Lakshmikumaran & Sridharan attorneys

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India prepares for GST

ISSUE #2

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The Tree of Knowledge

Knowledge Initiatives at L&S are nurtured by a constant stream of analysis and opinion pieces by our consultants and their practice experiences. The 'Tree of Knowledge' is a part of our wisdom initiative gleaned from the best of the organisation's learning, shared through the year.

MODEL GST LAW - INTRODUCTION

1

Overview

The Empowered Committee of State Finance Ministers has on 14th of June 2016 released the Model GST Law. This Model Law is in furtherance of four Reports of the Joint Committee on Business Processes for GST on Registration, Payment, Returns and Refunds released by the Government of India in October 2015, and hence should be read together for completion. It may be recalled that the Constitutional (One Hundred and Twenty-Second) Amendment Bill, 2014 has already been passed by the Lok Sabha (Lower House of Indian Parliament) and is pending approval by the Rajya Sabha (Upper House of Indian Parliament).

Model Law

The Model Law covers the following:

1. Goods and Services Tax Act, 2016
2. Integrated Goods and Services Tax Act, 2016
3. GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016.

Goods and Services Tax Act, 2016

- This is a Model Law which shall be customized by the Centre and the States for enactment. It has 25 Chapters, 184 Sections and 4 Schedules.
- The Law amalgamates concepts and practices from the Central legislations such as Central Excise and Service Tax and also of State VAT legislations. A large number of the provisions have been borrowed from these existing legislations. The Law also borrows several concepts from the International GST practices.

Supply

The taxable event for levy of GST shall be 'supply' of goods or services or both. The term 'supply' is defined inclusively to inter alia include -

- All forms of supply for a consideration.
- Specific supplies without consideration including supplies between two units/branches of same entity having separate GSTIN.
- Transactions between principal and agent is deemed to be a supply.
- Supply of branded services by aggregator.

Levy of GST

- Central GST (CGST) and State GST (SGST) will be leviable on intra-State supplies and Integrated GST (IGST) will be leviable on inter-State supplies.
- The provisions for determination of whether a supply is inter-State or intra-State are in Sections 3 and 3A of the IGST Act, 2016.
- Supply of goods/services shall be inter-State if location of supplier and place of supply are in different States. Otherwise the supply will be intra-State.
- Imports of both goods and services have been deemed as inter-State supplies leviable to IGST. Export is zero-rated.
- Separate provisions have been made in Sections 5 and 6 for determination of place of supply of goods and services respectively. Specific provisions have been introduced for bill-to-ship-to and in-transit supplies in POS.
- Certain transactions involving both supply of goods and services such as works contract, restaurant service, etc. have been deemed as supply of service under Section 3 read with Schedule II of the Model Law. Various declared services of the current service tax law have also been deemed as supply of service. Transfer of Right to Use Goods has also been deemed to be a service.
- Powers to grant exemptions, absolutely or conditional, by notification or by special order, have been given to the Central and State Governments, on the recommendation of the GST Council.
- There are provisions for reverse charge payments in respect of both goods and services.

Time of Supply

- In case of supply of services, the provisions relating to time of supply are broadly aligned with the Point of Taxation Rules, 2011 of the service tax law.
- The concept of time of supply has been introduced for goods which are also based on similar principles as in respect of supply of services. The time of supply of goods is also dependent on removal or non-removal of goods.

Valuation

- Transaction value shall be the basis for the levy of CGST / SGST and IGST. Section 15(2) provides for certain inclusions and exclusions while determining the value.

- Where transaction value is not available resort has to be taken to the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016. These Valuation Rules provide for a hierarchy of methods namely, transaction value of goods and/or services of a like kind and quality, computation value method (based on cost of production or provision) and the residual method.

Input Tax Credit

- Input Tax Credit (ITC) is available in respect of inputs, capital goods and input services. There is a negative list of items on which no ITC is available.
- ITC is available only on provisional basis (for 2 months) until the supplier makes the tax payment and files a valid return. There will be matching of supplier and receiver data and credit will be confirmed only after such matching. Where the data is not matched and where the supplier has not made the tax payment, the ITC shall be reversed with interest.
- Interest is from the date of wrong availment or utilization.

Input Service Distributor (ISD)

- Input Service Distributor has been introduced only for passing on credit of GST on services. No similar provision has been introduced for goods.

Registration

- The persons liable for taking registration are specified in Schedule III. They include –
  - (a) Persons crossing threshold of aggregate turnover of Rs. 9 lakhs in a financial year. Threshold is Rs. 4 lakhs for North-Eastern States.
  - (b) Persons making inter-State taxable supply irrespective of threshold.
  - (c) Persons liable to pay GST under reverse charge.
  - (d) Input Service Distributor.
  - (e) Aggregator.
  - (f) E-Commerce Operator.
- Separate registration is required to be taken in each State. There is no provision for centralized registration.
- Existing taxpayers will be issued Registration Certificate on a provisional basis valid for 6 months.
- Composition Scheme has been introduced in respect of taxable persons whose aggregate turnover does not exceed INR 50 lakhs.

