

# **THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017**

## **Statement of Objects and Reasons**

The Union Territories (for brevity, "UT") were earlier empowered to levy Sales Tax / VAT on the sale of goods, whereas the Central Government was empowered to levy excise duty and service tax on manufacture of goods and supply of services, respectively. This led to a multiplicity of indirect taxes being levied by various authorities.

The difficulties faced in the erstwhile indirect tax system were:

- (i) Rising hidden costs in trade and industry due to multiplicity of taxes at the Central and Union Territory levels
- (ii) Lack of uniformity of tax rates and tax structure, compliance procedures across Union Territories
- (iii) Cascading of taxes
- (iv) Non-availability of cross-utilization of credits i.e., utilization of excise duty and service tax credits against taxes levied by Union Territories and vice-versa.
- (v) Credit of taxes levied by one Union Territory or State cannot be set off against taxes levied by other Union Territories or States.

Under the GST regime, Union Territory tax along with related GST legislations replaced the erstwhile taxes while empowering the Central Government to levy Union Territory tax on the supply of goods or services or both taking place within a Union Territory not having a Legislature. The GST legislation:

- (i) Provides for levy of tax on all intra-State supplies of goods or services or both, except alcoholic liquor for human consumption, at the rates recommended by the GST Council;
- (ii) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;
- (iii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Governments and Union Territories;
- (iv) Empowers recovery of tax, interest or penalty payable by a person and remaining unpaid;
- (v) Empowers establishing of an Authority for Advance Ruling to enable the taxpayers to seek binding clarity on taxation matters;
- (vi) Provides for elaborate transitional provisions for smooth transition of taxpayers to GST regime; and
- (vii) Allows application of certain provisions of the CGST Act, 2017 to the extent relevant for the purposes of this Act;

# Chapter I

## Preliminary

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### 1. Short title, extent and commencement

### 2. Definitions

#### Statutory provision

#### 1. Short title, extent and commencement

- (1) *This Act may be called the Union Territory Goods and Service Tax Act, 2017.*
- (2) *It extends to the Union territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory.*
- (3) *It shall come into force on such date as the Central may, by notification in the Official Gazette, appoint:*

*Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*

#### Title:

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a fair description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

#### Extent:

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (2 with legislation + 5 without legislation =7) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi and Puducherry have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

'State' under the GST law is defined to include a Union Territory with Legislature. Delhi and Puducherry, though are Union Territories, have a Legislature of their own. Accordingly, for the purpose of GST Laws, the Union Territories of Delhi and Puducherry will be regarded as a State and will be governed by the respective SGST laws passed by them, instead of the UTGST law which is passed by the Central Government.

#### **Commencement:**

The UTGST Act will come into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (i.e. 1<sup>st</sup> July 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

It is expected that a notification with a prospective date of commencement of the UTGST Act i.e., a specific date succeeding the date of notification in the Official Gazette, would be issued. A notification providing for a retrospective date for commencement of the UTGST Act cannot be issued, since that would result in simultaneous operation of two laws governing the same subject matter i.e., the erstwhile law(s) and the UTGST Act being in force during the period starting from such retrospective date of commencement until the date of notification in the Official Gazette.

#### **Statutory provisions**

### **2. Definitions**

In this Act, unless the context otherwise requires—

*(1) "appointed day" means the date on which the provisions of this Act shall come into force.*

The provisions of the UTGST Act are implemented with effect from 1<sup>st</sup> July 2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

*(2) "Commissioner" means the Commissioner of Union territory tax appointed under section 3;*

Every Union Territory is administered by the President through an Administrator appointed by him. The Administrator, in turn, is empowered to appoint Commissioners and other officers for carrying out the purposes of the Act who will be deemed to be 'Proper Officers' for administering the Act.

The officers appointed under the erstwhile central and UT laws will continue to function as officers under the UTGST Act as well.

*(3) "designated authority" means such authority as may be notified by the Commissioner;*

Currently, the term does not find a reference in the Act and will be notified by the Commissioner from time to time.

*(4) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;*

The meaning of exempt supply is similar to the meaning assigned to it under the CGST law with the exception that supplies that are **partly exempted** from tax under this Act will also be considered as 'exempt supply'. On the contrary, partially exempted supplies under the CGST law would not be considered as 'exempt supplies' under the CGST law. The word "wholly" found in section 2(47) of the CGST law which is missing from section 2(4) under the UTGST law in the definition of exempt supply.

