

Conceptual Walkthrough with Revised Model GST Law



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INTRODUCTION

Taxes on goods and services are already there in our country in different forms like Excise Duty, VAT, Service Tax, Entry Tax, Entertainment tax etc. All these are different levies by Central or State Governments and are having altogether different sets of taxable events, rates, procedures and compliances. The existing legal framework of these indirect taxes pose some challenges and issues before tax payers like:

- Multiplicity of taxes.
- Cascading effect of taxes (tax on taxes).
- Classification issues.
- Excessive compliances.
- Fractured flow of Input Credits.

The proposed GST regime is bound to affect most aspects of every business be it procurement, supplies, Geographical Presence etc. Accordingly, it is advisable for all business entities, specially those having multiple locations or are having multiple registrations, to analyze their business structure in the light of the proposed law and have a complete impact analysis of their business process.

A single Goods and Services Tax (GST) was envisaged with a view to overcome all these issues of tax payers. Ideally GST is a comprehensive Consumption Based Value Added Tax to be levied at all stages of supply of goods and/or services, whereby Input Tax Credit on all types of business procurements (i.e. goods, services and capital goods) should be available without State Geographical Barriers.

Since the desired Constitutional Amendments have already been made and notifications for giving effect to provisions of the same have been issued, it is only a matter of time before GST is levied in the country. The Government, on many occasions had disclosed its intention to levy GST as early as possible. It may be noted that as per constitutional amendment, the government will lose power to levy existing taxes from 15th September 2017 and hence it can be inferred that GST will become reality in our country latest by September 2017.

In our country, instead of single comprehensive tax, GST is proposed to be levied on Dual Tier basis i.e. on all transactions of supply of goods and services; two taxes namely 'State Goods and Service tax' (SGST) and 'Central Goods and Services Tax' (CGST) shall be charged. If such transaction takes place in the course of inter-state trade or commerce, then instead of two different taxes one single tax to be called as 'Integrated Goods and Services Tax' (IGST) shall be levied, the rate of which shall be equivalent to sum total of SGST and CGST.

The GST the result of not only major a tax reform, but also a complete business reform for a number of reasons. It will greatly affect business practices and parameters. Therefore apart from tax professionals, it is important that the basic concepts of the GST should be understood by businessmen, as well as the finance, procurement and sales teams of every business entity.

SALIENT FEATURES OF THE MODEL GST LAW

Some of the important aspects of the GST, on the basis of revised model GST law released by the Government in November 2016, are summarized hereunder.

TAXABLE EVENT

In the present regime, levy of tax on goods are at the time of sale thereof or in case of services at the time of provision of services. The term Sale of goods and Provision of Services, under the present respective legislations, normally creates charge when particular goods are sold by one person to another or some services are provided by one person to another for a

consideration.

In the proposed tax regime, the taxable event will be Supply of Goods and Services. The term 'Supply' is much broader than existing charge of taxes i.e. Sale and Provision and it includes all commercial supplies such as Sale, Transfer, Barter, Exchange, License, Rental, Lease, Disposal etc. In the proposed GST law, it is not necessary that Supply should be there from one person to another, i.e. even self supplies can come under GST net. Further the proposed law provides a list of activities/ transactions whereby even if no consideration is charged the transaction will be treated as deemed supply - that means liability to pay GST will still be there. For instance if a company situated in Jaipur sends some of its assets (stock or otherwise, on which ITC was taken at the time of purchase) from its Jaipur office to its Mumbai office to be used there, the liability to pay GST will arise on such transactions, despite the fact that neither there were two persons involved nor any consideration was there in such transaction.

TIME OF SUPPLY

The term 'Time of Supply' signifies the point of time when liability to pay any tax arises. It will be altogether a new concept for existing dealers of goods i.e. paying VAT on their sales. In the present sales tax law, the time of supply is sale of goods i.e. directly linked to taxable event. However, under GST regime the tax on supply of goods shall be required to be paid at the earliest of following two events:

1. Date of issue of the invoice by supplier or the last date when he is required to issue the invoice.
2. Date on which payment is received by the supplier.