Returns

- Normal taxpayer has to file 3 Returns in a month namely for outward supplies, inward supplies and consolidated. Specific provision has been made in respect of filing their first Return. Taxpayers are also required to file an annual return.
- Returns have also been prescribed for ISD, Tax Deducted at Source (TDS), Tax Collected at Source (TCS, applicable for e-Commerce Operators).
- Final Returns is to be filed in case of surrender / cancellation.

Payment priority

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

e-Commerce

- Special provisions have been introduced in respect of e-Commerce operators and Aggregators.
- E-Commerce Operators are required to collect and deposit tax at source (TCS) on payments made to the vendors. They are also required to file statement/return relating to the supplies made through their portal. These will be matched with the details given by the vendor in his Return for outward supplies and in case of mismatch, output liability of vendor will be re-determined.
- Supply of branded services by Aggregators has been deemed as a supply by the Aggregator.

Transitional Provisions

- Amount of Cenvat credit carried forward in a Return will be allowed as ITC. Similar provision has been made for carry forward of Value Added Tax. However such carry forward is allowed only if the credit is admissible in terms of the ITC provisions of the GST Law. For procedures, one has to await the Rules to be framed in this regard.
- Unavailed Cenvat credit on capital goods, which is not carried forward in a return, will also be allowed in certain situations.
- Credit of eligible duties and taxes in respect of inputs held in stock will also be allowed in certain situations.

Miscellaneous Provisions

- Provisions have been made for Demands and Recovery, Appeals and Revision, Refund, Advance Rulings, Settlement of Cases, Offences, Penalties, Compliance Rating, etc.

TAXABLE EVENT: SUPPLY

2

Overview

- The taxable event for levy of Goods and Services Tax (GST) is 'supply'. Section 3 of the Model GST Act covers the meaning and scope of 'supply'. Supply is defined in inclusive manner.
- So we also need to see ordinary or natural meaning of supply besides these inclusions for determining the scope of the levy.
- The specific inclusions under the term 'supply' are as under:

    1. All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
    2. Supplies made or agreed to be made without a consideration as specified in Schedule I. Schedule I lists 5 items namely, 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; and supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business.
    3. Stock transfers and supply of goods/services between two separately registered units/branches whether in the same State or not, will be deemed as supply.
    4. Supply of goods by a registered taxable person to a job-worker in terms of Section 43A shall not be treated as supply of goods.
    5. Importation of service with or without consideration: Import of services is defined under the Model GST Act on lines broadly similar to the one in current service tax regime.
    6. Where a person acting as an agent who, 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.
    7. Supply of any branded service by an aggregator, as defined in section 43B, 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.

- The supply can be in the nature of intra-State or inter-State. The provisions for determination of whether a supply is inter-State or intra-State are in Sections 3 and 3A of the Model Integrated Goods and Services Tax (IGST) Act, 2016 respectively. Supply of goods/services shall be inter-State if location of supplier and place of supply are in different States. Otherwise the supply will be intra-State.
- Central GST (CGST) and State GST (SGST) will be leviable on intra-State supplies and Integrated GST (IGST) will be leviable on inter-State supplies. Imports of both goods and services have been deemed as inter-State supplies leviable to IGST. Export is zero-rated.
- Separate provisions have been made in Sections 5 and 6 of the Model GST Act for determination of place of supply of goods and services respectively.

Place of Supply for Services

- Place of supply of services are different for B2B and B2C Supplies. However, in respect of certain services, it is same. Snapshot of POS of services are as under:

Type of services	POS for B2B Supplies	POS for B2C Supplies
General Services	Location of recipient (registered person)	Location of the recipient where the address on record exists, and the location of the supplier of services in other cases.
Supply of services in relation to immovable property	Location at which the immovable property is situated	Location at which the immovable property is situated
Supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location where the services are actually performed.	Location where the services are actually performed.
Supply of services in relation to training and performance appraisal	Location of registered person receiving the service	Location where the services are actually performed.
Supply of services related to admission to event or amusement park or any other place	Place where the event is actually held	Place where the event is actually held

Type of services	POS for B2B Supplies	POS for B2C Supplies
Supply of Services by way of organization of event	Location of registered person receiving the service	Place where the event is actually held
Supply of services by way of transportation of goods, including by mail or courier	Location of registered person receiving the service	Location at which such goods are handed over for their transportation.
Supply of passenger transportation service	Location of registered person receiving the service	Place where the passenger embarks on the conveyance for a continuous journey
Supply of banking and other financial services	Location of the recipient of services on the records of the supplier of services:	Location of the recipient of services on the records of the supplier of services:
Supply of insurance services	Location of registered person receiving the service	Location of the recipient of services on the records of the supplier of services.

Place of Supply for Goods

- Where the supply involves movement of goods, 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.
- Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.
- The above provision has been brought specifically for 'bill to - ship to' supplies and in transit sale.
- Where the 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.
- Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

L&S Expert comments

- Whether Captive Consumption is a deemed supply?
- Whether allocation of expenses and cross-charges by head office or branches will be treated as supply?
- Whether supplies by way of charitable activities, gift, inheritance etc. are covered under the meaning of the term 'supply'?
- Whether the provision for deeming the supply between the principal and agent will make them act on principal to principal for GST purposes?
- Whether import of goods without consideration will be a supply for IGST levy?