Exempt supplies comprise the following 3 types of supplies:

- (a) supplies taxable at a 'NIL' rate of tax;
- (b) supplies that are wholly or partially exempted from UTGST or IGST, by way of a notification; and
- (c) supplies that are not taxable under the Act (petrol, high speed diesel, alcoholic liquor for human consumption etc.)

The following aspects need to be noted:

- (a) Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;
- (b) Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off.

*(5) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;*

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as The Indian Stamp Act, 1899, would not be covered here.

*(6) "Government" means the Administrator or any authority or officer authorized to act as Administrator by the Central Government;*

Every Union Territory is administered by the President through an 'Administrator' appointed by him. Even a Governor of a State can be appointed as the Administrator of an adjoining UT. Such an Administrator will be regarded as 'Government' for the purposes of the UTGST law.

*(7) "output tax" in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;*

The output tax chargeable on taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a UT without Legislature	UTGST + CGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies between two UT without Legislature	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act
Supplies between a UT without Legislature and a State (including UT with Legislature)	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act

The following aspects need to be noted:

- (a) While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the Statute from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- (b) The amount covered under this term is the tax 'chargeable' under law, and not what is 'charged'. Therefore, some experts believe that in case a person wrongly charges an amount as tax, or charges an excess rate of tax as compared to the applicable tax rate, such excess would not qualify as output tax.
- (c) Some experts are of the view that taxes payable on reverse charge basis would also be out of the scope of 'output tax'. Since credit of input tax can only be used to pay output tax, the above will have to be discharged by way of cash only (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- (d) The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the UT tax payable on such supplies as output tax in the hands of the supplier.

(8) "Union territory" means the territory of, —

- (i) the Andaman and Nicobar Islands;
- (ii) Lakshadweep;
- (iii) Dadra and Nagar Haveli;
- (iv) Daman and Diu;
- (v) Chandigarh; or
- (vi) other territory.

*Explanation.* —For the purposes of this Act, each of the territories specified in sub-clauses (i) to (vi) shall be a separate Union territory;

**Analysis**

'State' under the GST law is defined under the CGST Act to include a Union Territory with Legislature. Delhi and Puducherry, being UTs with Legislature, will be regarded as 'States' for GST, and will be governed by their respective SGST laws, instead of the UTGST law.

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the UTs of Delhi and Puducherry), and excludes the five UTs without Legislature listed under clauses (i) to (v) of the definition.

All territories that fall into the ambit of 'other territory' would also form part of the meaning of the term 'Union territory'. The purpose of this inclusion is to ensure that any Indian territory that remains unclaimed by all the States and Union Territories can be brought into the scope of GST. Although there is no specific indication that the extent of the term should be limited to the territory of India, locations outside India cannot be said to fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

*(9) "Union territory tax" means the tax levied under this Act;*

It refers to the tax charged under this Act on intra-State supply of goods or services or both, in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20% and will be notified by the Central Government based on the recommendation of the GST Council.

*(10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.*

Certain words and expressions like person, supplier, recipient, intra-state supply, reverse charge, cess, place of supply etc. defined in the CGST/ SGST/ IGST laws will have the same meaning for UTGST law.

## Chapter II

# Administration

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3. **Officers under this Act**
4. **Authorisation of officers**
5. **Powers of officers**
6. **Authorisation of officers of Central Tax as proper officer in certain circumstances**

### Statutory provision

#### **3. Officers under this Act**

*The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:*

*Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.*

#### **4. Authorisation of officers**

*The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.*

#### **5. Powers of officers**

- (1) *Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.*
- (2) *An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.*
- (3) *The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.*
- (4) *Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.*

#### **6. Authorisation of officers of Central Tax as proper officer in certain circumstances**

- (1) *Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*

- (2) *Subject to the conditions specified in the notification issued under sub-section (1), —*
- (a) *where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;*
- (b) *where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.*
- (3) *Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.*

### **Introduction**

Union Territory without a legislature enjoys laws passed by Parliament. The UTGST Act is one where the law is by the Parliament but its administration is left with the Administrator of the Union Territory.

### **Analysis**

Without being bound by the rigours and specificity of executive officers under the CGST act, the UTGST Act empowers the Administrator to issue a notification appointing one or more Commissioners and such other class of officers as required.

The Administrator is also empowered to appoint officers lower in rank than the Assistant Commissioner as required. Commissioners appointed by the Administrator are empowered to impose conditions and limitations necessary in the discharge of functions by the officers of UT Tax. A superior officer is permitted to discharge the functions and exercise the authority conferred on a subordinate officer. Interestingly, we do not find such flexibility in CGST Act and IGST Act. Not only does this Act prescribed the Assuming of power by a superior officer but also permits delegation of vested powers to be exercised by any other officer of UT Tax. Appellate authorities under this act are denied the flexibility of such appropriation or delegation of power vested in them.

