

## Levy – GST Model Law



*The word “Levy” in the common parlance means charge or imposition or collection of tax by authority. For the purpose of collecting tax, the authority should have powers to levy such tax. The Constitution of India in Article 265 sets out that no tax shall be collected without authority of law.<sup>1</sup> Article 300A specifies that no property should be deprived on account of taxes. The fundamental right to equality (Article 14) and right to carry on business or profession (Article 19) cannot in any case be infringed/trampled on. Under Central Excise Act, 1944, excise duty is levied by Central Government on production/manufacture of excisable goods removed for domestic consumption in India. Collection is on removal. Under service tax levy is for services provided or agreed to be provided by one person for another for a consideration. However, tax is collected on receipt of advance without rendition of services. Under VAT Act, Value Added Tax is levied on sale of goods. (transfer of goods from one to another for a consideration) Under VAT tax is not to be collected on advances.*

### Levy and Collection of Central/State Goods and Services Tax & Integrated GST

Section 7 of Model GST Act 2016 and Section 4 of the Model IGST Act 2016 sets out CGST/SGST and IGST shall be levied on all intra-state and interstate supplies of goods and/or services respectively.

The **intrastate supplies** of goods would be where the delivery to the recipient or any other recipient on behalf of the original recipient, terminates within the same State as it commences. Interstate supply would involve the movement

of goods to another State. The point at which the responsibility of the supplier ends (risk is transferred) would be the point at which one would have to reckon whether it is intra state or interstate.

The concept of “**sale**” is now replaced by “**supply**,” however; the understanding of delivery would remain the same. For example if a registered dealer from Mumbai comes to Delhi and procures goods and goes back to Mumbai with the goods, the delivery would be said to be interstate.<sup>2</sup>

The **place of supply for goods** under section 5 clarifies the alternatives in case of different transactions like when the goods do not move or when assembled at site or when supplied on board a vessel.

(Indirect Taxes Committee of the ICAI)(Comments can be sent to [itdc@icai.in](mailto:itdc@icai.in).)

<sup>1</sup> *TN Kalyana Mandabam Association Vs Union of India 2006 (3) STR 260 (SC)*

<sup>2</sup> *Mohanlal Hargovandas Vs State of MP – 1955 (6) STC 687(SC)*

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The **place of supply** as far as services are concerned is bit more of a challenge. Section 6 of IGST sets out elaborate provisions for determining the place of supply of services. For services related to immovable property it is where the property exists. For a large number of supplies of services, it specifies location of the registered recipient as per records. The best practice of location of registered recipient in B2B (Business to Business) in many cases is welcome. (Section 6(2)) The general principles have been adapted from the erstwhile Place of Provision of Services Rules 2012.

Under the GST laws, a taxable person means a person who carries on any business at any place in India and who is registered or required to be registered.

The **time of supply** is when levy would arise which is set out in Section 12 of GST and Section 5 of IGST Model Law. These provisions deem certain other times other than the actual time of supply as the time of supply when the levy crystallises. This concept would be tested again as done in case of the ruling in *Vazir Sultan Co Ltd.*<sup>3</sup> under central excise wherein it was held that levy which is not attracted at a pertinent time (manufacture) cannot be imposed at the time of removal. Goods already manufactured prior to levy cannot be levied to duty of excise imposed for the first time.

Section 7 (2) of CGST/SGST and provide for tax on **reverse charge**. Section 4 (3) of the IGST provides for tax on the importation of services. It is to be noted that the reverse charge liability arises even where the transaction is **not** in furtherance of business. The person receiving such goods and/or services shall be liable for paying the tax. Imported goods would be liable for Customs Duty along with IGST (equal to the IGST on similar goods).

These provisions are similar to the present unregistered dealer purchases (URD) which are subject to purchase tax in many State VAT laws

across the country for goods and reverse charge under Service tax under section 68(2) for services.