Further the model law provides that the invoice is to be made at the time or before delivery of the goods. Hence for all practical purposes the tax will have to be paid at the time of earliest of all major commercial events i.e. preparation of Invoice or Receipt of payment. In the existing system payment of VAT/ CST or Excise duty does not have any bearing on the receipt of advances, whereas under the GST regime, even if the delivery has not been given or sales has not been completed, if the advance is received the tax liability has to be discharged. Provisions for time of supply for services are more or less similar to the present provisions of 'Point of Tax' in the Service Tax Laws.

Time of supply provisions for supply of goods on approval basis and Continuous Supply of Goods/ Services are separately given to provide deserving relief. All tax payers have to modify their systems and procedures so that all relevant dates are captured to determine correct Time of Supply for all transactions and taxes be paid timely.

PLACE OF SUPPLY

The concept of place of supply is important to work out whether a particular transaction is Intra-State or Inter State. If a particular transaction is Intra-State, there will be two taxes i.e. SGST & CGST. If the transaction is in the course of Inter-State Trade, one tax i.e. IGST will be levied. The rate of tax of IGST will be equivalent to sum total of SGST & CGST.

A particular supply shall be treated as Intra-State if the 'Location of Supplier' and the 'Place of Supply' are in same state. On the contrary if the 'Location of Supplier' and the 'Place of Supply' are in different states then the supply will be treated as Inter-State. Further the following transactions are specifically treated as Inter-State transactions:

- i) Import of Goods/ Services in India.
- ii) Supply where 'Location of supplier' is in India and the 'Place of Supply' is outside India. (export and some other supplies which cannot be technically classified as Export due to non realization

of consideration in convertible foreign exchange or supply to distinct person of same entity).

- iii) Supply to/ by a SEZ unit or developer.
- iv) Any other supplies which are not an Inter-State Supplies, as may be specified.

Accordingly, any transaction with SEZ developer or unit will be Inter-State transaction even if the both parties to transaction are in the same state. Further since Union Territories without state legislature (eg Chandigarh) are not State and any transaction originating from them shall be treated as Inter-State Transaction and accordingly will attract levy of IGST.

The concept of Place of Supply is not new to the Service Tax assesses. The dealers paying VAT & CST are familiar with the concept of Intra and Inter State Sales; however provisions classifying particular supply of goods as inter state or intra state are fairly different from the present legal provisions.

In the GST Regime the concept of Place of Supply is very important, because if for any reason any tax payer deposits the IGST instead SGST/CGST or vice versa, then as per provisions of proposed law, unlike present regime, one has to first deposit the correct tax and then claim refund of the wrongly deposited tax.

VALUATION

Once it is settled that tax(GST) is to be paid, and what time it is to be paid and which tax (IGST or CGST/SGST) is to be paid the next question that arises is at which value the tax is to be paid. Normally GST is to be paid on the 'Transaction Value' that is the actual price of supply. Transaction Value of a supply includes:

- All statutory levies other than GST.
- Any Obligation of Supplier which as been paid by the Recipient.
- Expenses incidental to supply including any amount charged for anything done by the supplier at the time or before supply, in respect of supply of goods/ services.
- Interest, late fee, or penalty for delayed payment of consideration.
- Non-Govt. Subsidies directly linked to the price.

One of the main objectives of introducing GST is seamless flow of credit along the supply chain and hence mitigating cascading effect of taxes. Under GST regime normally credit of input tax on all goods and services, used or intended to be used for business, shall be allowed to the registered tax payer, which is restricted under current tax regime in many ways and hence results into higher cost of goods and/ or services.

CONCEPTUAL WALKTHROUGH WITH REVISED MODEL GST LAW

However the Transaction Value shall not include:

- Any discount given before or at the time of supply, as evidenced from Invoice and
- Any discount after the supply has effected, where the discount is in terms of an agreement entered into at or before such supply and the recipient has reversed the respective ITC.

Where supply is between related parties or price is not the sole consideration of supply then instead of Transaction Value, value of the supply has to be determined as per prescribed Valuation Rules. In such a case an attempt will have to be made to determine the arms length or the real price of the supply for levy of GST point of view.