REGISTRATION

3

- Persons who are liable to get registered are listed in Schedule III of the Model GST Law. They include –

    1. Persons crossing specified threshold of aggregate turnover
    2. Persons making inter-State taxable supply
    3. Persons liable to pay GST under reverse charge
    4. Input Service Distributor
    5. Aggregator
    6. E-Commerce Operator
    7. Persons who supply goods and/or services excluding branded services, through electronic commerce operator
    8. Persons liable to deduct tax (TDS)
    9. Persons who supply on behalf of other registered taxable persons whether as agent or otherwise

- The threshold specified for item No. 1 above is of Rs. 4 lakhs in a financial year for North-Eastern States including Sikkim. In other cases, it is Rs. 9 lakhs. Other persons at item Nos. 2 to 9 require to be registered irrespective of the threshold limit for item No. 1.
- Any person who is not liable to be registered under Schedule III may get himself registered voluntarily. In such a case, all provisions of the Act as applicable to registered taxable persons shall apply to such person as well.
- Any person having multiple business verticals in a State has an option to obtain separate registration for each business vertical.
- Every person who is liable to be registered shall apply for registration in every State in which he is so liable, within 30 days from the date on which he becomes liable for registration.
- Existing registrants under an earlier law (other than Input Service Distributor) need not apply for fresh registration. In terms of the transitional provisions, they will be issued Registration Certificate on a provisional basis valid for 6 months.
- Separate registration is required to be taken in each State. There is no provision for centralized registration.

- There is a deeming provision that rejection of application for registration under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act.
- Composition Scheme has been introduced in respect of taxable persons whose aggregate turnover does not exceed INR 50 lakhs.

INPUT TAX CREDIT

4

Availability of Credit

- Input Tax Credit (ITC) is available in respect of defined inputs, capital goods and input services.
- The terms 'input' and 'input service' have been defined in a wide manner to cover goods/services used or intended to be used by a supplier for making an outward supply in the course or furtherance of business. The definition of capital goods is similar to existing definition under Cenvat Credit Rules, 2004.

Items excluded for ITC

- Motor vehicles, except when used for providing specified taxable services.
- Specified goods and / or services used primarily for personal use or consumption of any employee.
- Goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery.
- Goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery.

Conditions for availing ITC

- Taxpayer is in possession of a valid document.
- Taxpayer has received the goods and/or services. Further, an explanation has been added to enable the availment of ITC in certain situation without actual receipt of goods. Further in case where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment.
- The tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.
- Taxpayer has furnished the return under Section 27 i.e. GSTR 3.

- ITC on an invoice is not available after filing of the return under Section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.

Matching Concept

- ITC is available only on provisional basis until the supplier makes the tax payment and files a valid return.
- The claim of input tax credit in respect of invoices and/or debit notes relating to inward supply shall be matched with the details of corresponding outward supply.
- In case of mismatch and where the supplier has not made the tax payment, the ITC shall be reversed with interest.
- Interest is from the date of wrong availment or utilization.
- There is specific provision for reclaim of ITC and interest in case of subsequent matching.

L&S Expert comments

- Whether the phrase "through utilization of input tax credit admissible in respect of the said supply" in Section 16(11)(c) suggests one-to-one correlation between input supplies and outward supplies in respect of such utilization?
- What will be the criteria for matching of data between the supplier and receiver for the purpose of ITC?
- What is scope of exclusion in cases of tax paid under composition scheme and goods and used for private or personal consumption?

TIME OF SUPPLY OF GOODS AND SERVICES

5

Time of Supply of Goods

A. One time supply

S.No.	Situation	Time of Supply
1.	Goods are required to be removed	Earliest of the following, namely:- 1. Date of removal of goods 2. Date of invoice 3. Date of receipt of payment# 4. Date of receipt of goods in receiver's books of account
2.	Goods are not required to be removed. As per *Explanation*-1, this shall apply in the following cases: (i) Physically not capable of being moved (ii) Supplied in assembled or installed form (iii) Supplied by the supplier to his agent or his principal	Earliest of the following, namely:- 1. Date of making goods available to receiver@ 2. Date of invoice 3. Date of receipt of payment receipt# 4. Date of receipt of goods in receiver's books of account

B. Continuous supply

S.No.	Situation	Time of Supply
1.	Successive statements of accounts or successive payments are involved	Date of expiry of period to which such statement / payment relate.
2.	No successive statements of accounts or successive payments are involved	Earlier of the following, namely:- 1. Date of invoice 2. Date of receipt of payment#

C. Others

S.No.	Situation	Time of Supply
1.	Reverse charge	Earliest of the following, namely:- 1. Date of receipt of goods 2. Date of payment made$ 3. Date of receipt of invoice 4. Date of debit in books of accounts
2.	Time of supply not known at the time of removal (sale or approval or return basis)	Earlier of the following, namely:- 1. Time when supply is known 2. Six months from date of removal
3.	Residuary (i) Periodical return to be filed (ii) Others	Due date of filing of periodical return Date of payment of CGST/SGST

Notes (for A to C):

- @ Making goods available to receiver means placing goods at his disposal.
- # Date of receipt of payment will be earlier of the date of payment entry in supplier's books of accounts, or the date of payment credit to supplier's bank account.
- $ Date of payment made will be earlier of the date of payment entry in receiver's books of accounts, or the date of payment debit in receiver's bank account.

