



Time of Supply of Goods & Services

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A. INTRODUCTION:

The Government has placed Model GST Law, i.e. the draft of the Indian GST framework, in the public domain in June 2016. It has been revised in November 2016. In short, proposed tax is destination based consumption tax, levied on multiple points in series of commercial activities or transactions of goods and services with availability of credit of taxes paid on goods and services, used in the normal course of business.

The term 'Time of Supply' signifies the Point of time when liability to pay any tax arises. Before checking 'Time of Supply' it is necessary that any activity or transaction is 'Supply' and is chargeable to tax in terms of Sec. 8 of the MGST Law. In other words provisions of 'Time of Supply' doesn't throw any light on taxability or non-taxability of particular supply, rather if any supply is chargeable to tax as per other provisions of law, then provisions of Time of Supply contained in sec. 12 & 13 of model GST Law provides the point of time or the date when liability for payment of tax arises.

The concept and provisions of 'Time of Supply' is not new to Service Tax assesseees. Whereas assesseees paying tax on goods in the form of Sales Tax, the concept is altogether new where as per existing practices the tax liability is discharged at the time of actual sale. Further in the case of excise duty, the levy is on manufacture whereas the Point of

Tax is Removal of goods. It may be noted that in both the cases, i.e. Sales Tax Laws and Excise duty, liability to pay tax is not correlated with receipt of consideration, i.e. any kind of advance receipt against sale or manufacturer doesn't attract any tax, which is currently there in case of service tax.

B. TIME OF SUPPLY IN GENERAL:

As per Sec. 12 (in case of Goods) & Sec. 13 (in case of Services) of the model law, time of supply of goods & services shall be earliest of the following:

1. Date of issue of invoice by the supplier
2. Last date on which supplier is required to issue Invoice for any Supply
3. Date of receipt of payment in respect of supplies

However, the supplier of goods and services have option to pay tax on the basis of invoices if the advance amount received is not in excess of Rupees One Thousand.

It may be noted that Sec. 12 does not makes any direct reference to Delivery or Removal of goods. However Sec. 28 of the Model law mandates issue of Invoice either Before OR At the time of removal, delivery or making available the goods to the Recipient as the case may be. The provisions for Time of Supply of Goods can be illustrated as under:

Date of Removal	Date of Invoice	Date of Payment	Time of Supply
06/10/2017	30/09/2017	03/10/2017	30/09/2017
05/10/2017	05/10/2017	25/09/2017	25/09/2017
05/10/2017	10/10/2017	06/11/2017	05/10/2017

It can be said that Time of Supply of goods in general shall be the earliest of Issue of Invoice, Date of Payment for Supply and Date of Removal or Delivery of Goods. It is well evident from the above provisions and chart that in GST regime, even if the supply of any goods has not been materialized in full but the advance payment is received, the GST has to be paid on such advances.

In case of supply of services, as per Sec. 28 of MGL read with Rule 1 of Invoices Rules the Invoice should be issued within 30 days from the date of supply of service. The provisions for time of supply of services can be illustrated as under:

Provision of Service	Date of Invoice	Date of Payment	Time of Supply
06/10/2017	30/09/2017	03/10/2017	30/09/2017
05/10/2017	05/10/2017	25/09/2017	25/09/2017
05/10/2017	10/10/2017	06/11/2017	10/10/2017
05/10/2017	10/11/2017	16/11/2017	04/11/2017

C. REVERSE CHARGE

In line with service tax practices, Sec. 8(3) of the Model GST Law, creates charge of tax on the recipient of goods and/or services in notified cases, i.e. payment of tax under reverse charge.

Time of supply of goods and services under reverse charge can be summarised as under:

GOODS – SEC. 12(3)	SERVICES – SEC. 13(3)
<p>Earliest of the following:</p> <ol style="list-style-type: none"> 1. Date of receipt of goods. 2. Date on which payment is made. 3. Date immediately following 30 days from the date of issue of invoice. 	<p>Earliest of the following:</p> <ol style="list-style-type: none"> 1. Date on which payment is made. 2. Date immediately following 60 days from the date of issue of invoice.

Where it is not possible to determine the 'Time of Supply' from above provisions the Time of Supply shall be the date of Entry in the books of accounts of the recipient.

However, Time of supply of Service, in case of associated enterprise where the supplier of service is located outside India shall be earliest of:

- (a) Date of entry in the books of accounts of recipient or,
- (b) Date of payment.