Continuing with efficiency in tax administration, without causing any prejudice to the UT Tax Act, officers under the CGST Act are authorised to be officers under this Act. This is permitted only upon the recommendation of the Council and subject to any conditions that may be imposed by the Administrator.

Where officers under this Act initiate any proceedings, said officers shall proceed to pass orders not only in respect of UT Tax but also in respect of Central Tax. Where such conjoined proceedings are underway, the said officers are expected to intimate officers of Central Tax. Similarly, where proceedings initiated by officers in respect of Central tax, the underlying transaction or the taxable base being the same, such officers under the CGST Act, are required to pass orders addressing demands in respect of UT Tax arising from the common underlying transactions. Whichever officer initiates any proceedings will determine the law and forum for exercising lawful jurisdiction in respect of rectification, appeal and revision.



## Chapter-III

# Levy and Collection of Tax

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- 7. Levy and Collection
- 8. Power to grant exemption from tax

### Statutory provisions

#### **7. Levy and collection**

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent., as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
- (2) *The Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.*
- (3) *The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (4) *The Union territory tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (5) *The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.*

*Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.*

*Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for paying tax and such person shall be liable to pay tax.*

### 7.1. Introduction

- a) The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no one can be taxed by implication, a person can be subject to tax in terms of the charging section only.
- b) Section 7 is the charging provision of the UTGST Act. It provides that all intra-State supplies would be liable to UTGST subject to a ceiling rate of 20%. The levy is on all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, GST may be levied on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel with effect from such date as may be notified by the Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax applicable on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax. The provision of this section is comparable to the provisions of section 9 of the CGST Act.
- c) Under the UTGST law, the levy of tax is as follows:
  - (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);
  - (b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)
  - (c) In the hands of electronic commerce operator-on services supplied by the suppliers through such electronic commerce operator

In the normal course, the tax would be payable by the supplier of goods and/or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and/or services.

Normally, the supplier of goods or services or both will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods or services or both will be liable to discharge the tax.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods or services or both, as if the recipient is the supplier of such goods or services or both – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

- d) When the goods/ services are supplied by a supplier, who is un-registered person to a receiver, who is registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, a registered person would be required to pay GST on all supplies received by it from un-registered persons.

- e) Additionally, where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendation of the Council notify that the e-commerce operator will be liable to discharge the tax on such supplies where the e-commerce operator:
- (a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.
  - (b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.
- f) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:
- (a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.
  - (b) Fulfilment centre – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to VAT. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.
  - (c) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly establish which side of the fence they are would prefer to fall on so that the respective incidence of tax follows.
  - (d) Agency – this is employed by few businesses involving supply of industrial inputs. The *modus operandi* is that the principal logs in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency. Such arrangements need to be vetted to ensure the inference of agency that emerges if it is not so desired, then the same may be redrafted suitably. Schedule I of the CGST Act states that transactions between principal and agent are deemed to be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

## 7.2 Analysis

The discussion of Levy under Section 9 of the CGST Act made in this book may be referred for detailed analysis

**Levy of tax:** Every intra-State supply will be liable to tax, if:

- (a) Supply should involve goods or services or both viz., wholly goods or wholly services or both viz.,

Even where a supply involves both, goods and services, the law provides that such

supplies would be classifiable either as, wholly goods or wholly services. The reference to be made to Schedule II of the CGST Act which provides for this classification.

- (b) The supply is an intra-State supply – viz., ordinarily, the location of the supplier and the place of supply is in same Union Territory. (Refer Section 8 of the IGST Act to understand the meaning of intra-State supply);
- (c) The tax shall be payable by a ‘taxable person’ as explained in definition Sec. 2(107) and explained in Section 22 & 24 of CGST Act.

**Tax shall be payable by a ‘taxable person’:** The tax shall be payable by a ‘taxable person’ i.e. person/ separate establishments of persons registered or liable to be registered under section 22 and 24 of the CGST Act..

**Rate and value of tax:** The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under Section 15 of the CGST Act.

#### **Supply:**

Refer discussion under Chapter III of the CGST Act for a detailed understanding of the expression ‘supply’. Additionally, the comments relating to ‘composite supply’ and ‘mixed supply’ and ‘reverse charge’ will equally apply for supplies taxable under UTGST Act.

