



cyril amarchand mangaldas
advocates & solicitors



TAX ALERT

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DISSECTING THE MODEL GST LAW

The Ministry of Finance has finally released the Model GST Law (“**Model**”) on June 14, 2016 which outlines the proposed structure for the GST regime. The Model has provided the draft of the Goods and Services Tax Act, 2016 (“**GST Act**”) which the Central Government and each of the State Governments would use to draft their respective Central and State Goods and Services Tax (“**GST**”) legislations. The draft of the Integrated GST Act, 2016 (“**IGST Act**”) has also been released as part of the Model.

This is in keeping with the assurances provided by the Government after the release of the Draft Model of Goods and Service Tax Act, 2016 (“**Old Model**”) in December, 2015 which was panned by all the stakeholders.

The key features of the Model are given hereunder:

1. Taxable Event

The taxable event under GST regime will be supply of goods or services. The definition of “supply” as per the proposed GST Act¹ is an inclusive definition which includes the following elements:

- A. all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

- B. importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and
- C. the following specified supplies made or agreed to be made without consideration:
 - a. Permanent transfer/disposal of business assets.
 - b. Temporary application of business assets to a private or non-business use.
 - c. Services put to a private or non-business use.
 - d. Assets retained after deregistration.
 - e. Supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business.
- D. Supply of any branded service by an aggregator under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.²

The Meaning of the term “supply” plays a crucial role under GST, as tax would be levied on supply of goods and services and the present concepts of manufacture/ rendering of services/ sale would lose all relevance. It is pertinent to note here that unlike the Old Model, Schedule I also specifies that the supply of goods by a registered person to a job-worker shall not be treated as supply of goods.

1. Section 3(1) of the GST Act.
2. Section 3(4) of the GST Act.

2. Levy of Tax

A. Taxable Person

For the purposes of the GST Act, ‘Taxable Person’ would mean a person who carries on any business at any place in India and who is registered or required to be registered under GST. However, an agriculturalist shall not be considered a ‘Taxable Person’.³ A person registered under the GST Act shall be a “taxable person” if his aggregate turnover in a financial year exceeds INR 10,00,000 (Ten Lakhs). However, a dealer conducting business in any of the North Eastern States including Sikkim shall be a “taxable person” under GST if his aggregate turnover exceeds INR 5,00,000 (Five Lakhs).⁴

B. Central/State Goods and Services Tax

A tax called Central/State Goods and Services Tax (“**CGST/SGST**”) shall be levied on all intra-state supplies of goods and/or services at the rate as may be specified in the GST Act.⁵

A negative list has also been prescribed for transactions and activities of Government and Local Authorities which shall be exempt from GST as per the Schedule to the GST Act, like activities of issuance of passport, visa, driving license, birth certificate or death certificate, etc.⁶

C. Integrated Goods and Services Tax

Integrated Goods and Services Tax (“**IGST**”) shall be leviable on all supplies of any goods and/or services made in the course of inter-State trade or commerce.⁷ For the purposes of this tax, supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.⁸ Detailed discussion on determination of the place of supply of goods and services is dealt with below.

D. Composition Levy

With respect to intra-state supplies of goods, a registered taxable person, whose aggregate turnover in a financial year does not exceed INR 50,00,000 (Fifty Lakhs), may be permitted to pay, *in lieu* of the tax payable by him, an amount calculated at a rate of one

percent (or any other rate that may be prescribed) of the turnover during the year. However, no such permission shall be granted to a taxable person who effects any inter-state supplies of goods and/or services.⁹ Moreover, the permission shall not be granted to the taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the Composition levy.¹⁰ It is important to note here that the taxable person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

3. Place of Supply

The IGST Act also specifies the determination of the place of supply of goods and services for the purposes of determining inter-state and intra-state supplies.

A. *Place of supply of goods:* The place of supply of goods shall be determined in the following manner:¹¹

- a. Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
- b. However, where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the recipient.
- c. Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, place of supply of such goods shall be the principal place of business of such person.
- d. Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.
- e. Where the goods are supplied on board a conveyance, the place of supply shall be the location at which such goods are taken on board.
- f. If the place of supply can’t be determined using 3.A.1 to 3.A.5 above, it shall be determined by law made by the Parliament in this behalf.

3. Section 9 of the GST Act.
4. Section 9 of the GST Act.
5. Section 7 of the GST Act.
6. Schedule IV of the GST Act.
7. Section 4 of the IGST Act.
8. Section 3 of the GST Act.
9. Section 8 of the GST Act.
10. Section 8(1) of the GST Act.
11. Section 5 of IGST Act.

B. *Place of supply of services*: The place of supply of services shall be determined in the following manner:¹²

- a. Generally, the place of supply to a registered person shall be the location of that registered person. However, in case of a person not registered place of supply shall be:
 - The location of the recipient where the address on record exists, and
 - The location of the supplier of services in other cases.
- b. Exceptions have been created to the aforementioned rule for specified services, such as those in relation to immovable property, performance based services, services in relation to events, transportation services, telecommunication services, banking and other financial services, insurance services and advertisement services to the Central or State Government.