D. CONTINUOUS SUPPLY:

Continuous supply of goods is defined to mean a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline, or other conduit, and for which the supplier issues invoices to the recipient on a regular or periodic basis. For example supply of gas or water through pipeline and supply of electricity through cable may be continuous supply of goods.

On the same analogy continuous supply of services means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations. For example supply of telecommunication services or leasing of property or machinery may be continuous supply of services. The State and Central government may also notify any supply of services to be treated as Continuous Supply of services.

Looking into the operational difficulties for issue of invoice as per normal provisions of sec. 28, MGL provides special provisions for issuance of invoices in case of continuous supply of goods and services, which directly affects Time of Supply in these cases. Relevant provisions for Issues of Invoice are as under:

- In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received
- In case of continuous supply of services,
 - o Where the due date of payment is ascertainable from the contract, the invoice shall be issued within 30 days from the date when liability to payment arises as per contract
 - o Where the due date of payment is not ascertainable from the contract, the invoice shall be issued within 30 days from the date of receipt of the payment
 - o Where the payment is linked to the completion of an event, the invoice shall be issued within 30 days from the completion of that event

For example if the gas (assuming not exempted) is supplied through the pipeline on a continuous basis and the monthly statement of the gas supply is given to the recipient for a period from 11th of April to 10th May and so on. In this case the time of supply will be 10th May, whereas if the statement is given from 1st April to 30th April the time of supply will be 30th April and the liability to pay tax will arise accordingly.

E. GOODS SENT ON APPROVAL:

At times in some trade, goods are being sent on approval basis, that is goods are first removed from the premises/ place of business of supplier to the recipient's place and the ultimate supply takes place when recipient confirms it. The same practice may be on account of quality or specifications of goods or any other reason as per contract between supplier and recipient. If recipient rejects the goods same may be taken back by the supplier and property in such goods doesn't pass to the recipient.

As per model GST Law, If the goods are being sent/ taken on approval or return basis without knowing whether a supply will finally take place or not, the invoices shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

For example, a company sent 'Diamond Segments' to a marble slab manufacturer on approval basis, so as to check the quality of segments in the specific type of stone block, on 20th April 2018, for whom these are tools to be used in manufacturing process. In such a case if the recipient gives confirmation about supply on 15th June 2018, the time of supply shall be 15th June 2018, whereas if the recipient doesn't give confirmation till six months from the date of removal i.e. 19th October 2018, the time of supply shall be treated as 19th October 2018 (assumed payment for such supplies has been made after confirmation of supply).

F. TIME OF SUPPLY OF VOUCHERS:

Since actionable claim will be in tax net of GST, it will be all together new aspect of taxability. Accordingly MGL provides that in case of supply of vouchers, the Time of Supply shall be:

- The date of issue of voucher, if the supply is identifiable at that point, or
- The date of redemption of voucher, in all other cases.

G. ISSUES OF INDUSTRY:

Apart from adaption of system, some common issues are there which need special attention and clarity from lawmakers. There may be situations where supplier has received consolidated advance for multiple supplies of goods and/or services, which are chargeable to different rate of tax and it is not identifiable at the time of receipt of advance. Further in case of a company having multiple registrations may receive the advance at its Head Office or Corporate Office for supplies to be made from different locations which are not identifiable at the time of receipt of advance. Since payment of taxes under GST shall be based on Self Assessment, in such situations the taxpayer may have to work out tax liability on the basis of purchase orders or past trends or future plans of supplies instead of concrete value. However, in case of deviation of actual supplies

from the expected supply plan, taxpayer may have to face interest cost or blocking of working capital investment in the form of GST.

Further it may be noted that the model law itself makes distinction between Advance Payment and Deposits. The Deposit will not be considered as payment for supply unless the supplier applies such deposit as consideration for the supply. It may be the area where taxpayer may efficiently plan their business model and optimise time of tax outflow, however due care has to be given to provisions of other statues such as Income Tax and Companies Act.

H. SUMMARY:

It appears to be a challenge for all existing suppliers/ tax payers, mainly of goods, to adapt such a substantial change in the time of payment of taxes. If provisions of Model GST Law, as far as in relation to Time of Supply are concerned, remains intact, then all business houses will have to get themselves equipped to modify their systems so as to adapt for payment of taxes on the basis of advances received, unlike existing practices of actual sales and/or removal. The tax payer has to maintain a track of all events for all supplies and has to make regular reconciliation among Delivery, Invoicing and Payments. Further in case of continuous supply of goods it will be prudent to review existing contracts and suitable amendments can be made.
