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L&S Update

an e-update to clients from
Lakshmikumaran & Sridharan

GST Update
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**Goods and Services Tax (GST) –
Model Act**

Model GST Law

Overview

- While the Empowered Committee meeting is underway at Kolkata, the Model GST Law as prepared by the Empowered Committee of State Finance Ministers has put up in the Government of India, Ministry of Finance website at <http://finmin.nic.in/>.
- It may be recalled that the Constitutional (One Hundred and Twenty-Second) Amendment Bill, 2014 has already been passed by the Lok Sabha and is pending approval by the Rajya Sabha. The Government of India had also released four Reports of the Joint Committee on Business Processes for GST on Registration, Payment, Returns and Refunds in October 2016.
- The Model Law is in furtherance to these documents and should be read together for completion.

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.
- This Model Law 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 and services or both. The term ‘supply’ is defined inclusively to *inter alia* include -
- All form of Supplies 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 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) provisions 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 fifty 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 not 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.
- Supplies 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. The procedure may require to await the Rules to be framed in this regard.
- Unavailed Cenvat credit on capital goods, which is not carried forward in a return, will also be allowed 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.



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