- b. the date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period; or
- c. the date on which the recipient shows the receipt of services in his books of account, in a case the provisions (a) or (b) do not apply.

C. *Continuous Supply*:

- a. In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply.¹⁵
- b. In case of continuous supply of services, the time of supply shall be as follows:¹⁶
 - where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service;
 - where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the payment, or issues an invoice, whichever is earlier;
 - where the payment is linked to the completion of an event, the time of completion of that event.

4. Point of taxation

As per the present service tax law, the time of supply has also been specified through the provisions governing point of taxation. The point of taxation under the GST Act is to be determined as follows:

A. *Supply of Goods*: The liability to pay CGST / SGST on the goods shall arise at the time of supply which is the earliest of the following dates:¹³

- a. the date on which the goods are removed by the supplier for supply to the recipient, in a case where the goods are required to be removed; or
- b. the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed; or
- c. the date on which the supplier issues the invoice with respect to the supply; or
- d. the date on which the supplier receives the payment with respect to the supply; or
- e. the date on which the recipient shows the receipt of the goods in his books of account.

B. *Supply of Services*: The liability to pay CGST/SGST on services shall arise at the time of supply as follows:¹⁴

- a. the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period; or

5. Valuation

The value of supply of goods and/or services is the transaction value of the supply, i.e. the price actually paid or payable for the said supply where the supplier and recipient are not related parties and price is the sole consideration for the supply.¹⁷ The transaction value shall be the value determined in monetary terms.¹⁸ Where value of supply cannot be determined under the transaction value method, the Model has also provided that Goods and Services Tax Valuation (Determination of Value of Supply of Goods and Services) Rules, 2016 (“**Rules**”) which prescribes the following additional methods for valuation of the supply as given hereunder:

12. Section 6 of IGST Act.
13. Section 12 of the GST Act.
14. Section 13 of the GST Act.
15. Section 12 of the GST Act
16. Section 13 of the GST Act

- A. *Transaction value of goods or services of like kind:* The value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.¹⁹
- B. *Computed Value Method:* Where value cannot be determined under previous method, [i.e., as per 5.A above], it shall be based on computed value which shall include cost of production, manufacture or processing of the goods or, the cost of the provision of services, the charges, if any, for design and brand and amount towards profit and general expenses.²⁰
- C. *Residual Method:* Where the value cannot be determined under the computed value method, the value shall be determined using reasonable means consistent with the principles and general provisions of the Rules.²¹

6. Utilization of input tax credit

As per Chapter IX of the GST Act, the following manner shall be followed for the utilization of input tax credit credit:²²

- A. *Utilization of IGST credit:* The amount of input tax credit on account of IGST available in the electronic credit ledger of dealer shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, and in that order.
- B. *Utilization of CGST credit:* The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.
- C. *Utilization of SGST:* The amount of input tax credit on account of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

Here it is pertinent to note that the input tax credit on account of CGST shall not be available for payment of SGST, as had been previously anticipated.

7. Payment of Tax

Tax, interest, penalty, fee, etc., shall be paid *via* internet banking or by using credit/debit cards or NEFT or RTGS or by any other mode prescribed. This amount shall be credited to the electronic cash ledger of dealer.²³

8. Tax Deducted at Source

The Central or a State Government may mandate certain departments (viz. local authority, Govt. Agencies, etc.) to deduct tax at the rate of one percent on notified goods or services, where the total value of such supply, under a contract, exceeds INR 10,00,000 (Ten Lakhs).²⁴

9. Tax Collected at Source on online sales of goods or service

The GST Act specifically deals with “Electronic Commerce” under Chapter XIB. Every E-commerce operator engaged in facilitating the supply of any goods and/or services shall be liable to collect tax at source at the time of credit or at the time of payment whichever is earlier.²⁵

10. Refund

A person can claim refund of any tax and interest by making an application in that regard to the prescribed officer of IGST/CGST/SGST, as per the procedure as that may be prescribed. The application can be made before the expiry of two years from the relevant date, as may be prescribed. It has been provided that the limitation of two years shall not apply where such tax or interest or the amount has been paid under protest.

11. Highlights of Transitional Provisions

- A. Under the Model, a registered taxable person will be entitled to take credit of the amount of CENVAT credit/ Value Added Tax carried forward in a return furnished by him in respect of the period ending with the day immediately preceding the appointed day.²⁶
- B. The Model states that a registered taxable person shall be entitled to take in his electronic credit ledger/credit of the unavailed CENVAT credit/ unavailed input tax credit in respect of capital goods not carried forward in a return furnished under an earlier law by him for the

17. Section 15 of the GST Act.

18. Rule 3 of the Rules.

19. Rule 4 of the Rules.

20. Rule 5 of the Rules.

21. Rule 6 of the Rules.

22. Section 35 of the GST Act.

23. *Ibid.*

24. Section 37 of the GST Act.

25. Section 43C of the GST Act.



period ending with the day immediately preceding the appointed day.²⁷

- C. If a person registered under GST was not liable to be registered under the earlier law or if he was manufacturing exempted goods under the earlier law, which are liable to tax under GST, then he will be allowed to take credit of eligible duties and taxes in respect of inputs held in stocks or semi-finished/finished goods.²⁸
- D. Every claim for refund of any duty/tax and interest, if any, paid on such duty/tax or any other amount, filed by any person before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash. However, where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.²⁹