Time of Supply of Services

A. One time supply

S.No.	Situation	Time of Supply
1.	Invoice is issued in time	Earlier of the following, namely:- 1. Date of invoice 2. Date of receipt of payment#
2.	Invoice is not issued in time	Earliest of the following, namely:- 1. Date of completion of service 2. Date of receipt of payment#
3.	S. Nos. 1 & 2 not applicable	Date of receipt of services in receiver's books of accounts

B. Continuous Supply

S.No.	Situation	Time of Supply
1.	Date of payment ascertainable from contract	Due date of payment by receiver, irrespective of date of invoice and receipt of payment
2.	Date of payment not ascertainable from contract	Earliest of the following, namely:- 1. Date of invoice 2. Date of receipt of payment#
3.	Payment linked to completion of event (Milestone payments)	Time of completion of each milestone

C. Others

S.No.	Situation	Time of Supply
1.	Reverse charge	Earliest of the following, namely:- 1. Date of receipt of service 2. Date of payment made$ 3. Date of receipt of invoice 4. Date of debit in books of accounts
2.	Cessation of supply of services before its completion	Time of cessation of such supply
3.	Residuary (i) Periodical return to be filed (ii) Others	Due date of filing of periodical return Date of payment of CGST/SGST

Notes (for A to C):

- $ Date of payment made will be earlier of the date of payment entry in receiver's books of accounts or the date of payment debit in receiver's bank account
- # Date of receipt of payment will be earlier the date of payment entry in supplier's books of accounts or the date of payment credit to supplier's bank account

D. Change in rate of tax

Situation-1: Provision of taxable service *prior to* change in effective rate of tax

Before change	After change	Time of Supply
Service provided	Invoice + Receipt of payment	Earliest of the following, namely:- 1. Date of invoice 2. Date of receipt of payment#
Service provided + Invoice	Payment	Date of invoice
Service provided + Payment	Invoice	Date of receipt of payment#

Situation-2: Provision of taxable service *after* change in effective rate of tax

Before change	After change	Time of Supply
Invoice	Service provided + Payment	Date of receipt of payment#
Invoice + Payment	Service provided	Earlier of the following, namely:- 1. Date of invoice 2. Date of payment receipt#
Payment	Service provided + Invoice	Date of invoice

Notes (for Situations 1 & 2):

- # Date of receipt of payment will be *earlier* of the date of payment entry in supplier's books of accounts or the date of payment credit to supplier's bank account. This is subject to exception that in case credit of payment in supplier's bank account is after 4 working days from the effective date of change, date of payment receipt will be date of credit to supplier's bank account.

VALUATION FOR LEVY OF GST

6

Transaction value

- The value of a supply of goods and/or services for the purposes of the levy of CGST / SGST or IGST, as the case may be, shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- Section 15(2) of the Model GST Law provides for certain inclusions and exclusions while determining the value. The expenditure incurred by the recipient of supply on behalf of supplier shall be included in the transaction value. Free issue/discounted supplies by recipient, royalties, license fees are included in the transaction value. All the incidental expenses like packing, commission incurred by the supplier at the time of or before the delivery of the goods are also included. Taxes, duties, fees and charges levied under any other statute other than the SGST at, CGST Act or IGST Act are to be included. Subsidies linked to the supply shall be includable in the transaction value. Discounts and incentives allowed after supply has been effected are to be included but they will be excluded if existence of the same is known before. Discounts allowed in the normal course of trade will be not included.
- Where transaction value is not available resort has to be taken to the GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016 ['GST Valuation Rules'] for determination of the value of supply. As per Rule 7 of the said Rules, where the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the supplier to furnish further information, including documents or other evidence. But if he still has reasonable doubt about the truth or accuracy of the value declared, it shall be deemed that the transaction value cannot be determined.

Consideration for a supply

- Consideration includes any payment, or any act or forbearance if it is 'in respect of, 'in response to', 'for the inducement of' a supply. It may include payments made voluntarily, and payments made by persons other than the recipient of a supply. It is very comprehensive. The consideration shall be in relation to the supply. The definition of consideration is very similar in the UK, New Zealand and Australian GST/VAT Acts.
- The definition of 'consideration' has two elements to it. Both elements must be satisfied. The first is the payment of something by one entity to another. The second element is the nexus between the payment and the supply. Thus, there must be a sufficient nexus between a particular supply and a particular payment, which is provided for that supply, for there to be a supply for consideration.

GST Valuation Rules

- These Valuation Rules provide for a hierarchy of methods namely, transaction value of goods and/or services of a like kind and quality, computation value method and the residual method, with the next method to apply when the value cannot be determined as per the earlier method. These Valuation Rules will have be relevant in cases such as free supply of goods and/or services, supply of goods and/ or services to related parties, captive consumption of goods and /or services, transaction between branch and head office, stock transfer between factory and warehouse, cost allocation of shared services, etc.
- ***Value of Supply by comparison:*** The value of supply shall be determined on 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. In determining the value, proper officer shall make adjustments for difference in dates of supply, commercial levels and quantity levels, freight and insurance charges, composition, quality and design.
- ***Computed Value method:*** The computed value method is based on cost of production/ manufacture of goods or provision of services. The value shall be determined based on profit and general expenses for same class or kind of supply by other suppliers.
- ***Residual method:*** Here the value shall be determined using reasonable means consistent with the principles and provisions of the GST Valuation Rules.
- ***Pure agent:*** Expenditure or costs incurred by a service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if specified conditions are fulfilled.

