L&S Update

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

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Revised Model GST Law - General Provisions including Rate Cap, Definitions & Cess

General Provisions including Rate Cap, Definitions & Cess

It may be recalled that the Government had earlier released the Model GST Law in public domain on June 14, 2016. Taking into account the representations and suggestions received from the trade and industry, the Government has released the revised Model GST Laws (comprising of the draft Central/State GST Act and the Integrated GST Act) along with the draft Compensation Bill in public domain on November 26, 2016. However, the revised draft of GST Valuation Rules have not been released.

Some of the key provisions and/or changes proposed in the revised draft Model GST laws in respect of levy and collection of GST including definition of certain terms, rate cap and the Compensation Cess are highlighted below.

Rate Cap

- The proposed rate of CGST and SGST has been capped at 14% each. Taken together this would mean a rate cap for CGST+SGST would be 28%. The IGST rate has been capped at 28%.

Taxable person

- Taxable person is a person who is registered or liable to be registered under the GST Act.
- A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons.
- An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons.

Deemed Supply

- Schedule I of the Model CGST/SGST Act lists the matters which are proposed to be treated as supply even if made without consideration.
- As per the revised Schedule I, the following matters are now proposed to be treated as supply when made even without consideration
  - → Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
  - → Supply of goods or services between related persons, or between distinct persons, when made in the course or furtherance of business.
  - → Transaction between principal and agent.

→ Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

- In the absence of consideration, following matters which were earlier proposed to be treated as supply may now not be treated as supply
  → Permanent transfer/disposal of business assets where input tax credit has not been availed on such 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.

Definition of "Goods"

- The definition of "goods" given under the Draft GST Law has been amended to include "actionable claims" and exclude "securities" from its ambit.

Negative List

- To align with the current provisions pertaining to service tax, a negative list of activities/transaction, which shall neither be treated as supply of goods nor a supply of service, has been proposed to be provided in the Schedule III of the Model CGST/SGST Act.

- As per Schedule III the following activities shall not be treated as supply
  - → Services by an employee to the employer in the course of or in relation to his employment.
  - → Services by any Court or Tribunal established under any law for the time being in force.
  - → Services by a foreign diplomatic mission located in India.
  - → Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

Composite/Mixed supply

- Provisions regarding determination of tax liability in case of mixed and composite supply have been provided.
- A composite supply comprising two or more supplies of goods or services (one of which is a principal supply), shall be treated as a supply of such principal supply which plays the dominant role.
- A mixed supply comprising two or more supplies (where such supply does not constitute a composite supply) shall be treated as supply of that particular supply which attracts the highest rate of tax.

Valuation

- Subsidy given by the Central Government or a State Government will not be required to be included in the value of taxable supply.
- Interest or late fee or penalty for delayed payment of any consideration will be includible in the taxable value.

Supply to/by SEZ

- Provisions with regard to supplies made by/to a SEZ developer or an SEZ unit have been incorporated in the revised draft laws.
- Supply of goods and/ or services to or by a SEZ developer or an SEZ unit has been proposed to be deemed as inter-State supply.
- Supply of goods and/ or services to or by a SEZ developer or an SEZ unit shall be treated as zero rated supply.
- The SEZ developer or SEZ unit receiving zero rated supply shall be eligible to claim refund of IGST paid by the registered taxable person on such supply.

Goods and Services Tax Compensation Cess

- For the purpose of providing compensation to the States for loss of revenue arising on account of implementation of GST for the period of five years, proposal has been made for levy and collection of GST Compensation Cess.
- This cess will be leviable on the supplies (including imports and those on which tax is payable on reverse charge basis) which may be prescribed on the recommendations of the GST Council.
- Input tax credit of the said cess will be available which can be further utilized only towards payment of such cess chargeable on outward supplies.
- Applicable rate of this cess will be notified separately.
- Separate format of return and form for claiming refund of this cess will be prescribed.

Anti-profiteering Measure

- The revised model law also proposes anti-profiteering measure to ensure that the businesses pass on the tax benefits derived from implementation of GST, in the form of increased availability of input tax credit, reduction in tax rate, etc., by way of reduction in prices of their supplies to the consumers.

- For implementation of this measure, the Central Government may constitute an Authority or may entrust the work to an existing Authority constituted under any law.
- Such Authority will exercise its powers (including those for imposition of penalty) in the cases in which it finds that the price being charged has not been reduced on account of tax benefits derived from implementation of GST.

Power of CAG to call for information

- The Comptroller & Auditor General (CAG) or officers authorized by him are proposed to be empowered to seek information and returns which are furnished under the GST Act and required by them for conduct of audit under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act.

Joint and several liability for payment of tax

- An agent and his principal are proposed to be made jointly and severally liable for payment of tax payable on such goods which are supplied or received by the agent on behalf of his principal.

- Every person who was a director in a private company during the period for which any tax due in respect of any supply of goods or services cannot be recovered is proposed to be made jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Works contract

- Ambiguity with regard to treatment of maintenance contracts appears to have been removed.

- Definition of works contract is proposed to be amended to also include the activities pertaining to completion, maintenance and alteration activities.

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