



Government of India releases the model Goods and Service Tax Law

Background

The release of the Model GST Law on 14 June 2016 nudges India towards implementation of the Goods and Service Tax (GST) by 1 April 2017 if the Rajya Sabha approves the Constitution Amendment Bill in the upcoming Monsoon Session.

The Model GST Law has put forth the broad GST framework in the public domain which will form the basis of the GST Law to be adopted by the central and respective state governments.

Coverage of the Model GST Law

The Empowered Committee of State Finance Ministers has released two draft GST law (a) the Central/State Goods and Services Tax Act, 2016 (CGST Act/SGST Act); and (b) Integrated Goods and Services Tax Act, 2016 (IGST Act) along with Valuation Rules to be adopted under GST regime.

The CGST/SGST Act comprises of 25 chapters and four schedules. The IGST Act contains 11 chapters including the provisions relating to the place of supply of goods and/or Services. Both the Acts put together broadly cover the following aspects of the GST framework:

- (i) Meaning and scope of supply
- (ii) Treatment of transactions as supply of goods and/or services
- (iii) Place of supply of goods and services
- (iv) Time of supply of goods and services
- (v) Value of taxable supply
- (vi) Input tax credit
- (vii) Refund of tax
- (viii) Electronic commerce
- (ix) Registration
- (x) Composition scheme
- (xi) Returns under GST
- (xii) Transitional provisions

The significant/key aspects of the Model GST Law are as follows:

(i) Meaning and scope of supply [Section 3 of CGST Act/ SGST Act]:

The term 'supply' is stated to include:

- All forms of supply of goods and/or services (such as sale, transfer, barter, exchange, license, rental, lease or disposal) for consideration in the course or furtherance of business.
- Importation of service (whether or not for a consideration and whether or not in the course or furtherance of business).

- Specific transactions (specified in Schedule I) made without a consideration such as services/assets put to a private or non-business use.

(ii) Treatment of transactions as supply of ‘goods’ or ‘services’ [Schedule II of CGST Act/ SGST Act]:

Schedule II of the Model GST Law prescribes the nature of transactions and when they can be construed as the supply of goods or services. Some of these transactions and their prescribed treatment are illustrated below:

<i>Nature of transaction</i>	<i>Treatment</i>
Transfer of the title in goods or transfer of title through an agreement at a future date upon payment of full consideration	Supply of goods
Renting of immovable property including lease, tenancy, easement, license to occupy land, etc.	Supply of services
Treatment or process applied to goods belonging to another person	Supply of services
Construction of a complex, building, civil structure or a part thereof intended for sale to a buyer	Supply of services
Temporary transfer or permitting the use or enjoyment of any intellectual property right	Supply of services
Works contract including transfer of property in goods involved in the execution of a works contract	Supply of services
Transfer of the right to use any goods for any purpose	Supply of services

(iii) Place of supply for goods and services [Section 5 and 6 of IGST Act]:

The place of supply of goods and services is specified in IGST Act to ensure that the same is consistently followed across India without any deviation by any state.

<i>Transaction of supply of ‘goods’</i>	<i>Place of supply</i>
Supply of goods involving movement of goods	Location of the goods at which the movement of goods terminates for delivery to the recipient
Supply by way of transfer of title documents of the goods to a person	The principal place of business of such 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 on board

<i>Transaction of supply of 'services'</i>	<i>Place of supply</i>
Supply of all services (unless specified otherwise) to a registered person	Location of the service recipient
Supply of all services (unless specified otherwise) to any other person	Location of the service recipient if available on the record; or else location of the service provider

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

(iv) Time of supply of goods and services [Section 12 and 13 of CGST Act/ SGST Act]:

- The liability to pay CGST/SGST shall arise at the time of supply of goods or services.
- The time of supply of goods would be earliest of the date of (a) removal of goods/ making available the goods if the same are not removed; or (b) issuance of invoice; or (c) receipt of payment; or (d) date on which the buyer shows receipt of goods in his books of account.
- 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 continuous supply of services, the time of supply will be the due date of payment to supplier in case it is ascertainable from the contract and if such due date is not ascertainable from the contract, each time when the supplier of service receives the payment or issues an invoice, whichever is earlier. Also, where the payment is linked to the completion of an event, the time of completion of that event is the time of supply.