No MRP based levy

- MRP based valuation is not provided in the Model GST Law, GST being a multi-stage tax on transaction value.

L&S Expert comments

Valuation in given below circumstances needs clarity:

- The circumstances to reject a transaction value between two unrelated parties
- Valuation for captive consumption
- Valuation of services between branch and head office
- Valuation in case of cost allocation of common services
- Trade / volume discount and business practices
- Nature of subsidy

PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS

7

Three electronic ledgers of the taxpayer

- Amount deposited by the taxpayer towards payment of tax, interest, penalty, fee or any other amount by a taxable person shall be credited to the **electronic cash ledger.**
- Input tax credit as self-assessed by the taxable person shall be credited to his **electronic credit ledger.**
- All the tax liabilities of the taxable person will be recorded in his **electronic tax liability register.**

Rules for utilisation of cash and cross-utilisation of input tax credit of IGST, SGST and CGST

- Amount available in electronic cash ledger can be utilised for making payment towards tax, interest, penalty, fees or any other amount payable.
- Amount available in electronic credit ledger can only be used for making payment towards tax. Such amount cannot be used for making payment of interest, fee or penalty.
- Amount of input tax credit on account of IGST shall first be utilized towards payment of IGST and balance, if any, may be utilized for payment of CGST and SGST, in that order.
- Amount of input tax credit on account of CGST shall first be utilized towards payment of CGST and the balance amount, if any, may be utilized towards the payment of IGST.
- Amount of input tax credit on account of SGST shall first be utilized towards payment of SGST and the balance amount, if any, may be utilized towards the payment of IGST.
- Input tax credit on account of CGST shall not be utilized towards payment of SGST.
- Input tax credit on account of SGST shall not be utilized towards payment of CGST.

Prioritisation Rules for payment of tax and other dues

- Payment of all the tax and other dues of every taxable person shall be made in the following order:

  1. Self-assessed tax, and other dues related to returns of ***previous tax periods***

  2. Self-assessed tax, and other dues related to return of ***current tax period***

  3. Any other amount payable.

L&S Expert comments

- Whether amount in electronic credit ledger can be used for payment of TDS/TCS?

SCRUTINY OF RETURNS, ASSESSMENT AND DEMANDS

8

Returns

- Normal taxpayer has to file 3 Returns in a month namely for outward supplies, inward supplies and consolidated. Specific provision has been made in respect of filing their first Return. Taxpayers are also required to file an annual return.
- Returns have also been prescribed for ISD, Tax Deducted at Source (TDS), Tax Collected at Source (TCS, applicable for e-Commerce Operators).
- Final Return is to be filed in case of surrender / cancellation.

Assessment / Scrutiny of Returns

- The payment of GST shall be based on self-assessment principle. Every registered taxable person shall himself assess the taxes payable and furnish return for each tax period.
- Provisional Assessment can be made on the request of the taxable person. Difference between the tax finally assessed and provisionally assessed will be deposited/ refunded on payment of appropriate interest. Payment of interest shall be from the due date of payment till the actual payment..
- However specific provisions have also been introduced relating to scrutiny of returns filed. The proper officer may verify the correctness of the return and where discrepancies are noticed, he shall inform the taxable person of the same seeking explanation. Where no satisfactory explanation is furnished within 30 days or further period allowed, or where no corrective measure is taken in respect of accepted discrepancies, the proper officer may initiate action such as audit, special audit or enforcement, or initiate demand proceedings.
- The Model GST Law provides for best judgment assessment in cases where a registered taxable person fails to furnish the return as well as in cases where a taxable person fails to obtain registration even though liable to do so.
- Summary assessment has also been proposed to protect the interest of revenue on the basis of any evidence showing a tax liability of a person coming to the notice of the proper officer, if the officer has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue.

Demand / Adjudication

- The provisions with the respect to the demands and adjudication can be summarized as under:

Activity	Normal cases	Cases involving fraud, willful mis-statement, etc.
Issue of Notice	Determination has to be made by issuance of notice specifying tax, interest and penalty leviable	Determination has to be made by issuance of notice specifying tax, interest and penalty leviable
Payment before issuance of Notice	No notice shall be served in case tax and interest paid before issuance of notice	No notice shall be served in case tax, interest and 15% penalty paid before issuance of notice
Payment within 30 days of Notice	Deemed conclusion of demand in case tax along with interest paid within 30 days of issue of the notice	Deemed conclusion of demand in case tax, interest and 25% penalty paid within 30 days of communication of the notice
Payment within 30 days of the serving of order	No specific provision. Taxpayer can be made liable to penalty upto 10% of tax or Rs. 10,000/- whichever is higher	Deemed conclusion of demand in case tax, interest and 50% penalty paid within 30 days of communication of the order
Limitation Period	Order can be passed within 3 years from due date of annual return or actual date of filing, whichever is earlier.	Order can be passed within 5 years from due date of annual return or actual date of filing, whichever is earlier.

