



# TAX FLASH NEWS

## Circulation of draft Goods and Services Tax law

### Background

After the release of few draft business processes by the joint committee on business processes for GST in the month of October 2015, it was anticipated that the government will shortly release the draft GST law in the public domain.

The draft Goods and Services Tax (GST) law was recently circulated/uploaded on few tax portals (source: [www.vatinfo.com](http://www.vatinfo.com)).

Unlike the business process reports issued by the joint committee on business processes for GST, the said draft GST law is not officially released by the government or Empowered Committee of state's finance ministers. We understand that the draft GST law which is currently in circulation is a working draft, and suitable changes shall be made by the GST Law Drafting Committee.

We expect that once the GST Law Drafting Committee has fine-tuned various provisions of the GST law, a final version will be released by the government for reference of the trade and industry.

In the meantime, we have briefly summarised the key features or aspects of the draft GST law which are currently under deliberation by the central and state governments.

### Coverage

The draft GST law provides insights on the governing provisions/framework regarding levy and collection of GST. The GST law shall be referred to as central/state Goods and Services Tax Act, 2016 and consists of Part I to XIV with three schedules which broadly covers the following aspects:

1. Scope of supply and definitions of key terms
2. Nature of supply

3. Place of supply
4. Time of supply
5. Value of taxable supply
6. Scheme of input tax credit
7. Demands/refunds
8. Returns, payment, and related compliances
9. Transitional provisions

The significant/key aspects under the draft GST law are as follows:

- (i) Scope of 'supply of goods and services'
  - All forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal and importation of services, made or agreed to be made, for consideration by a person in the course or furtherance of business
  - Supply specified in Schedule I made or agreed to be made, without a consideration
  - Schedule II covers matters to be treated as a supply of goods or services.
- (ii) Nature of supply of goods and services
  - If supply involves the movement of goods from one state to another, then it will be construed as Inter-state supply, and where the supply of goods remains within the same state, it will be treated as intra-state supply.
  - If the service provider and the service recipient are located in different states then the supply of services will be considered to be inter-state supply; whereas the same will be treated as intra-state supply if the service provider and the service recipient are located in the same State.

(iii) Transaction whether supply of 'goods' or 'services'

- Schedule II of the model GST law prescribes the nature of transactions and when they can be construed as supply of goods or services:

Nature of transaction	Treatment
Transfer of the title in goods or transfer of title through an agreement at a future date	Supply of goods
Transfer of right or interest in goods	Supply of services
Lease of immovable property including land and building	Supply of services
Treatment or process applied to goods belonging to another person	Supply of services
Work contract for carrying out building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any immovable property	Treated as declared service

(iii) Place of supply for goods and services

Transaction of supply of 'goods'	Place of supply
Supply of goods involving movement of goods	The place of delivery to the receiver
If supply does not involve movement of goods	The location of such goods at the time of delivery to the receiver
Assembly or installation of goods at site	Place of such installation or assembly
Goods supplied on board a conveyance	The location at which such goods are taken onboard

Transaction of supply of 'services'	Place of supply
Supply of all services to a registered person unless specified otherwise	Location of the service recipient
Supply of all services to any other person unless specified otherwise	Location of the service provider

- Specific provisions have been made to determine the place of supply for services relating to immovable property, performance based services, telecommunication services, insurance services, banking and financial services, etc.

(v) Time for supply of goods and services

- The time of supply of goods would be earliest of the date of (a) removal of goods; or (b) issuance of invoice; or (c) receipt of payment; or (d) the date on which the buyer shows receipt of goods.
- The time of supply of services would be earliest of the date of (a) issuance of invoice (if issued within prescribed period) or receipt of payment; or (b) date of completion of the service or receipt of payment if the invoice is not issued within the prescribed period. In other cases, the time of supply of services shall be construed as the date on which the recipient shows receipt of services.
- In case of payment of tax on reverse charge basis, the time of supply will be the earliest of the following events:

- the date of receipt of services or
- the date of payment or
- the date of receipt of invoice or
- the date of debit in the books of accounts.

