CA C.K.Bajpai
M.Com. LLB. FCA.
International Taxation(Certificate)
Supertech Livingston
Crossing Republik, Ghaziabad (U.P.)
0120-2986412, 8588827340, 9560037408
contact@cackbajpai.com, cackbajpai@gmail.com

Salient Features of Model GST Act

Background

The model law of the much anticipated GST will probably be out by the end of January next year for general public for feedback however a model GST Act is getting circulated of which source of release could not be independently verified in the absence of it being unavailable on the government portal.

We are tried to brief the features of the Model GST as per this model. There would be separate Acts for CGST, SGST and IGST. The model Act would guide for drafting GST Act for each of the state.

Levy of Tax

Charging section 7 of the Act provides that there shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.

The CGST/SGST shall be paid by **every** taxable person in accordance with the provisions of this Act. The essential features of the Act are as follows:

1. There should be a taxable person:

Taxable person has been defined in the section 9 of the Act.

It covers

→any person carrying on business in India

→Include Central Government, State Governments and local authorities in relation to transactions in which they are engaged as public authorities

→Employees, in relation services provided to employer, kept out of definition of taxable person

2. The taxable person should be engaged in the business

The definition of taxable person provides that the person should be engaged in carrying out any business.

The business has been defined in section 2 (13) in very wide term.

It includes the following:

(a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any transaction in connection with or incidental or ancillary to (a) above;

(c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e)provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members as the case may be;

(f) admission, for a consideration, of persons to any premises; and

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(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

but does not include agriculture;

3. The business should be in relation to goods or services:

To levy GST, the business should be in relation to goods or services. The term goods and services have been defined as follows:

Section 2 (31): "goods" means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

Section 2 (59): "services" mean **anything** other than goods

Note: The service has been defined very large. It could include immovable property also.

4. There should be supply

GST is levied **on supply of** goods or service. Supply has been defined in section 3 of the Act as follows:

Supply defined in very wide term to cover all forms of supply such as:

- ➔ Sale, Transfer, Barter, Exchange, Licence, Rental, Lease, disposal and importation of assets for consideration in the course of business
- ➔ Schedule I: Supply without consideration as deemed supply
- ➔ Schedule II: Determination of what is supply of goods and supply of services

5. The supply should be of goods/services

6. Such supply should be in the course of business

7. The tax shall be levied **at the time of supply of** goods/services.

→Tax shall be levied at the time of supply of goods/services. The time of supply of goods and services have been provided separately.

→Time of supply of goods shall be earliest of the following dates: (section 11)

i. Date of removal of goods by supplier to the buyer for supply

ii. Where goods are not required to be removed, the date on which goods are made available to the buyer

iii. Date when supplier issues invoice for supply

iv. Date on which supplier receive payment for supply

v. Date on which buyer shows receipt of goods in books of account

Distinction has been made between REMOVAL and SUPPLY. Where goods have been removed but supply has not taken place, the time of supply shall be when it become known that supply has taken place or 12 months from removaldate, whichever is earlier

→Time of supply of service shall be earliest of following: (section 12)

i. The date of issue of invoice or date of receipt of payment, whichever is earlier. (provided invoice issued within prescribed time)

ii. Date of completion of service or receipt of payment, whichever is earlier. (if invoice not issued within prescribed time)
iii. Date on which recipient shows receipt of service in books of account. (If not covered by case i and ii above)
→In case of services covered by reverse charge, the time of supply shall be earliest of
i. Date of receipt of service
ii. Date of which payment is made
iii. Date of receipt of invoice
iv. Date of debit in books of account

- → Provisions have been made for determining time of supply of service in case of continuous supply of service on milestone basis

8. Nature of tax (CGST/SGST/IGST) shall depend upon nature of supply
→ Supply of goods shall be :
i. Interstate supply: if supply involves movement of goods from one state to another
ii. Intra state supply: If goods remain within the state
→ Supply of service shall be
i. Interstate supply: If service provider and service receiver are located in different states
ii. Intra state supply: If located in the same state
→Above principles of supply of goods and supply of service are by default principle.
In case of specified goods and services, nature of supply may change depending upon the place of supply.

9. Nature of supply would depend upon place of supply.

Separate provisions have been made for determining place of supply of goods (section 15) and place of supply of service (section 16) in case of specified goods and services.