- Specific provisions have been made to compulsorily set out relevant facts, basis of decision in the notice. Also provisions have been made to ensure that the amount of tax, interest and penalty be not in excess of what is proposed in the notice and demand should not be confirmed on grounds other than grounds specified in notice.
- Interest has been made recoverable whether or not specified in the Order.

RECOVERY

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Modes of Recovery

- Model GST Law provides for recovery of due amount by any resorting to any one or more of the following methods, namely:-
    1. Deduction from money in control of the officer. Typical example would be deduction from Cash Ledger (PLA account), refund due to taxpayer, etc.
    2. Detention and sale of movable property belonging to the taxpayer in the control of officer.
    3. Garnishee Notice viz. notice to person owing money to defaulting taxpayer.
    4. Distrain movable/immovable property of the defaulting taxpayer and detain the same until payment. Such property may also be sold in case of non-payment of dues by the taxpayer within 30 days of seizure and detention.
    5. Recovery of tax by issuing Recovery Certificate to District Collector as if it were an arrear of land revenue.
    6. Application to the appropriate Magistrate for recovery of the due amount as if it were a fine imposed by him.
- The Model GST Law as such does not prescribe any prioritization amongst these modes.
- Model GST Law also seeks to empower the CGST officers to recover SGST dues and vice versa, during the course of recovery CGST and SGST arrears respectively.

Payment of tax in installments

- Much in line with the Central Excise, Service Tax, Customs and VAT laws, GST Law also provides for deferred payment of tax/ payment of tax in instalments. The said facility is available subject to approval from specified officer and payment of interest on deferred payment.
- Benefit of deferred payment/ payment in installments is subject to strict conditions. Any default in payment of even one instalment disentitles the whole scheme to the taxpayer, making the whole outstanding balance payable forthwith by the taxpayer.

Tax to be first charge on property

- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Central or a State Government shall be a first charge on the property of such taxable person, or as the case may be, such person.
- Here it may be noted that there is no saving clause in respect of sums due under the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest (SARFAESI) Act, 2002, etc. (unlike in the case of existing Central Excise and service tax laws).

REFUNDS

10

Refund claim

- Refund claim may be filed in respect of any tax, interest paid on such tax or any other amount with the proper officer of IGST/CGST/SGST.
- Refund may also be claimed of unutilised input tax credit at the end of any tax period, in cases of exports or accumulated on account of rate of tax on inputs being higher than the rate of tax on output. However, refund in such cases will not be allowed if the goods exported out of India are subject to export duty.
- Refund claim may also be in respect of refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports.
- The refund application shall be accompanied by –
    1. documentary evidence to establish that the refund is due to the applicant.
    2. documentary / other evidence to establish that the amount was collected from, or paid by, the applicant and the incidence of such tax and interest had not been passed on by him to any other person. Where the refund claimed is below Rs. 5 lakhs, it is sufficient to only file a declaration, based on the documentary or other evidences with the applicant, certifying that the incidence of such tax and interest had not been passed on by him to any other person.

Time limit for claim

- Refund claim shall be filed before the expiry of two years from the 'relevant date'.
- This limitation of 2 years shall not apply where the tax, interest or amount has been paid 'under protest'.
- 'Relevant date' in case of goods means –
    1. In respect of exports by sea or air, the date on which the ship/aircraft leaves India; by land, the date on which the goods pass the frontier; and by post, the date of despatch by the post office to a place outside India.
    2. In respect of deemed exports, the date on which the return relating to such deemed exports is filed.
    3. In respect of returns for being remade, refined, reconditioned, or subjected to any other similar process in any place of business, the date of entry into the place of business for the purposes aforesaid.

- ‘Relevant date’ in case of services exported out of India means the date of receipt of payment in convertible foreign exchange, where the supply of service had been completed prior to the receipt of such payment; or issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.
- In case of consequential refunds arising from judgment, decree, order or direction of appellate body or Court, the relevant date shall be the date of communication of such judgment, etc.
- In case of refund of unutilised ITC, the relevant date shall be the end of the financial year in which the claim for refund arises.
- Where tax is paid provisionally, the relevant date shall be the date of adjustment of tax after the final assessment.

Processing of refund claim

- Where the proper officer is satisfied that the amount claimed is refundable, he shall order accordingly and credit to the Consumer Welfare Fund except where the refund claim relates to exports, refund of input tax credit as mentioned in (b) above, or the applicant had not passed on the incidence of such tax and interest to any other person. However, no refund shall be paid to an applicant if the amount is less than INR 1000.
- The order above shall be issued within 90 days from date of receipt of the complete application.
- Where refunds have been claimed on account of export of goods and/or services made by such category of registered taxable persons as may be notified, 80% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, shall be refunded on a provisional basis subject to safeguards as may be prescribed. The remaining 20% may be refunded after due verification of documents furnished by the applicant.
- However, where any refund is due under the said sub-section to a registered taxable person who 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 by the specified date, the proper officer may either withhold payment until the return is filed or tax is paid; or deduct such tax, interest or penalty from the refund due. Specified date for this purpose means the last date for filing an appeal where no appeal has been filed and 30 days after such last date in other cases.

