration 3: A wholesaler in Jharkhand asks a manufacturer in Maharashtra to directly deliver Paper reams to a retailer in Gujarat. Here, there will be two supplies that will be deemed to have taken place. First will be the supply between the manufacturer in Maharashtra and wholesaler in Jharkhand for which the place of supply will be Jharkhand. The second will be the supply between the wholesaler in Jharkhand and the retailer in Gujarat for which the place of supply will be Gujarat.

Illustration 4: An agent in Kolkata procures an order for plastic materials from a dealer in New Delhi for delivery to his principal at Mumbai. Since, the goods are delivered on direction of a third person (agent in Kolkata), the first supply will be the principal place of business of the agent i.e. Kolkata. The second supply will be between the agent in Kolkata and the principal in Mumbai for which the place of supply will be Mumbai.

Illustration 5: An agent in Delhi asks a manufacturer in Kolkata to deliver goods to a retailer in Kolkata. In this case there will be two supplies that will be deemed to have taken place. First will be the supply between the manufacturer in Kolkata and the agent in Delhi. The Second Supply would be between agent in Delhi and the retailer in Kolkata

Note: In the above Example although the goods are not being moved outside Kolkata the Manufacture in Kolkata will Charge IGST , Since the Place of Supply of Goods would be Delhi

3. Where supply does not movement of goods, the location of goods at the time of delivery to the recipient will be the place of supply.

Illustration 6: A customer from Kolkata on a visit to Mumbai buys a perfume bottle from a shopping mall at Mumbai. The supplier of goods does not ask for the destination of goods nor the customer submit the same. No GSTIN was declared by the customer as well. Here, the person supplying the goods does not know the destination of goods. In fact, he doesn't even know if any movement will occur outside the state or not. This will be covered in the case wherein supply does not involve movement of goods. So, the place of supply will be the location of goods at the time of delivery to the recipient i.e. Mumbai.

4. Where the goods are assembled or installed at site, the place of supply will be the place of such installation or assembly.

Illustration 7: A modular furniture manufacturer in Mumbai send its personnel to Kolkata for setting up a new office for a client whose registered office is Delhi. The furniture is brought in dismantled form to the office at Kolkata and assembled at the client's place. Here, the place of supply will be Kolkata as it is the place of assembly/ installation.

5. Where the goods are taken on board a conveyance, the place of supply will be location at which the goods are taken on board.

Illustration 8: A flight from Guwahati to Mumbai goes via Kolkata. Some merchandise is served to passengers on a chargeable basis within the flight. The merchandise is taken on board at Kolkata and is served in between the journey from Kolkata to Mumbai. The place of supply will be Kolkata where the merchandise has been taken on board.

6. Where the place cannot be determined by law from above, it will be determined in a manner prescribed by Central Government on the suggestion of the GST Council.

Please note that points to 1 to 6 above only described situations where the goods are neither imported into nor exported from India. The provisions for the place of supply of goods in case of import and export of goods has been specified separately. The below describes the situation of import and export:

7. When the goods are imported into India, the place of supply will be the location of the importer.

Illustration 9: A watch showroom in Kolkata imports certain watches from Switzerland. For this, the place of supply will be Kolkata i.e. the location of the importer.

8. When the goods are exported from India, the place of supply will be the location outside India.

Illustration 10: Jute bags are exported by a jute manufacturer in Kolkata to a dealer in Texas, USA. The place of supply in this situation will be Texas, USA i.e the location outside India.

Frequently asked Question: In Illustration 6, let us assume the supplier is aware that the recipient is from Kolkata. Since, it is a B2C transaction, there is no question of obtaining the GSTIN. Merely because the supplier is aware that the buyer will take the goods to Kolkata, does it make the supply inter-state?

Answer:

In order to understand the answer to this question, we need to carefully examine the following provisions relating to place of supply of goods under the Model GST law:

Section 7(2) – Where the supply involves movement of goods whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Section 7(4) – Where supply does not involve movement of goods, whether by the supplier or the recipient the place of supply shall be the location of such goods at the time of the delivery to the recipient.

Now our example should be put under the light of both these provisions to determine the place of supply. There are two schools of thought which can emerge when we analyze our example diligently.

First School of thought

When the goods are bought at a showroom in Mumbai, then the supply is said to be completed at the showroom itself. So, the supply should not involve movement in such a scenario. Hence, this supply should be covered under Section 7(4) above.

Since the supply is completed at the showroom itself, the movement (if any) takes place only after the supply has been made. The risk and rewards with regard to the said goods is transferred at the showroom and the supplier is not concerned with the final destination of the goods for the recipient.

So, the place of supply should be the location of the goods at the time of delivery to the recipient i.e. Mumbai in our example. So, going by this school of thought, the supply will be intra state irrespective of the fact whether the supplier is aware of the address of the recipient or not.

