



GST updates

Applicability of market value to transactions between non-Associated Enterprises

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The determination of transaction value/ market value has always been a matter of debate under the current indirect tax laws such as excise and customs. It appears that this legacy is expected to continue under the GST regime as well.

Under the Model GST Law, the value of taxable supply shall be the transaction value i.e. the price actually paid or payable for the supply of goods and services subject to price being

the sole consideration and the supplier and recipient of the supply not being related parties. Further, Section 15 lays down certain situations wherein the value would be determined as per the methods prescribed in the Valuation Rules including inter alia situations where price is not the sole consideration, where parties are related and there is a reason to doubt the truth or accuracy of the transaction value declared.

In this segment, we will focus on the provisions dealing with the determination of transaction value in case there is a reason to doubt the truth or accuracy of the statement. The relevant portion of the provisions have been encapsulated below:

Section 15(4)- Value of taxable supply	Rule 7 of Valuation Rules- Rejection of declared value
<p>The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.</p> <ul style="list-style-type: none"> i. the consideration, whether paid or payable, is not money, wholly or partly; ii. the supplier and the recipient of the supply are related; iii. there is reason to doubt the truth or accuracy of the transaction value declared by the supplier; iv. business transactions in the nature of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery; v. such other supplies as may be notified by the Central or a State Government in this behalf 	<ul style="list-style-type: none"> a. When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3. b. The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following: <ul style="list-style-type: none"> i. the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed; ii. the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply;



In a combined reading of 15 (4) (iii) of the Act with Rule 7 (1) (b) (ii) of the Model Valuation Rules, it appears that the value declared for the transactions might be questioned using 'market value' as a parameter if there is a reasonable doubt about the truth and accuracy of the transaction value declared by the supplier. In terms of Section 2(67) of the draft law, the term 'market value' has been defined to mean the full amount which a recipient of a supply is required to pay in order to obtain the goods and/or services of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related.

Since this Rule does not specifically talk about its application being limited to transactions between two related entities, a view is possible that the authorities have the power to question the valuation even in case of third party transactions. Although a similar provision existed under the present customs laws as well (not for excise), the nuisance value of this could be higher in the GST regime given the increased number of transactions being covered under this regime.

Further, the guidelines laid down for determining the truth and accuracy of the value of supply being worded in an inclusive manner may give rise to multiple litigations under the GST regime. Further, the term 'significantly higher and lower' as used in the guidelines merits certain clarifications as such words being vague and ambiguous could also be used in an arbitrary manner by the authorities.

The first question is how does one determine the market value. It could be highly subjective in light of the following aspects:

- What should be the benchmark adopted for ascertaining services of like kind and quality especially in case of services (for goods, reference may still be drawn to the existing rules/practices adopted for customs and excise purposes)
- What if there are no comparables available to ascertain market value

Also, the bigger question is whether these provisions are required at all to the extent GST is creditable – applicability of such provisions ought to be restricted to scenarios as encapsulated below (illustrative):

- The assessee has filed an application for refund of GST
- B to C transactions where GST is not creditable.

Invoking these provisions under other scenarios could be futile since GST would be creditable in the hands of a purchaser and to this extent the issue will become tax neutral

In conclusion, the industry would expect more clarity on this issue since any such requirement in the context of third party transactions could substantially increase compliance requirements in terms of documenting justification for adoption of a particular price. Further, should the government decide to go ahead with this model, it needs to frame specific guidelines so that there is uniformity in approach as far as authorities are concerned.

Last but not the least, specific safeguards should be built in the rules so that this power is not arbitrarily exercised by authorities.

KPMG in India contacts:

Sachin Menon

Partner and Head

Indirect Tax

T: +91 22 3090 2682

E: sachinmenon@kpmg.com

KPMG.com/in

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