The reverse charge provisions are necessary to provide a level playing field for the tax compliant so that those who provide goods and/or services from outside India or who are not registered do not get an unfair advantage over the main stream supplier.

The registered person who pays GST under reverse charge would also be eligible for input tax credit if such goods are eligible capital goods/inputs or input services. It is important to note that such persons would not be eligible for the exemption of ₹10 lakhs available to small assesseees. Even if the importation of goods supplied is less than ₹1 lakh they would be liable to register and pay the GST.

### Special Provision for Small Assesseees

In India, the unorganised sector has significantly contributed to the growth of entrepreneurs and even in export of quality goods and services. It also employs lakhs of contributing workers which is on the job skill development enterprise. The owners of these units could be uneducated or technocrats of just skilled persons. Under various local sales tax and VAT laws as well as Income tax they have been provided a facility of not keeping elaborate records for decades. This segment many a times get their books updated once a year. It may be difficult to expect them to file multiple returns and reconcile every bill with the customer on an ongoing basis.

There is also a real parallel unaccounted business of goods and/or services which is a legacy of decades of cash business. These errant businessmen have unfortunately at times been nurtured largely by the State tax administration and to some extent by the central tax administration. The composition scheme is supposed to encourage them into the mainstream

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<sup>3</sup> *Vazir Sultan Tobacco Co Ltd - 1996 (83) E.L.T. 3 (S.C.)*

Section 7 (3) of the Model GST Act provides for **composition levy** an option available to such assesseees. This is a concept which has been there under erstwhile Sales Tax and VAT as also till recently in service tax providing for relaxation in tax rates and minimal procedural compliance.

Under GST the registered taxable person, whose aggregate turnover in a financial year does not exceed [fifty lakh of rupees], may opt to pay, in lieu of the regular tax payable, an amount calculated at such rate as may be prescribed, not less than 1 %. {Likely to be CGST-2% and SGST 2% in total 4%} This should protect the interest of at least 1 crore present and future assesseees under GST. The present conditions are as under:

- A taxable person who affects any inter-State supplies of goods and/or services shall not be given permission. This means that only those who have supplies of goods and/or services within the State would be eligible. The philosophy has been carried forward from the State laws where there was a perceived need to protect the States revenue which may not be relevant now. It also goes against the principle of common market and right to business in India. Even under the composition scheme in States the need for permission is not envisaged normally.
- The receiver of goods and/or services from taxable person under composition cannot avail the credit is an unfair provision. Here the composition dealer is unable to pass on the GST paid on inputs, capital goods and input services. This in addition to the credit not being available to receiver, would price out all composition dealers. They may end up being 10-12% costlier. This is a carry forward of archaic provisions of the VAT laws. In service tax in 2007 itself these restrictive principle were abandoned and receivers of service from works contractors (akin to composition dealers) were allowed credit.
- The dealer opting for composition who is not eligible would be liable to pay the tax under normal scheme (the eligibility of set off for such dealers is not provided. There is time limit for credit availment which could be catastrophic).
- Further he shall be liable for penalty equal to the tax. Very unfair and harsh provision.
- Further conditions are to be prescribed. These need to forward the possibility rather than look at safeguarding the revenue.

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Note: The above conditions need to be deleted/modified substantially to ensure ease of business for smaller tax payers. The purpose of providing an alternative to smaller dealers in the tax net would be defeated and such dealers may choose to be out of the net which would be disastrous to GST success.

- All the registered taxable persons, having the same PAN also need to opt for composition which is reasonable.
- The composition dealer is not eligible for credit due to the lower rate to be specified. However when he receives goods or services from another composition dealer which is quite a common practice, he should be enabled the credit.
- The coverage of goods and services that could opt for the composition scheme is to be specified. Hopefully it would not be restrictive and cover all suppliers of goods as well as services and those who provide composite transactions like works contract, lease etc.