INPUT TAX CREDIT

One of the main objectives of introducing GST is seamless flow of credit along the supply chain and hence mitigating cascading effect of taxes. Under GST regime normally credit of input tax on all goods and services, used or intended to be used for business, shall be allowed to the registered tax payer, which is restricted under current tax regime in many ways and hence results into higher cost of goods and/ or services. However, a registered tax payer shall be entitled to ITC if the following conditions are satisfied:

- a) He is in possession of Tax Invoice/ Dr. Note/ Prescribed Tax paying document.
- b) He has actually received the goods and/ or Services.
- c) Tax Charged in the invoice has actually been paid to the credit of your Account.
- d) He has furnished required return under the GST Law.

Further, in case of ITC of Services there is requirement to pay the value of supply along with tax to the supplier within three months from the date of issue of invoice by the supplier, failing which ITC shall be reversed along with interest liability in the manner yet to be prescribed.

In the present tax regime, there are several litigations on the allowability of ITC on the conditions of matching of taxes paid by vendors on respective sale. However this matching concept is presently not there in the excise and service tax. In GST provisions for invoice level matching of input tax credit have been made for all supplies of goods and services. In result if a supplier does not deposit taxes to the credit of government account, the recipient will not be allowed to avail the ITC despite the fact that he had paid such taxes to the supplier. Accordingly one needs to carefully select the vendor from whom such goods and/ or services are to be purchased/ procured. If a tax payer does not select the vendor diligently for procuring inputs under GST regime, it can result into double payment of taxes, hence categorization of vendors becomes necessary.

Further, as it is a destination based consumption tax, there is a set order of utilizing input tax credit under GST regime, which is as under:

- IGST in order of IGST, CGST and SGST;
- CGST in order of CGST and IGST;
- SGST in order of SGST and IGST;

Cross utilization of credit between CGST and SGST shall not be available. Further, unlike CENVAT Credit there is no specific concept of availment and utilization of credit under Model GST Law. Alike, current indirect taxes, reversal of input tax credit is there when inputs, input services or capital goods are used partly for business and non business purpose, or taxable and exempted supplies purposes.

TRANSITION TO GST

Migration or Transition to GST is a process of existing tax payers' transition into GST regime from the existing indirect taxation



regime. Among many, two most important aspects of transition are Input Tax Credit and Registration:

- Carry forward of complete and eligible Input tax credits paid on goods, input services and capital goods. The tax payer might have paid Sales Tax, Services Tax and Excise Duty on inwards supplies in the existing tax regime which are eligible to be carried forward. Further it may be possible that those eligible credit may not be reflected in the returns filed in the existing laws. Identification and proper compliances to carry forward the same are most important aspect of the Transitional phase.
- It is better to decide the place or places of registration in the proposed regime as soon as possible. It may be noted that unlike existing service tax system whereby the tax payer can take centralized registration, as per model GST law there will not be any system of centralized registration. Persons located in different States will have to take separate registration under GST. In addition to it, person having multiple business verticals in the same State will be having option to take different registrations within the same State. All registrations shall be treated as a separate taxable person from adjudication and compliances point of view under proposed GST law.

COMPLIANCES UNDER GST

Apart from six different conceptual aspects of the proposed GST, discussed above, another important area is compliances. Compliances under GST is the area whereby any tax payer is under obligation to make payment of taxes and file different returns and statements. In GST regime normally a tax payer is required to file minimum three monthly statements/ returns per registration apart from annual return. Further in case the tax payer is required to deduct tax at source an additional return per month per registration is required to be filed. That means if any tax payer is having three registrations and is required to deduct TDS, he shall be filing 147 statements/ returns in a financial year. Moreover in most places these statements requires invoice level entry, i.e. information contained in each and every invoice has to be uploaded in the monthly statements e.g. Name, Address, GSTIN of Recipient, description of goods/services, HSN code, Details of tax etc. Apart from filing of statement and returns, in case of post supply events, such as return and/or rejection of goods, difference in rates, quantity etc. the GST law specifies adjustments of the same in a particular manner through debit and/or credit notes, which in turn also be reported through monthly statement/ returns.

CONCLUSION

The GST is bound to affect most aspects of business be it procurement, Supplies, Geographical Presence etc. Accordingly, it is advisable for all business entities, especially those having business in multiple locations or are having multiple registrations, to analyze their business structure in the light of the proposed law and have a complete impact analysis of their business process. In the absence of proper planning there may be situations whereby investment in working capital may rise significantly. CS