Interest on delayed refunds

- If the refund is not granted within three months from the date of receipt of application, interest at notified rate shall be payable from the date immediately after the expiry of the due date for sanction of refund till the date of refund of such tax.

APPEALS AND REVISION

11

Overview

- The Draft GST Law provides for the following hierarchy for appeals:
  1. Appeal to First Appellate Authority
  2. Revision by Commissioner (applicable to SGST)
  3. Appeal to Appellate Tribunal
  4. Appeal to High Court
  5. Appeal to Supreme Court
- Provisions regarding constitution of Appellate Tribunal are identically worded both for CGST and SGST. The Model GST Law provides for constitution of a National Goods and Service Tax Appellate Tribunal (NGSTAT) headed by National President. NGSTAT shall have one branch in each State called State GST Tribunal (SGSTAT) headed by a State President. The Tribunal will consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed.
- There will be differences in the appellate mechanism available to the Tax Administration between CGST and SGST. While the Model GST Law specifically empowers the department to file appeals before the First Appellate Authority and the Appellate Tribunal in respect of CGST, for SGST it provides for powers to revise adjudication orders.
- However, the provisions regarding appeal to High Court, appeal to Supreme Court are common between CGST and SGST.
- IGST Law does not have separate provisions for appeals. The provisions for CGST shall also apply IGST as well.
- Unlike the present sales tax / VAT Regime which provides for constitution of a special authority called Central Sales Tax Appellate Authority (CSTAA) for resolution of inter-State disputes, the Model GST Law provides that disputes involving two States or the Centre and any State shall directly be taken to Supreme Court from Appellate Tribunal.
- There are mandatory pre-deposit conditions for filing appeal before the First Appellate Authority and the Appellate Tribunal. The presumption appears to be that no separate stay application for stay of recovery would be required once the pre-deposit conditions are met.
- The following persons can appear as 'authorised representative' before the GST Officers, First Appellate Authority and Appellate Tribunal, namely:-

1. Relative or regular employee of Taxpayer
2. Advocate entitled to practice in India
3. Chartered Accountant, Cost Accountant or a Company Secretary holding valid Certificate of Practice
4. Person with qualifications specified by Central Government.

Appeal provisions in respect of CGST

Appeal to first Appellate authority or Tribunal – Any person aggrieved or department on direction of the Commissioner, can file appeal to the first Appellate Authority against any decision or order passed by an adjudicating authority. Three months' time from the date of communication of order is given to the appellant in this regard, while appeal may be decided within a period of one year from date of filing. The provisions are similar in case of appeal to Appellate Tribunal except that in case of appeal to first appellate authority, delay of upto one month is condonable while in case of Tribunal, delay in filing is condonable on showing of sufficient cause. Both appeals require deposit of 10% of amount in dispute as pre-condition to filing the appeal.

Appeal provisions in respect of SGST

Appeal to first Appellate authority or Tribunal – Similar provisions, as in the case of CGST, have been provided under SGST also in case of appeals to first appellate authotity and to the Appellate Tribunal. However it may be noted that in respect of SGST, higher pre-deposit upto 50% of the disputed amount can be mandated on an application by the department in cases involving disputed tax liability of Rs. 25 Crore or more.

Revision provisions - Provisions relating to SGST also provide for Revision by Commissioner either suo-motu or on the basis of information received against decision or Order passed by any officer subordinate to Commissioner. The Revision is allowed only on points not appealed before Appellate Tribunal, High Court or Supreme Court.

Appeals to High Court and Supreme Court (common to CGST and SGST)

Appeal to High Court – Commissioner of GST or any other party aggrieved by the Order of Appellate Tribunal in cases involving substantial question of law can file appeal to High Court within 180 days of communication of the Order to the concerned party. It may be noted that Order of Appellate Tribunal involving dispute between two States or a State and Centre regarding nature of supply or place of supply, are not appealable before the High Court.

Appeal to Supreme Court is to be filed against the Order of High Court or the Order of Appellate Tribunal involving dispute between two States, or a State and Centre regarding nature of supply or place of supply.

ELECTRONIC COMMERCE TRANSACTIONS

12

Coverage

- Electronic Commerce Operator ("E-Commerce Operator") covers persons owning, operating or managing an electronic platform which facilitates the supply of any goods and/or services or provides information or any other services incidental to or in connection there with. But excludes persons engaged in supply of such goods and/ or services on their own behalf from the definition of E-Commerce Operator.

Taxability on supplies made through E-Commerce Operator

- E-Commerce operator will be liable to pay GST on supply of services provided by them to the suppliers.
- Suppliers will be liable to pay GST on supply of goods and/or services made by them through the E-Commerce Operator.

Liability to register

- Suppliers supplying goods and/or services, other than branded services through E-Commerce Operator will be liable to get registered under Model GST law irrespective of threshold limit.
- E-Commerce Operator will be liable to be get registered under the Model GST law irrespective of threshold limit.

