This Alert provides an insight into Model GST Law released for stakeholder consultation. This is an important milestone in the GST journey and provides a ringside view for industry to understand the proposed GST framework and prepare for the eventual implementation.

Executive summary

We are pleased to release News Alert providing insights on the Model GST Law.

The release of the Model GST Law is a laudable effort and is an important milestone in the GST journey. This provides an opportunity for stakeholders to engage with Government and collaboratively shape a final law that ensures certainty, efficiency and ease of compliance.

The Model GST Law, contains comprehensive provisions of Central / State Goods and Services Tax (CGST / SGST) and the Integrated Goods and Services Tax (IGST). The law covers various aspects relating to supply of goods and services, time and place of such supply, input tax credit, valuation rules, tax administration and the transition provisions. There is also a separate chapter on digital economies like electronic commerce considering its growing importance to provide clarity on the tax treatment.

The law has several new concepts along with provisions from legacy tax framework to address the needs of the envisaged GST structure. There are several areas where the law will emerge in the coming months as we create consensus amongst the different stakeholders.
Model GST Law

Background

► The 122nd Constitution Amendment Bill (‘Bill’) that will enable the introduction of Goods and Services Tax (GST), was passed in the Lok Sabha on 12 May 2015 and awaits passage in Rajya Sabha.

► Pursuant to its passage by Parliament, 50% of the State Governments will have to ratify before the said Bill receives the President’s assent and is enacted, paving way for introduction of GST. The GST Council will be constituted soon thereafter.

► Under the proposed GST regime, tax on supply of alcohol for human consumption has been kept outside the GST purview.

► The Central Government has retained the right to impose excise duty on petroleum and tobacco products. State Governments continue to be eligible to impose VAT on sale of the same. State Governments have also reserved their right to impose electricity duties.

► The initial proposal of levying 1% additional tax on inter-state supply of goods, based on reports, is expected to be withdrawn.

► The Empowered Committee of State Finance Ministers convened on 14th and 15th June 2016 to debate several key GST issues, prime amongst them the Model GST Law. They are further scheduled to meet mid-July 2016 to discuss other key issues including the Revenue Neutral Rate.


Key highlights of the said Model GST Law are as follows:

Territorial coverage of the Central/State GST Act, 2016 (‘CGST Act/SGST Act’)

► While each State GST Act would extend to the relevant State, the Central GST Act extends to the whole of India and includes Jammu & Kashmir (‘J&K’).

It is noteworthy that State of J&K has not been excluded from the definition of India. Given the special status that J&K enjoys, the State Legislative Assembly will need to accept and ratify the inclusion of J&K for applicability of GST.

► India has been defined to inter alia include territorial waters, continental shelf, exclusive economic zone or any other maritime zone.

The principles related to applicability of SGST, CGST or IGST for supplies made beyond 12 nautical miles up to 200 nautical miles need to be addressed.

Key definitions include:

► Aggregate turnover means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be.

Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.

► Business has been widely defined to include trade, commerce, manufacture, profession, vocation or any other similar activity, including transactions related or incidental thereto, irrespective of volume or frequency, as well as supply of goods/services in connection with commencement or closure of business.
The definition of ‘business’ is expansive and appears to have been borrowed from State VAT legislations, with modifications made to include transactions in services.

Capital goods definition is similar to the current definition in Rule 2(a) of CENVAT Credit Rules, 2004.

The definition however does not appear to include the changes brought in by the Union Budget 2016-17 amendments to the CENVAT Credit Rules.

Further, for manufacturers, capital goods have been confined to only those used at the place of business.

Consideration in relation to the supply of goods and/or services to any person, includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person

The definition excludes from its ambit, any deposit, whether refundable or not, given in respect of the supply of goods and/or services unless the supplier applies the deposit as a consideration for the supply.

Valuation Rules in this regard have been prescribed, which are discussed separately.

Deemed exports has been defined to include transactions in which the goods supplied do not leave India, and payment for such supplies is received either in Indian Rupees or in convertible foreign exchange.

Transactions that will get covered within deemed exports shall be notified by the Government. The Model GST Law is presently silent on treatment of supplies to SEZS, STPs and EOUs; it is likely that the same may find place in such notification.

