

INDIRECT TAXES UPDATE – 173

GOODS & SERVICES TAX

Some Key Changes in the Revised Model GST Law (Nov 2016)

Definitions

- Intermediary has been deleted from the definition of the term ‘Agent’ and thus, such category of persons shall no longer be included as agents. It is important to mention that there is no specific definition of the term intermediary in the new law, the term has been defined in existing Service Tax law (Finance Act, 1994)
- Term “non-taxable supply” has been removed from the definition of “Aggregate turnover” and inter-State supplies have been included in the definition. The scope has been specified with this change.
- Business Verticals definition has been provided in the clause itself and reference of AS 17 has been removed.
- Definition of the term ‘Capital Goods’ has been revised and the earlier definition which was same as in Excise laws has been omitted. The new definition synchronizes the concept of capital goods with that of capital asset in accounts i.e. capitalized assets.
- The phrase ‘composite supply’ has been revised to provide that composite supply would only be those bundled supplies of multiple goods/ services which are bundled in the normal course of business.
- Actionable Claims to be considered as part of ‘Goods’ and securities excluded from the same.
- Revision of definition of the terms ‘input’ and input services’ to exclude the condition of use of such input and input services for provision of output services. Only qualification is that such inputs or input services should be used in the course or furtherance of business.
- Term “Service” to include transactions in money and exclude money/ securities.
- Works Contract will not include activities undertaken in relation to moveable properties. Thus, works contract when used shall be only in relation to immovable property.

Supply

- Negative List of activities/ transactions treated neither as a supply of goods nor a supply of services provided vide section 3(3) & Scheduled III.
- Importation of services for personal use continues to be considered as a supply.

- Taxability of composite and mixed supplies provided for.

Levy & Exemption

- Levy of Tax on e-commerce operators provided in the Charging Section.
- Rate of 14% notified as uppercap for rates of CGST/ SGST and 28% for IGST
- Taxability of e-commerce operator provided for in charging section i.e. section 8(4). Further, provisions introduced to provide for person liable to pay GST in his case when such person is located outside taxable territory.
- Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees.
- Return of goods / services is now permitted where the underlying GST paid can be recovered by issuing credit note.

Composition

- Composition Levy available as under if the Turnover in the previous financial year upto Rs.50 Lakhs:

For Manufacturers	Not less than 2.5%
For Traders	Not less than 1%
However not allowed to:	
<ol style="list-style-type: none"> 1. Service Providers 2. Inter State Outward supplier 3. Notified Manufacturers or nontaxable supply of goods 4. Electronic commerce operator 	
General Penal Provision will apply instead as earlier proposed.	

Registration

- Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act. A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act
- Persons making taxable supplies liable to be registered if his aggregate turnover in a financial year exceeds 20 lakh rupees (10 lakhs for NE States)
- Casual taxable person or a non-resident taxable person to apply for registration at least five

days prior to the commencement of business

Time & Value of Supply

- Event of recipient showing receipt in books of accounts has been deleted as a determining point in Time of supply for goods.
- Provisions relating to Change in rate of Tax made applicable to Goods as well.
- Subsidies received from Central and State Governments have been excluded from the transaction value.

Input Tax Credit

- Pro-rated distribution of Input Tax Credit in case of outputs being taxable (including zero-rated supply) as well as exempt supplies.
- Provisions related to Invoice, Debit/ Credit Notes have been modified substantially.

Returns

- Non-resident taxable person not required to submit details of outward/ inward supplies and Commissioner's approval has been made mandatory for further extension of time limit.
- Details of Inward Supplies as made u/s 33 need to be confirmed by corresponding supplier by 17th of the following month. For example, if A has supplied goods/ services to B, then A will declare the same at outward supplies and B as inward supplies. Now A needs to confirm details of inward supplies provided by B by 17th of Next Month.
- Notice to return defaulters to be issued within 15 days of failure of filing of returns.

Refunds

Particulars	Earlier Limit	Revised Limit
Refund order by Proper Officer to be made in	90 days	60days
Interest on delayed refunds payable after	3 months	60 days
Limit of Provisional Refund	80%	90%

TDS/ TCS

- For TDS transactions: Limit of the total value of supply under a contract for applicability of the TDS provisions has been reduced from Rs. 10 Lac to Rs. 5 Lac. Rate of TDS is 1% of the net value of supplies.
- Rate of TCS notified as 1%.
- TDS and TCS in respect of inter-State supplies under IGST Act to at 2% for both.

Other Changes

- In case of assessment of Non-filers of returns time of allowing 15 days by Proper officer has been deleted.
- In case of tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, Show cause notice needs to be issued at least 3 months prior to time limit for issuance of order which is within 3 years from the due date for filing of annual return for the year to which such tax relates. Penalty of flat 10% is specified. Only due date of filing annual return is to be considered for the issuance of order
- Limits revised for cognizable and nonbailable offences from Rs.250 Lacs to Rs.100 Lacs.
- IGST payment condition removed for grant of refund in case of Tax wrongfully collected and deposited with the Central or a State Government.
- Appeals to First Appellate Authority to be made within 3 months from the date of communication of order/ decision. Pre-deposit amount to be deposited in addition to amount of tax, interest, fine, fee and penalty arising from the impugned order; higher in serious cases but not more than 25%. No authority to refer the case back to adjudicating authority.
- Committee can apply to Appellate Tribunal within 6 months from the date on which the order sought to be appeal against.
- In case of Inspection of goods in movement Monetary limit of any consignment of goods of Rs. 50,000/- removed.
- Provision relating to restriction on unjust enrichment by suppliers on count of enhanced credit has been introduced as Section 163 i.e. Anti-Profiteering Mechanism

Transitional Provisions

- Reference of GAAP removed from transitional provisions.
- For semi-finished goods removed for job work and returned on or after the appointed day & Finished goods removed for carrying out certain processes and returned on or after the

appointed day recovery of ITC to be made instead of tax payable.

- Capital goods on which CENVAT credit has not been availed, shall not be exigible to GST if supplied / disposed without consideration.
- Temporary application of business assets/ services to private or non-business use has been removed from being deemed supply.

IGST

- Imports deemed to be a supply of goods in the course of inter-State trade or commerce.
- Separate principles of Place of Supply have been incorporated for import export transactions.
- Supply of goods and/ or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.
- Supply of Goods or Services to SEZ would be categorized as “Zero Rated Supplies” and facility of refund of credit or output tax paid is extended

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