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Model GST Law – A Road Map to A Stronger Nation

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ABSTRACT

In this paper I have tried to analyze the key provisions of the Model GST Law. GST is essentially an indirect tax and it will replace most of the taxes that are imposed. It is a comprehensive form of tax based on a uniform rate of tax for both goods and services. GST is payable only at the final point of consumption. The Government has released a draft version of the 'Model GST Law' on 14th June 2016. The Model GST Law contains comprehensive provisions of Central/State goods and Service Tax (CGST/SGST) and the Integrated GST (IGST). The Law covers various aspects relating to supply of goods and services, time and place of such supply, mechanism for availment, utilization, transfer and refund of input tax credit, valuation rules, tax administration, and the transition provisions. Salient features of the Model GST law has been discussed in brief in this paper.

KEYWORDS : GST (Goods & Service Tax), Central Goods & Service Tax (CGST), State Goods & Service Tax (SGST), Integrated Goods & Service Tax (IGST)

Introduction

In 2000, an empowered committee was set up by the Atal Bihari Vajpayee Government to streamline GST model to be adopted. P. Chidambaram, the then Finance Minister formed another empowered committee of State Finance Ministers which submitted its report to the government in 2008 April. In 2009 First Discussion Paper on GST was released. The Constitutional (122nd Amendment) Bill, 2004 was passed in Lok Sabha on 6th May 2015. The Bill was passed by the Rajya Sabha on 3rd August 2016. The amended Bill was passed by Lok Sabha on 8th August 2016. Till date 16 states have ratified the legislation. The states which have ratified the Bill are:

- Assam – 12 August 2016
- Bihar - 16 August 2016
- Jharkhand - 17 August 2016
- Himachal Pradesh - 22 August 2016
- Chhattisgarh - 22 August 2016
- Gujarat - 23 August 2016
- Madhya Pradesh - 24 August 2016
- Delhi - 24 August 2016
- Nagaland - 26 August 2016
- Maharashtra - 29 August 2016
- Haryana- 29 August 2016
- Telangana - 30 August 2016
- Sikkim - 30 August 2016
- Mizoram - 30 August 2016
- Goa – 31 August 2016
- Odisha – 01 September 2016

GST Bill has been ratified by 50% of the states in 23 days and it can go for Presidential assent now. It is likely imminent that GST may be implemented from 1st April 2017.

GST on Global Level: Across the Globe, GST is prevalent in more than 150 countries. Current rates of GST in some countries are Canada – 5 %, Singapore – 7%, Australia – 10 %, New Zealand- 15%, Netherlands – 21, Italy- 22, Sweden – 25%.

Taxes Subsumed under GST: Central Excise Duty, Additional Excise Duty, Service Tax, Additional Customs Duty, Special Additional Duty of Customs, Surcharges, VAT /Sales Tax, Luxury Tax, Entertainment Tax, Taxes on betting, lottery, Entry Tax, State Cesses & Surcharges

The key features of Draft Model GST Law are as under:

Territorial Coverage: For the first time, the act is extended to whole of India including Jammu & Kashmir. In the present regime, service tax was not extended to Jammu & Kashmir.

Important Definitions:

Goods include every kind of moveable property other than money and actionable claims. It includes securities, growing crops, grass and thing attached or forming part of land.

The definition of **Business** is an inclusive definition and covers various spheres of transactions including the services. It does not exist in the present Excise/Service Tax law; it has been defined under the CST Act/State legislations. Profession and vocation has also been added in the definition of business.

The definition of **capital goods** is similar to present definition of capital goods under Rule 2(a) of CENVAT Credit Rules.

Services mean anything other than goods and it includes actionable claims and intangible property but money is excluded.

Supplier is defined to mean the person supplying the goods and/or services and includes an agent acting as such on behalf of such supplier.

Registration: The dealer is required to take registration if his aggregate turnover is more than Rs 9 lakhs in a financial year (Rs 4 lakhs in North Eastern States). It is to be obtained in 30 days from the date of being liable to be registered. However, the tax liability shall arise only if the aggregate turn over exceeds Rs 10 lakhs (Rs 5 lakhs in North Eastern States).

Place of Registration: Registration is to be taken by the dealer in the state from where the goods and services are supplied.

Migration of existing taxpayers to GST: Existing tax payers will be issued a certificate of registration on provisional basis and will be valid for 6 months. Final Registration certicate shall be granted after the filing the requisite information within 6 months.

Scope of Supply: It includes

All forms of supplies, sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration

Import of service with or without consideration

A supply specified in Schedule I will be treated as supply even without consideration

Retained assets after deregistration.

Permanent disposal/transfer of business assets Transactions between principal and agent are deemed to be a supply.

It also includes supplies covered under Schedule II.

Supply of any branded service by an aggregator under a brand name or trade name owned by him.

Supply of goods to a job worker by a registered dealer will not be considered as supply of goods.