(vi) Value of taxable supply

- The value of taxable supply will be the transaction value, which is the price actually paid or payable for the said supply of goods and services unless the parties are related.
- The value of taxable supply should also include any amount which is paid by the recipient to the supplier in connection with the supply, royalty/license fees payable as a condition of supply, any taxes/duties charged under any statute other than GST, etc.
- In the case of supply of goods and/or services between related parties, the valuation shall be governed by the rules framed by the government.
- A compounding scheme for levy of GST has been introduced for registered taxable persons whose turnover in a financial year does not exceed INR50 lakhs. The rate of composition tax is expected to be not less than one percent.

- In the case of supply of goods (bearing retail sale price under Legal Metrology Act, 2009) made by the taxable person to any unregistered person, the value shall be retail sale price less the applicable GST.

(vii) Input tax credits

- The draft law lays down the provisions for availment and utilisation of the input tax credit as well as provides for certain specific circumstances where credit cannot be availed like goods/services used for personal consumption, certain petroleum products, goods/services used for the construction of immovable property, etc.
- The model GST law also prescribes the order of utilisation of the credit of Central GST (CGST), State GST (SGST) and Integrated GST (IGST).

Nature of tax paid	Order of utilisation
IGST	IGST, CGST and SGST
CGST	CGST, IGST
SGST	SGST, IGST

(viii) Returns under GST

- Every registered taxable person shall file an electronic return for inward/outward supplies of goods and services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within twenty days after the end of such tax period.
- The registered person is also required to furnish details of outward supplies and inward supplies by 10th of the next month and 15th of next month respectively.
- Further, persons covered under the compounding scheme for levy of GST shall furnish a return for each quarter within eighteen days after the end of such quarter.

(ix) Transitional provisions – treatment of unutilised input tax credit

- The taxable person may be allowed to carry forward the unutilised balances of CENVAT credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT Act / rules) lying with him on the date of his switching over to GST in such manner as may be prescribed

(x) Model IGST law

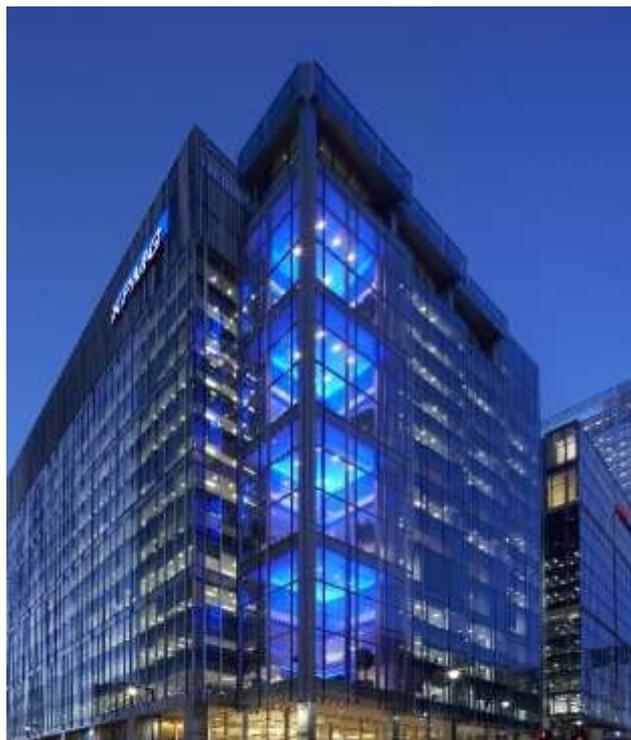
- The model IGST law shall govern the levy of GST on inter-State supplies of goods and/or services by the central government.
- The supply of goods/services in the course of import into the territory of India shall be deemed to be a supply in the course of inter-state trade or commerce.

(xi) Additional tax on certain inter-state supplies

- The levy of additional tax will be at a rate not exceeding one percent and will be levied for a period of two years or such other notified period by the central government on the recommendation of Council.
- For this purpose, the 'supply' will mean all forms of supply made for a consideration and this additional tax cannot be claimed as input tax credit.

**Our comments**

With the availability of the draft GST law in the public domain (though not officially released by the central government or Empowered Committee), the trade and industry can anticipate and envisage the provisions which may form part of the model GST law. The government should endeavour to officially release the draft GST law for inputs/comments by trade and industry at an early date.



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