Tax Collection at Source (TCS)

- E-Commerce Operator are liable to collect TCS on the supplies of goods and/or services made by the suppliers through its platform.

Returns to be filed by E-Commerce Operators

- E-Commerce Operators are required to file the following Returns/ Statements:
  1. GSTR-1: Outward supplies of services by E-Commerce Operator to Suppliers
  2. GSTR-2: Inward supplies received by E-Commerce Operator
  3. GSTR-3: Monthly Return

4. GSTR-8: Annual Return
5. Statement under section 43C (4) of the Model GST Law

Matching of supplies

- The supplies reported by E-Commerce Operator will be matched with the details given by the supplier in his Return for outward supplies (GSTR-1) and in case of mismatch, output liability of vendor will be re-determined.

SUPPLIES BY AGGREGATORS

13

Deemed supply by Aggregators

- 'Aggregator' has been defined on lines similar to the existing provisions in service tax law to mean a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said Aggregator.
- Supply of branded services by aggregator has been deemed to be supply under the Model GST Law. 'Branded services' has been defined as services which are supplied by an electronic commerce operator under its own brand name or trade name, whether registered or not.

Liability to register

- An Aggregator who supplies services under his brand name or his trade name, will be liable to get registered without any minimum threshold limit.

Returns to be filed by Aggregator

- Aggregators are required to file the following Returns/Statements:
    a. GSTR-1: Outward supplies of services by Aggregator
    b. GSTR-2: Inward supplies received by Aggregator
    c. GSTR-3: Monthly Return
    d. GSTR-8: Annual Return

L&S Expert comments

- Whether provisions relating to Tax Collection at Source (TCS) as applicable on E-Commerce Operator will be applicable for Aggregators also?
- Whether Aggregators will be entitled to avail input tax credit in respect of eligible input, input services and capital goods used by them for making such supplies in view of the deeming supply provision? In the current regime they are required to pay under reverse charge.

TRANSITIONAL PROVISIONS

14

Carry forward of input credit

- The transition provisions allow manufacturers / traders / service providers to carry forward the Cenvat Credit or Input Tax Credit (ITC) availed by them under the Central Excise, Service Tax or the Value Added Tax (VAT) legislations.

<table>
<tr><th>S.No.</th><th>Situations</th><th>Transitional provision</th></tr>
<tr><td>1.</td><td>Cenvat Credit and ITC carried forward in return for the period ending with the day immediately preceding the day when GST Act will be applicable.</td><td rowspan="2">• The transitional provisions allow carry forward of Cenvat credit and ITC.
• Cenvat Credit shall be carried forward as CGST and ITC shall be carried forward as SGST.</td></tr>
<tr><td>2.</td><td>Unavailed Cenvat credit and input tax credit in respect of capital goods, not carried forward in a return.
(Cases where staggered credit on capital goods is permitted.)</td></tr>
<tr><td>3.</td><td>Cenvat Credit of eligible duties and taxes / ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock by following person:
a. Person who was not liable to be registered under the earlier law
b. Person who was engaged in the manufacture of exempted goods under the earlier law but which are liable for GST
Accordingly, exempt goods lying in stock made out of tax-paid inputs and in respect of which duty paid documents is available will get covered under this provision.</td><td>• The transitional provisions allow carry forward of such credit subject to prescribed conditions.
• The amount of credit shall be calculated in accordance with generally accepted accounting principles to be prescribed.</td></tr>
</table>

- However, the carry forward requires that the credit should also be admissible in terms of the ITC provisions of the GST Law. The procedure may require to await the Rules to be framed in this regard.

Other transitional provisions

- Inputs/semi-finished/finished goods removed for job work in pre GST regime and returned in GST regime.
- Issue of supplementary invoices, debit or credit notes post GST regime in respect of supplies made pre GST regime.
- Sales made during pre-GST regime but returns under GST regime:
- Pending litigation/refund matters
- Revision of returns filed under pre GST regime
- Long term construction / works contracts

L&S Expert comments

- Whether credit in respect of the following pre-GST taxes/duties will be allowed, namely:-

1. Credit of excise duty or service tax in respect of duty paid invoices lying with the erstwhile VAT dealer
2. ITC on stock lying with service provider.
3. CST on inputs held in stock and inputs contained in semi-finished or finished goods held in stock by manufacturer
4. CST and excise duty paid stock held by the trader
5. Credit of excise duty paid on goods in transit.

- Whether there will be grandfathering of time bound and project based exemptions and concessions (e.g. area based exemptions) being availed under the Central Excise, Service Tax, VAT or other taxes which are to be subsumed in the GST will be grand in respect of the following pre-GST taxes/duties?

NOTES

NOTES

Founded by V. Lakshmikumaran and V. Sridharan in 1985, Lakshmikumaran & Sridharan (L&S) is one of the largest integrated law firms in India with over 300 professionals including 46 partners.

The firm has ten offices located across India. In Europe, the firm's office is in Geneva. It specializes in the areas of Competition Law, Customs & International Trade, Taxation, Intellectual Property and Corporate law.

The firm has provided more than 30,000 legal opinions, undertaken legal compliance review for more than 300 companies and handled more than 40,000 litigation cases before various fora both in India and abroad including more than 2,000 cases before the Supreme Court of India.

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