Second school of thought

When the goods are bought at a showroom in Mumbai, it involves movement of goods from Mumbai to Kolkata. Now even if the said movement is made by the recipient, the said supply will be covered under Section 7(2) above.

If we take the first school of thought as correct, then it renders the concept of movement of goods by the recipient almost redundant. In every case, where the movement of goods is by the recipient, the first school of thought purports to classify that under Section 7(4). This will not only limit the applicability of Section 7(2) to a large extent but also put the concept of destination placed principle in jeopardy. In every situation where the movement of goods is made by the recipient after taking delivery from the supplier, the supply will be intra state and the origin state will get the revenue as per the first school of thought. Surely, tweaking a contract term like movement of goods by the recipient instead of the supplier should not decide the fact that the origin state will get the revenue. That cannot ever be the intention of the legislature. Also, the recipient in his state (i.e. destination state) will never be able to get the Input tax credit if the tax is paid in the origin state. That will severely hamper the seamless flow of credit and the whole purpose of GST will be defeated. So, such a supply should ideally fall under Section 7(2) and not section 7(4).

A careful reading of the Section 7(2) suggests that the movement can take place even after the risk and rewards with regard to the said goods have already been transferred to the recipient. In such a situation, only if the supplier is aware that the said goods require movement into another state, he will be considering the place of supply as another state. When the said movement is made by the supplier, it is known to him as to where the movement will be terminated by him (e.g. FOR contracts). Also, when the goods are transported in an ex-works B2B transaction, the supplier is aware of the movement and the destination of the goods because the GSTIN of the person placing the order is available with him.

Now, the real challenge arises in cases of B2C transactions wherein the address of the recipient may or may not be available. From the standpoint of a supplier and the recipient, it doesn't make any difference as to which nature of tax is charged. This is because:

1. The total quantum of tax paid by the recipient on the good remains the same (since $IGST = CGST + SGST$).
2. The Input tax credit in respect of the same is not required to be obtained by the recipient in his own state. This is unlike B2B supplies wherein the Input tax credit has to be taken in the recipient's state under the destination principle.

But, the major issue with wrong declaration of place of supply in B2C supplies is that the rightful state will be losing out on its revenue. Since the GST is a destination based

tax, the destination state should get the revenue of any supply and it will not be ready to compromise on its share of revenue at any cost.

The Government does realize that it is not always possible to determine the address of the recipient (i.e. the destination state) in every situation. So, certain relaxations were provided by the Report of the Joint Committee on Business Process for GST on GST Return published in October 2015.

As per the Report of the Joint Committee on Business Process for GST on GST Return published in October 2015, invoice for a value less than Rs. 50,000 that does not have an address on record will be treated as an intra state supply. However, the address of the recipient has to be mandatorily reflected in every invoice with a value greater than Rs. 50,000 or more in a B2C supply. So, if we draw inferences from the above report, the determination whether a supply is intra state or inter-state will be as follows:

- a) For invoices greater than Rs. 50,000 – The address of the recipient needs to be mandatorily taken on the record of the supplier. If the address on record of the recipient is different from the supplying state, then the supply will be considered as inter-state.
- b) Invoices less than Rs. 50,000 – If the address of the recipient is on record with the supplier, then the supplying state and the destination state needs to be compared. If they are same, then the supply will be intra state and if they are different, then the supply will be inter-state. However, if the address of the recipient is not available, then the supply will be deemed as intra state.

In our example, if the price of perfume is greater than Rs. 50,000, then the showroom in Mumbai is mandatorily required to obtain the address of the recipient from Kolkata. In such a scenario, the supply will be inter-state.

If the price of perfume is less than Rs. 50,000, then the showroom may or may not obtain the address of the recipient. If the address of the recipient is not obtained, then the same will be an intra state supply. However, if the address of the recipient is declared to the showroom, then it will be considered as inter-state supply and IGST will be charged.

Now, it is expected that the matters covered within the Business Processes for GST and the Rules to be notified by the Government will be in sync. So, the above arguments presented on the basis of the Business Process document should stand. However, we will have absolute certainty once when the Rules with regard to this are notified.

Lastly, we need to emphasize here that a mistake of determination of place of supply committed by a taxable person can be really detrimental for the working capital of that person. For instance, if a person determines a supply to be an inter-state supply and pays IGST but later it is found that it should have been an intra state supply and ideally CGST/SGST should have been paid. In this kind of a scenario, the taxable person has to pay CGST/SGST first and then claim the refund of the IGST. So, the cash outflow of CGST/SGST would be immediate but the refund can only be obtained after a certain point in time. In fact with the history of the delay in providing refunds by the Department, this can only add to the woes of the person making such a mistake. So, determining the place of supply is of utmost importance in GST for any taxable person.

(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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