Sale of under construction properties, work contracts, transfer of rights to use any goods and up gradation, development of software would be treated as supply of service.

Time of Supply:
In respect of supply of goods: is the earliest of date of removal/making of available goods by the supplier, date of issue of invoice, date of receipt of payment by the supplier or date on which the recipient shows the receipt of goods in his books of accounts.

In respect of supply of services: is the earliest of date of issuance of invoice, date of receipt of payment, date of completion of service if invoice is not issued within prescribed time limit or date on which recipient reflects the receipt of services in his books of accounts.

In respect of reverse charge mechanism : is the earliest of date of receipt of service, date on which payment is made, date of receipt of invoice or date of debit in the books of accounts

Value of Taxable Supply
Value of taxable supply of goods and services shall be the transaction value which is actually paid or payable for such supply, when the parties are not related and price is the sole consideration.

GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016 are to be applied if the above method cannot be applied, which are as follows:

Transaction Value & Services of like kind: Value of goods and/or services shall be the transaction value of like quantity and quality at and about the same time to the customers.

Computed Value Method: By adding the cost of production, cost of services, design charges, profit and general expenses of same kind or class of goods or services.

Residual Method: Where the value cannot be determined under the computed value method, the value shall be determined by using the reasonable means which are consistent with the principles and general provisions of these Rules.

MRP based valuation has been done away with. Concept of pure agent is to propose to be continued under GST.

Place of Supply: The place of supply of goods is the place where the goods are delivered. For services provided to an unregistered person, the address of recipient is the place of supply and if it is not available, the location of the supplier of services. For the services provided to a registered person, the location of such registered person is the place of supply.

Input Tax Credit: Entitlement of Input Tax Credit is dependent upon inputs/services used or intended to be used by a supplier form making an outward supply. Various exclusion are goods/ services used primarily for personal consumption or use by employees, goods and services used acquired for construction of immovable property.

Input Tax Credit can be taken within one year from the date of invoice.

Input Tax Credit of the inputs/ semi-finished/ finished goods held in stock preceding the date of registration can be taken. Model GST law provides for transfer of unutilized CENVAT credit and VAT input tax credit availed provided the amount is reflected as carry forward in the return and such credit is admissible under the earlier law as well as the GST Law.

Transfer of Input Tax Credit is allowed in case of sale, amalgamation, transfer.

Utilization of Credit:
Utilization of CGST: CGST shall be utilized first towards payment of CGST and the amount remaining if any, may be utilized towards the payment of IGST.

Utilization of IGST: IGST shall be utilized first towards payment of IGST and the amount remaining if any, may be utilized towards the payment of CGST & SGST.

Utilization of SGST: SGST shall be utilized first towards payment of CSST and the amount remaining if any, may be utilized towards the payment of IGST.

Cross credit utilization of CGST and SGST is not permitted.

Payment: Any tax, interest, penalty, fee etc shall be paid via internet banking or by using debit/credit card or NEFT or RTGS. This amount shall be credited to the electronic cash ledger of the dealer. The amount so available in the electronic cash ledger may be used for making above payments.

Tax Deducted at Source: Central or State government may mandate departments of Central/State government or local authority or Governmental agencies or any other notified person to deduct tax at source at the rate of 1% from the payment made or credited to the supplier, where the total value of supply exceeds Rs 10 Lakhs under a contract. The late fee for furnishing of the certificate is Rs 100 per day subject to Rs 5000/-.

Refund:
Refund of tax and interest can be claimed by making an application to the proper officer within 2 years from the relevant date. For tax or interest paid under protest the limitation of 2 years will not apply.

Within 90 days of receipt of such application, proper officer should issue the refund order.

Returns :
A person is required to file the returns separately for outward supplies made, inward supplies received on monthly basis within 20 days after the end of each month.

Those dealers who are paying tax under composition scheme are required to furnish a return for each quarter within 18 days after the end of such quarter.

An annual return is also required to be filed on or before the 31st December following the financial year.

Dealer who is required to deduct tax at source is required to furnish a return within 10 days after the end of the month in which deduction is made.

Conclusion
The Model GST law provides the much needed visibility and window for the industry to understand the GST framework and it provides the necessary feedback to shape the final law. No negative list has been prescribed at this stage. Key areas like treatment of supplies to SEZ/STP, transition of Central/

State government incentives are unanswered questions in GST regime. There are several areas where the law will emerge in the coming months as consensus is created among the different share holders. Many key elements which need to be finalized by the government in the coming period are classification of goods and services and corresponding GST rates, fate of area based exemptions, alignment of existing foreign trade policy benefits to GST regime and implementation of GST Network.

The government has already stated its intent that it plans to implement it from 1st April 2017. The government needs to provide clarity on the open areas mention above and should also institute mechanism to understand and address the concern of Industry. It would enable industry to assess the impact of GST and will help in planning the transition. The genuine concerns of GST which are needed in law also need to be effectively represented to the Government.

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