Further, zero rated supply status is expected to be granted to deemed exports.

Export of services and Import of services have been defined to exclude transactions between establishments of the same person in India and outside India.

Exports of goods and services have been included within the scope of zero-rated supplies. Zero-rated supplies are defined as any supply of goods/services on which no tax is payable but credit of related input tax credit is admissible.

Services means anything other than goods.

It has been clarified that services would include intangible property and actionable claim but not include money. Correspondingly, goods have been defined to exclude intangibles.

While specific inclusion of intangible property will go a long way, to resolve existing controversy, inclusion of actionable claim is likely to create ambiguity in various financial and commercial arrangements.

Further, under separate provisions, supply of software, works contracts and leasing transactions have been deemed to be services.

Works contract have been defined to mean an agreement for carrying out for cash, deferred payment or other valuable consideration, building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any moveable or immovable property.

Deeming of works contracts as services should simplify taxation of works contracts. However, whether a particular contracting structure qualifies as a works contract, is a determination that the taxpayer would need to undertake.
Composite supply have been defined to include any combination of services and/or goods provided in the course of furtherance of business.

While the principles of classification have not been included in the Model GST Law, it is possible that such contracts could be treated as bundled supplies and specific classification rules proposed for the same.

Scope of supply

Supply includes

(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) a supply specified in Schedule I, made or agreed to be made without a consideration.

It also includes supplies covered under Schedule II, which primarily covers deemed supplies (akin to current declared services) and also covers deemed supply of goods.

Further, transactions between principal and agent are deemed to be a supply.

Also, the supply of any branded service by an aggregator, under a brand name or trade name owned by him is deemed to be a supply of the said service by the aggregator.

Transactions under Schedule I inter alia include supply of goods/services by a taxable person to another in the course of business. It is, presently, not clear whether branch transfer of goods between two registered taxable persons having the same PAN is covered under this clause for purposes of levy of GST on the same. This needs to be clarified especially because in all public discussion the industry has been given to understand by Government authorities that branch transfers will attract IGST.

It is specifically clarified that supply of goods by a registered taxable person to a job worker shall not be considered as a supply of goods. Further, under Section 43A, supply of raw material and receipt of goods after completion of job-work may be done without payment of tax, subject to permission from the Commissioner.

Composition Levy

A registered taxable person, whose aggregate turnover in a financial year does not exceed INR 50 lakhs, may opt to pay an amount calculated at specified composition rate, which will not be less than 1% of turnover during the year.

Benefit of composition will apply only for intra-state supply transactions, and shall not be available to a person effecting inter-state supplies.

Composition benefit once opted, has to be applied to all registered taxable persons having the same PAN.

Person opting for composition is prohibited from availing input tax credit. Also, the person is prohibited from collecting tax on supply of goods and/or services from its customers.

Threshold limit for registration/tax payment

A person is required to take registration if his aggregate turnover in a financial year exceeds INR 9 lakhs. However, tax liability shall arise only once the aggregate turnover in a financial year exceeds INR 10 lakhs.

For the North Eastern States, the aforesaid limits are INR 4 lakhs and INR 5 lakhs respectively.

Place of registration

A taxable person has to take registration in the State(s) from where taxable goods or services are supplied.
Time of Supply

► Liability to pay CGST / SGST on services shall arise at the time of supply.

► Time of supply of goods shall be the earlier of:
  ► Date of removal of goods
  ► Date on which goods are made available to the recipient (where goods are not required to be removed)
  ► Date of issuance of invoice
  ► Date of receipt of payment by supplier
  ► Date on which recipient shows receipt of goods in his books of account.

► Time of supply of service shall be the earlier of:
  ► Date of issuance of invoice
  ► Date of receipt of payment
  ► Date of completion of service (if invoice is not issued within the prescribed period)
  ► Date on which recipient reflects the receipt of services in his books of account.

► Time of supply in case of reverse charge mechanism shall be the earlier of:
  ► Date of receipt of service
  ► Date on which payment is made¹
  ► Date of receipt of invoice
  ► Date of debit in the books of accounts

Value of taxable supply

► MRP based valuation is done away with.

► Value of taxable supply of goods and services shall ordinarily be the “transaction value” which is actually paid for such supply, when the parties are not related and price is the sole consideration.

