L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

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Model GST Law - Scrutiny of Returns, Assessment and Demands

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.

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.

Assessment / Scrutiny of Returns (contd.)

- 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:

	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

Demand / Adjudication (contd.)

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.

Demand / Adjudication (Contd.)

- 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. These provisions appear to have been inserted in light of Apex Court rulings in this regard.

- Interest has been made recoverable whether or not specified in the Order

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