12. Compliance Requirements

A. Registration

- a. A dealer is required to take registration under this law if his aggregate turnover in a financial year exceeds INR 9,00,000 (Nine Lakhs). However, dealers conducting business in any North Eastern State including Sikkim are required to take registration if their turnover exceeds INR 4,00,000 (Four Lakhs).³⁰
- b. A dealer has to take registration in the State from where taxable goods or services are supplied, which reinforces the nature of GST as a destination based consumption tax.³¹
- c. However, if the person, other than an Input Service Distributor, is registered under an earlier law, it shall not be necessary for him to apply for fresh registration.³²
- d. Moreover, if a person has multiple business verticals in a State, he may obtain a separate registration for each business vertical.³³
- e. Every person already registered under the specified indirect tax laws will be issued a certificate of registration on a provisional basis which shall be

valid for a period of 6 months. Such person will have to furnish certain prescribed information within the 6 months of provisional registration and on furnishing of such information, the final registration certificate shall be granted by the Central/State Government(s).³⁴

B. The following kinds of returns are prescribed under the Model

- a. **Monthly Return:** Every registered taxable person shall have to e-file a monthly return for inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars within 20 days after the end of such month.³⁵
- b. **Return for Composition Scheme:** Dealers paying tax under composition scheme shall have to furnish a quarterly return, electronically within 18 days after the end of a quarter.³⁶
- c. **Return for dealers required to deduct tax at source:** Every dealer who is required to deduct tax at source shall furnish a return electronically within 10 days after the end of month in which deduction is made.³⁷
- d. **Return for Input Service Distributor:** Every Input Service Distributor shall file e-return for every calendar month, within 13 days after the end of such month.³⁸
- e. **First Return:** Every registered taxable person paying CGST/SGST on all intra-State supplies of goods and/or services shall have to furnish the first return from the date on which he became liable to registration till the end of the quarter in which the registration has been granted.³⁹
- f. **Annual Return:** Every registered taxable person shall have to furnish an annual return for every financial year electronically on or before the 31st day of December following the end of the financial year.⁴⁰
- g. **Final Return:** Every registered taxable person who applies for cancellation of registration shall have to furnish a final return in the prescribed form within three months of the date of cancellation or date of cancellation order, whichever is later.⁴¹

26. Section 143 of the GST Act.

27. Section 114 of the GST Act.

28. Section 145 of the GST Act.

29. Section 154 of the GST Act.

30. Para 1 of Schedule III of the GST Act.

31. Section 19 of GST Act read with Para I of Schedule III.

32. Section 19 of the GST Act.

33. *Ibid.*

34. Section 142 of the GST Act.

35. Section 27 of the GST Act.

36. Proviso to Section 27 of the GST Act.

37. Section 27(5) of the GST Act.

13. GST compliance rating score

As per the Model, every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of the GST Act. The GST compliance rating score shall be updated at periodic intervals and shall be intimated to the taxable person and also placed in the public domain.⁴²

This would be a welcome move to allow vigilance for taxpayers in the supply chain, so that the stream of credit is not broken, and incentivise every supplier/taxable person in a supply chain to be compliant.

14. Offences and Penalties

A. Specified Penalties under the Model

Chapter XVI of the GST Act deals specifically with "Offences and Penalties". A taxable person, who commits an offence under the specific provisions of the Model, shall be liable to a penalty of INR 10,000 (Ten Thousand) or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.⁴³

Further, any contravention of the provisions of the GST Act, for which no penalty is separately provided for, general penalty shall be applicable, which may extend upto Rs. 25,000.⁴⁴

However, no tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.⁴⁵

B. Prosecution

Commission of the following offences provided for under Chapter XVII of the Model shall be punishable as follows⁴⁶:

- a. In cases where there is evasion of tax and the amount of tax evaded exceeds two hundred and fifty lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- b. In cases where there is evasion of tax and the amount of tax evaded exceeds fifty lakh rupees but does not exceed two hundred and fifty lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- c. In the case of any other offence where the amount of tax evaded exceeds twenty five lakh rupees but does not exceed fifty lakh rupees, with imprisonment for a term which may extend to one year and with fine.

In any prosecution for an offence under the GST Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.⁴⁷

B. Offences by Companies and certain other persons

The Model provides that where an offence committed by a person is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.⁴⁸

38. Section 27(6) of the GST Act.
39. Section 27(A) of the GST Act.
40. Section 30 of the GST Act.
41. Section 31 of the GST Act.
42. Section 116 of the GST Act.
43. Section 66 of the GST Act.
44. Section 66 of the GST Act.
45. Section 68 of the GST Act.
46. Section 73 of the GST Act.
47. Section 75 of the GST Act.
48. Section 77 of the GST Act.



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Should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us at the following coordinates:

Cyril Shroff

Managing Partner

Email : cyril.shroff@cyrilshroff.com

Mekhla Anand

Partner

Email : mekhla.anand@cyrilshroff.com