► Various amounts that ought to be included within the ambit of ‘transaction value’ have been specified. These include reimbursable expenditure incurred by or on behalf of the supplier and charged in relation to the supply, royalties, license fees, subsidies, etc.

► While discounts allowed before or at the time of supply², will not form a part of “transaction value”, the discount or incentive given after effecting supply would be allowed only in case where such post sale discount which is established as per agreement is known at or before the time of supply, and specifically linked to relevant invoices.

► GST Valuation (Determination of Value of Supply of Goods and Services) Rules, 2016 proposes to determine value of supplies in cases where the consideration is not wholly or partly in money; supplier and recipient are related, supplies undertaken by pure agent, money changer, etc.

► As per the above rules, where value of supply cannot be determined as per transaction value then the supplies have to be valued by proceeding sequentially through the following:
  ► Value to be determined based on the transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers. [Determination of value of supply by comparison method]

  ► Value to be determined based on the computed value which shall include cost of production / provision of services, design or brand charges, general expenses and the amount of profit. [Computed value method]

  ► Value to be determined based on reasonable means consistent with the principles and general provisions of the rules. [Residual method]

¹ “Date on which payment is made” shall be the earlier of date on which payment is entered in the books of accounts of recipient or date on which payment is debited in his bank account.

² Provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice.
**Input Tax credit**

► Input tax credit (ITC) entitlement is dependent upon inputs/ input services used or intended to be used by a supplier for making an outward supply, with various exclusions prescribed.

► Key exclusions are goods/ services used primarily for personal consumption or use by employees, goods/ services used acquired for construction of immovable property

Provisions related to eligible ITC appear restrictive and contrary to the industry expectations of a liberal credit regime.

► ITC is available to registered taxable person with reference to supply of goods and services subject to:
  ► Possession of tax invoice or other prescribed taxpaying document.
  ► Receipt of the goods and or services
  ► Actual payment of tax charged in respect of such supply to the Government by the supplier, and
  ► Furnishing of return under Section 27.

► Credit will continue to be not allowed for supplies used primarily for personal use or consumption of any employee, as under the current provisions.

► ITC will also not be available for goods or services used for private or personal consumption.

► ITC will not be available beyond a period of one year from the date of issue of invoice in case of new registration.

► ITC will not be allowed in respect of any invoice after September following the end of financial year or filing of the annual return, whichever is earlier.

**Input Tax credit distribution**

► Distribution of credit by Input Service Distributor (ISD) is restricted to tax on input services and not in respect of goods.

► Manner of distribution of credit by ISD has been prescribed as follows:
  ► Credit of both CGST and SGST can be distributed against invoice or other prescribed document
  ► Amount of credit distributed not to exceed credit available for distribution
  ► Credit attributable to any recipient of supply shall be distributed only to such recipient.
  ► Credit attributable to more than one recipient to be distributed pro-rata to such recipients in the ratio of turnover.

Clarity is required on the ISD mechanism, as to whether such distribution is mandatory or optional.

**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 of taxable goods / services, where the total value of supply, under a contract, exceeds INR 10 lakhs.

**Tax Collection at Source**

► Every electronic commerce operator engaged in facilitating supply of any goods / services is required to collect tax at source (out of the total amount payable to the supplier) at the time of credit of such amount or at the time of payment, whichever is earlier.

► Every operator shall furnish a statement of all the amounts collected within 10 days after the end of the calendar month.

► Supplier is required to deposit tax in case of mismatches between information forwarded by e-commerce operator and the returns filed by the supplier.

**Utilisation of credit**

► IGST shall be utilised first towards payment of IGST and the remaining amount, if any, can be utilised towards payment of CGST and SGST.
CGST shall be utilised first towards payment of CGST and the remaining amount, if any, can be utilised towards payment of IGST.

SGST shall be utilised first towards payment of SGST and the remaining amount, if any, can be utilised towards payment of IGST.

There is no cross credit utilization permitted between CGST and SGST.

Returns

Monthly returns

Every registered taxable person (dealer) shall have to electronically 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 as may be prescribed within 20 days after the end of such month.

Composition Levy

Dealers paying tax under the provisions of composition scheme shall electronically file a quarterly return, within 18 days after the end of such quarter.