- 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.

(v) Value of taxable supply [Section 15 of CGST Act/ SGST Act and Valuation Rules]:

- The value of taxable supply of goods and services will be the transaction value (i.e. the price actually paid or payable for the said supply of goods and services) if the parties are not related and the price is the sole consideration for the supply.
- 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.
- The value of supply of goods and/or services in specific cases including in the case of supply between related parties shall be governed by the rules framed by the government.

(vi) Input tax credits [Section 16 to 18 of CGST Act/ SGST Act]:

- 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 primarily for personal consumption of employees or used for private or personal consumption,

goods/services acquired by the principal in the execution of works contract which results in construction of immovable property, goods on which tax is paid under composition, etc.

- The Model GST Law specifies several conditions for availment of input tax credit and specifically includes the condition such as (a) the recipient has received the goods and/or services; (b) the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply, etc.

(vii) Refund of tax [Section 38 of CGST Act/ SGST Act]:

- Claim for refund of tax and interest must be filed within two years from the relevant date except in cases where the payment is made under protest.
- The exporters of goods and services as well as assessee having an inverted duty structure can claim a refund of unutilised credit at the end of the tax period.
- In respect of notified category of exporters of goods and services, a mechanism has been provided to provisionally refund 80 per cent of the total amount claimed.

(viii) Electronic Commerce [Section 43B and 43C of CGST Act/ SGST Act]:

- The Model GST Law provides that every electronic commerce operator is required to collect an amount at a notified rate, at the time of credit of any amount to the account of the supplier or at the time of payment of any amount representing consideration towards the supply, whichever is earlier and deposit such collected amount with government within 10 days after the end of the month.
- Every electronic commerce operator shall furnish an electronic statement of all amounts collected containing the details in respect of all supplies of goods and/or service effected through the operator.

(ix) Registration

- Schedule III of the GST Act provides for the registration thresholds.
- For all the suppliers of goods and services, the threshold limit for registration will be INR9 lakh (aggregate turnover in a financial year). However, for suppliers who conduct business in any of the North Eastern states including Sikkim, the threshold limit will be INR4 lakh.
- However, persons making any inter-state taxable supply shall be required to obtain registration irrespective of the threshold specified above.
- Similarly, no thresholds limit has been prescribed for persons required to pay tax under reverse charge, Input service distributor, casual dealers, etc.

(x) Composition Scheme

- Subject to specified restrictions and conditions, the Model GST Law provides an option to a registered dealer to pay tax at a composition rate (of not less than one percent of turnover) if aggregate turnover in a financial year does not exceed INR50 lakh.

(xi) Returns under GST [Section 25 to 31 of CGST Act/ SGST Act]:

- 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 a tenth of the next month and fifteenth of the next month respectively.
- Further, persons covered under the composition scheme for levy of GST shall furnish a return for each quarter within eighteen days after the end of such quarter.

- Every registered taxable person required to deduct tax at source shall furnish the electronic return for the month in which such deductions have taken place by a tenth of next month.
- Every Input Service Distributor shall file a monthly electronic return by thirteenth of the next month.
- Annual return is required to be filed by 31 December following the end of such financial year.

(xii) Transitional provisions – treatment of unutilised input tax credit [Section 143 to 146 of CGST Act/ SGST Act]:

- A 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. However, the credit will lapse if the said credit is restricted under the Model GST Law.

The Model GST Law also deals with other provisions relating to assessment, audit, demand and recovery, inspection, appeal, etc.

Our comments

With the announcement of the Model GST law, the trade and industry can anticipate and envisage the provisions which may form part of the Model GST Law. This provides an opportunity to trade to identify the areas of impact on account of the specific provisions and submit their recommendations to government for suitable modification in the final GST law.

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