#### **7.3 Comparative review**

Under the erstwhile tax laws, Central Excise is on ‘manufacture of goods’, VAT/CST is on ‘sale of goods’ and Service tax is on ‘provision of service’. Unlike different incidences, under the GST law, it is ‘supply’ which would be the taxable event. Under the earlier law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a ‘supply’. Further, free supplies would be liable to excise duty, while under the GST laws, free supplies would require reversal of input tax credit;

Under the erstwhile law, there are multiple transactions which apparently qualify as both ‘sale of goods’ as well as ‘provision of services’. e.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a ‘supply of goods’ or as ‘supply of services’. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, Definition of composite supply and mixed supply in the CGST law.

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, import of services, sponsorship services etc. are comparable to the ‘reverse charge mechanism’ prescribed herein. Further, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

**7.4 Related provisions**

Statute	Section	Description
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(17)	Definition of 'business'
CGST	Section 2(107) read with 22 and 24	Meaning of 'taxable person' and distinct persons
CGST	Section 2(31)	Meaning of consideration
IGST	Section 8	Meaning of intra-State supplies
UTGST	Section 7	Levy and collection of UTGST

**7.5 FAQs**

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No. Reverse charge applies to supplies of goods or services or both.

Q2. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The receiver of goods would be liable to pay tax under reverse charge.

**7.6 MCQs**

Q1. As per Section 7, which of the following would attract levy of UTGST?

- (a) Inter-state supplies
- (b) Intra-state supplies
- (c) Any of the above
- (d) None of the above

Ans. (b) Intra-state supplies

Q2. Who can notify a supply to be taxed under reverse charge basis?

- (a) Board
- (b) Central Government
- (c) GST Council
- (d) None of the above

Ans. (b) Central Government.

**Statutory provisions****8. Power to grant exemption from tax**

- (1) *Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*
- (2) *Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.*
- (3) *The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.*
- (4) *Any notification issued by the Central Government under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or an order issued under this Act.*
- Explanation. —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, more than the effective rate, on such supply of goods or services or both*

**8.1 Introduction**

This provision of this section states that the Central Government may grant exemptions for intra-State supply of goods and / or services within a Union Territory. Reference may also be made to Section 11 of the CGST Act and Section 6 of the IGST Act for a detailed analysis.

**8.2 Analysis**

The Central Government will be empowered to grant exemptions from payment of UTGST on intra-State supplies within Union Territory, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On recommendation from the Council
- (iv) Absolute / conditional exemption may be for any goods and / or services

- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.
- With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for classes of persons.
  - It is to be noted that in cases where goods and/or services are exempt absolutely, no input tax credit can be claimed.
  - Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, even inadvertence in not availing such absolute exemptions are made inexcusable. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.
  - There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.
  - There is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.
  - In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, trade and industry is apprehensive that this could be used without necessary superintendence.
  - To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an “Explanation” at any time within a period of 1 year from the date of notification or special order. The effect of this “Explanation” would be retrospective, viz., from the effective date of the relevant notification or special order.
  - The law makes it clear that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes more than the effective rate.

#### **Exemption under section 11 of the CGST/SGST Act equally applicable**

Any exemption notification or special order issued under Section 11 of the CGST Law will apply equally for intra-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the UTGST Law.

**Effective date of the notification or special order**

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

**8.3 Comparative review**

The provisions relating to exemption are broadly like the exemption provisions under the erstwhile tax regime. There are no significant differences.

**8.4 Related provisions**

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST / SGST
IGST	Section 6	Exemption from payment of IGST
UTGST	Section 8	Power to grant exemption from tax

**Chapters of UTGST Act covered under CGST / IGST**

Sl. No.	Chapter No. / Heading – UTGST	Sections No. – UTGST	Description
1	IV – Payment of tax	9	Payment of tax
		10	Transfer of input tax credit
2	V – Inspection, Search, Seizure and Arrest	11	Officers required to assist proper officers
3	VI – Demands and Recovery	12	Tax wrongfully collected and paid to the Central Government or UT Government
		13	Recovery of tax
4	VII – Advance Ruling	14	Definitions
		15	Constitution of Authority for Advance Ruling
		16	Constitution of Appellate Authority for Advance Ruling
5	VIII – Transitional Provisions	17	Migration of existing tax payers
		18	Transitional arrangements for input tax credit
		19	Transitional provisions relating to job work



		20	Miscellaneous transition provisions
6	IX- Miscellaneous	21	Application of provisions of CGST Act
		22	Power to make Rules
		23	General power to make regulations
		24	Laying of rules, regulations and notifications
		25	Power to issue instructions or directions
		26	Removal of difficulties

- The sections cited supra other than the provisions relating to Chapter IX - Miscellaneous are discussed in the relevant sections of CGST / IGST laws wherever deemed fit.
- The Chapter IX - Miscellaneous other than Section 21 of the UTGST Act are similar to the provisions as discussed in the context of IGST Act. There is an additional provision (section 25 under the UTGST Act), which deals with Commissioner's power to issue instructions or directions, which is similar to section 168 of the CGST Act. Readers are requested to refer to the said provisions in this context.