TDS Return

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

Input Service Distributer (ISD)

Every ISD shall electronically file a return for every calendar month or part thereof, within 13 days after the end of such month.

First Return

Every dealer 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 for registration till the end of the month in which the registration is granted.

Annual Return

Every dealer shall have to furnish an annual return for every financial year electronically, on or before 31st December following the end of such financial year.

Final Return

Every dealer who applies for cancellation of registration shall furnish a final return within 3 months of the date of cancellation or date of cancellation order, whichever is later, in a prescribed form.

Refunds

A person can claim refund of tax and interest by making an application to the proper officer of IGST/CGST/SGST. This application shall be made before the expiry of 2 years from the relevant date.

Further, it has been provided that the limitation of 2 years shall not apply where such tax or interest has been paid under protest.

Refund shall be available to a taxpayer under the following cases:

- Where the taxpayer is engaged in export; and
- Where the taxpayer is unable to utilise the credit on account of rate of tax of inputs being higher than rate of tax on outputs (i.e. inverted tax structure)

Proper officer shall issue the refund order within 90 days from the date of receipt of application.

Provisional refund will be granted in case of export related refund claim to the extent of 80% of the amount so claimed excluding ITC, for categories of registered taxable person to be notified.

Balance 20% shall be refunded after due verification of documents.
Rate of Interest on delayed refund will be notified separately.

Appeals

Appellant is required to make a pre-deposit of 10% of the disputed amount while filing an appeal before the First Appellant Authority.

However, departmental authorities may apply for a higher pre-deposit, not exceeding 50% of the disputed amount where the disputed tax liability is not less than INR 25 crores and where the GST Commissioner is of the opinion that the department has a very good case against the taxpayer (considered as serious case)

Transitional Provisions

Model GST law provides for transfer of unutilised CENVAT credit and VAT Input tax credit (ITC) availed under the existing laws subject to following:

Amount is reflected as carry forward in the return
Such credit is admissible under the earlier Law as well as the GST Law.

Unavailed CENVAT credit on capital goods, not carried forward in a return, will be allowed in certain situations.

The provisions also deal with allowability of credits under various scenarios.

Central Government or the State Government may issue orders or make rules consistent with the need for smooth transition to GST including the need to take care of matters not specifically covered so long as such matters are not in conflict with the purposes of the Act.

On the appointed day, every person registered under any of the earlier laws shall be issued a certificate of registration on a provisional basis in a prescribed form and the same will be valid for six months.

During the specified period, the person has to furnish information required by the authorities to get final registration certificate.

Integrated GST Act, 2016 (IGST)

IGST is a tax levied under the Act on the supply of any goods and/or services in the course of inter-state trade or commerce.

Inter-state trade or commerce is defined to mean any supply where the ‘location of the supplier’ and the ‘place of supply’ are in different States.

Intra-state trade or commerce is defined to mean any supply where the ‘location of the supplier’ and the ‘place of supply’ are in the same State.

Supply of goods or services in the course of import into the territory of India and an export of goods or services shall be deemed to be a supply of goods or services in the course of inter-state trade or commerce.

Detailed provisions defining place of supply of goods and various kinds of services have been laid down, for determining supply of goods and/or services in the course of inter-state and intra-state trade or commerce.

Way forward

Appropriate institutional framework to be set up to engage with the industry for developing the law which aligns with the primary objective of implementing GST i.e. having a unified market, removal of cascading effect of taxes with an eye on ‘Make in India’ for both goods & service, ease of doing business by ensuring rationalisation of tax compliances and providing adequate certainty.

Further, the following key elements need to be finalized by the Government at the earliest:

Classification of goods and services and corresponding GST rates
Alignment of existing foreign trade policy benefits to GST regime
Implementation of GST Network

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3 Applicable in case of SGST and CGST
4 Applicable in case of SGST
Comments

The Model GST Law provides the much needed visibility and window for industry to understand the GST framework and provide the necessary feedback to shape the final law.

The model law has unanswered questions on key areas like treatment of supplies to SEZ / STP, transition of Central / State Government incentives in GST regime. Also at this stage no negative list has been prescribed. Some of these require consensus which, hopefully, will emerge in the ensuing months.
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