#### Understanding "Supply"

The levy of GST is on **supply**. Therefore the definition needs to be understood clearly. The common meaning of supply is to give, provide, contribute, furnish, impart etc. Under GST the definition is analysed as under:

Definition starts with **supply includes**<sup>4</sup> which expands the normal meaning as understood commonly. It would encompass removal under excise, sale under VAT and provision of services under service tax to mention a few. It would be much more than that.

The EU VAT restricts VAT to only service for **consideration**. Free supplies there are not liable. Malaysian VAT sets out that transfer of business is not a supply In Singapore anything done without

<sup>4</sup> Ramala Shakari Chinni Mills Ltd – 2016 (33) ELT 3 (SC)

consideration is not a supply. However in India in GST, many transactions without consideration are deemed to be supply. The definition is briefly analysed as under:

Supply Includes (sec 3):

1. All forms of Supply of goods and/or services made or agreed to be made by a person in the course or furtherance of business for a consideration. Indicative list also provides for sale, transfer, barter, exchange, license, rental or disposal. Consideration could be monetary or non-monetary. Supply need not result in transfer of property in goods.
2. Importation of services whether or **not** for consideration or whether or not in furtherance of business. Here even personal import of services is being sought to be taxed. This hopefully would be applicable only over some limits (say ₹10,000) as followed by European Union and U.K. Presently in service tax personal imports are exempt without any limit.
3. Transactions between a principal and agent would be supply. The supply or receipt of any goods and/or services on behalf of the principal would also be deemed to be a supply.
4. The supply of any branded service by an aggregator (as defined in section 43B) under a brand name owned by him would be deemed to be supply by him. This provision is to capture the e-commerce which is as on date escaping being taxed.
5. Supply made or agreed to be made without consideration are also liable under GST. They have been set out in Schedule-I briefly explained as under:
  - a. Permanent Transfer/disposal of business asset: This may happen due to dissolution or in sale of business as a whole. ( In Malaysian VAT this type of a transaction is not a supply)
  - b. Temporary application of business assets for private or non-business use. Example could be car, laptop or mobile used for furtherance of business. They may be used at home or outside office too for private/personal use. This concept has been borrowed from the VAT laws.
  - c. Services put to private or non-business use. Example Servicing of car/laptop, Mobile bill paid by company. This is borrowed from service tax.

- d. Assets retained after deregistration. ITC would have been claimed therefore liable when getting out.
- e. Supply by taxable person to taxable or non-taxable person in the course of business. This could be samples, gifts, warranty, free of cost supplies, Diwali gifts to customers etc.

Supply of goods to the job worker working under section 43B would not be considered supply. However job work supplies could also be on payment of GST in which case they would be considered to be a supply.

*Note: It may be noted that there could be valuation issues in all the above transactions especially for services for which the valuation section and rules are required to be referred.*

### What is Service Vs Goods?

The possible differential rate for services and goods has been considered in Section 3 (3) where the Central/State Government upon the recommendation of the GST council would specify certain transactions to be:

- ➔ Treated as a supply of goods and not a supply of services ( example could be permanent transfer of IPR),
- ➔ Treated as a supply of services and not a supply of goods ( example could be software license, works contract) and
- ➔ Treated as neither a supply or service or goods (specified transactions in immovable property).

### Conclusion

The attempts to make the tax simple, fair and tax payer friendly should be apparent in the final Act and Rules so that the law would be implemented smoothly and voluntary compliance encouraged. The members could keep in mind that this model was law drafted by the 31 or so representatives of the States (who understand VAT) and Union territories and few of the Central Tax officers (who understand Central Excise and Service Tax). India being a federal country the law is represented democratically.

The clear and consultative approach of seeking honest feedback from the Government needs to be responded by trade, industry as well as concerned professionals and citizens to ensure that GST succeeds. Representations from the professional, trade, industry and service providers directly and through their bodies would definitely make GST a successful game changer. ■