The discussion on the following provisions have been provided in the CGST Act in the relevant chapters/sections.

(i)	scope of supply;
(ii)	composition levy;
(iii)	composite supply and mixed supply;
(iv)	time and value of supply;
(v)	input tax credit;
(vi)	registration;
(vii)	tax invoice, credit and debit notes;
(viii)	accounts and records;
(ix)	returns;
(x)	payment of tax;
(xi)	tax deduction at source;
(xii)	collection of tax at source;
(xiii)	assessment;
(xiv)	refunds;
(xv)	audit;

(xvi)	inspection, search, seizure and arrest;
(xvii)	demands and recovery;
(xviii)	liability to pay in certain cases;
(xix)	advance ruling;
(xx)	appeals and revision;
(xxi)	presumption as to documents;
(xxii)	offences and penalties;
(xxiii)	job work;
(xxiv)	electronic commerce;
(xxv)	settlement of funds;
(xxvi)	transitional provisions; and
(xxvii)	miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

**It is important to note that the UTGST Act is legislated by the Central Government and the corresponding rules would also be legislated under its authority.**

**Note: All Relevant UTGST notifications are provided in forthcoming pages of this publication.**

**Following rules are common to all UT GST acts i.e Lakshwadeep, Andaman & Nicobar, Dadra & Nagar Haveli, Daman & Diu and Chandigarh.**

**Rule1: Short title and Commencement.**

- (1) These rules may be called the Union Territory Goods and Services Tax (Andaman and Nicobar Islands) Rules, 2017.
- (2) They shall come into force with effect from the 1st day of July, 2017.

**Rule2: Adaptation of Central Goods and Services Tax Rules, 2017.**

- (1) The Central Goods and Services Tax Rules, 2017, in respect of scope of supply, composition levy, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, settlement of funds, transitional provisions, and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply except the following rules:-

Rules	Particulars
Rule 90 (4) of CGST Rules 2017	Acknowledgement
Rule 117 (1) – for Second proviso of CGST Rules 2017	Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed.
Rule 119 of CGST Rules 2017	Declaration of stock held by a principal and job-worker

(a) **Analysis of the Amendment to the Rules: For Amendment of Rule 90(4) of the CGST Rules 2017**

In terms of Rule 90 (4) of the CGST Rules 2017 read as

*“(4) Where deficiencies have been communicated in FORM GST RFD-03 under the **State Goods and Service Tax Rules, 2017**, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3)”.*

In terms of the amendment to the Rule to UTGST Rules, 2017 shall be read as

*“(4) Where deficiencies have been communicated in FORM GST RFD-03 under the **Central Goods and Service Tax Rules, 2017**, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).”;*

The aforesaid rules have been amended to the extent of for the words **State Goods and Service Tax Rules, 2017** shall be read as **Central Goods and Service Tax Rules, 2017** in line with the CGST Rules.

(b) **For Amendment to the Rule 117 of CGST Rules 2017**

(i) The Second proviso of the CGST Rules, 2017 provides obligation to file a details of an Transitional claim in respect of Forms received and pending with regards to Form C , Form I, Form H, Form F as specified in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(ii) Further, in terms of the Rule 117(4) of CGST Rules 2017 a registered person who was not registered under the existing law shall eligible to availment of Credit. However, this provision is not made applicable under the provisions of UTGST Rules.

(c) **For Amendment to the Rule 119 of CGST Rules 2017 for the purpose of application of UTGST Rules 2017**

Rule 119 of UTGST Rules 2017 provides declaration of stock held by principal and agent shall be within 90 days of the appointed day (w.e.f.01.07.2017) electronically in

Form GST TRAN-1. Section 142(14) is not traceable to the CGST Act, 2017, as a corollary one may have to fall back on the SGST Legislation.

Other rules of UGST shall be same as of Central Goods of Services Tax Rule, 2017

**Explanation:-** For the purposes of these rules, it is hereby clarified that all references to section 140 of the Central Goods and Services Tax Act, 2017, shall be construed to refer to section 18 of the Union Territory Goods and Services Tax Act, 2017.