10. The supply should be for a consideration

→Tax can be levied only when there is consideration. In the absence of consideration, no tax shall be levied
→Consideration has been defined in section 2 (20) in relation to supply of goods/services as:
i. Any payment in money or otherwise in respect of supply of goods or services, whether by person or by any other person
ii. Monetary value of any act or forbearance in respect of supply of goods or services
iii. Refundable deposit shall not be considered as consideration unless this is adjusted against value of goods/services supplied

11. The tax shall be levied on value of taxable supply:

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→Value of taxable supply shall be transaction value. Transaction value shall include the following:
i. Price paid or payable for supply of goods or services
ii. Value of free supply or supply at reduced cost by recipient of supply to supplier
iii. Royalties and licence fees relatable to supply of goods and service
iv. Any duty, tax, cess, fees levied other than CGST/SGST/IGST
v. Incidental expenses at the time or before delivery of goods/services
vi. Subsidy linked to supply
vii. Any discount allowed after supply has been effected. Discount allowed before or at the time of supply shall not be included in the transaction value.
→Where value cannot be determined as per above, it shall be calculated in accordance with the rules framed in this behalf.

12. The rate of tax shall be as specified in the schedule:

The rate of tax has not been provided in the Act. It would be provided separately in the schedule. There may be different rate of taxes for different class of goods and services.

13. The tax may be paid after availing input tax credit.

→ Tax may be paid after adjusting the eligible credit.
→Where goods and services are used partly for business and partly for other purpose, credit shall restricted as attributable to business
→Where goods (excl. capital goods) and services are partly used for taxable supply and partly for non taxable supply, credit restricted to taxable supply.
→ Order of utilisation shall be as follows:
i. IGST to be used for IGST, CGST and SGST in that order
ii. CGST to be used for CGST and IGST in that order
iii. SGST to be used for SGST and ISGT in that order
iv. CGST to SGST and SGST to CGST adjustment not possible
→ Excess credit may be carried forward to next tax period
→ Credit can be claimed as refund where accumulated due to export or where tax on input is higher than tax on output
→ Certain expenditure mainly in the nature of personal expenses have been excluded from the eligibility of credit

14. Option has been provided for payment of tax under compounded scheme

→Section 8 of the model Act talks about compounding scheme. The option would be available to registered taxable person whose turnover in a financial year does not exceed Rs. 50 lacs.
→The term "turnover" has been defined in very wide term which includes:
i. Taxable supply
ii. Non taxable supply
iii. Exempt supply

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iv. Export

→Payment under compounding scheme shall be considered as "amount" not "tax".

→The rate under compounding scheme shall not be less than 1 % as may be notified. The amount needs to be paid on turnover (not on taxable turnover). This means it would be applicable on exempted, non-taxable and export supply also.

→Compounded scheme option not eligible to person making inter-state supply and the person liable to pay tax under reverse charge mechanism.

→ In case of services to be specified by CG/SG, in respect of specified category of taxable service, option of compounding scheme would be available. Here, the rate may be less than 1% also as nothing has been specifically mentioned.

15. The government may provide exemption from tax:

→Exemption may be granted by government based on recommendation of council.

The exemption may be absolute or conditional.

→Where exemption has been granted absolutely, it would be mandatory to claim the exemption.

16. Registration needs to be taken by person liable to pay tax (section 26)

→There would be separate categories of registrations for different taxable persons viz., normal taxpayer, taxpayer under compounding scheme, casual dealers, nonresident supplier, input service distributor and unique ID for UN bodies/ governmental authorities and PSUs.

→ Registration would be PAN based.

→An entity having a single PAN but effecting supplies from multiple States would be required to take registration in each of the States from where the supply is being made.

→Separate registrations may be taken for different business verticals within the same State. This would be optional and not mandatory.

→ The facility of taking registration through Tax Return Preparer (TRP) and Facilitation Centre (FC) has been introduced.

17. Taxable person needs to file the return

→Every taxable person required to file return submitting details of outward supply on or before 10th of the succeeding month (section 34)

→Details of inward supplies need to be submitted before 15th of the succeeding month (section 35)

→ Final return shall be submitted on or before 20th of the succeeding month giving details of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars.

→Person deducting TDS has to file the return within 10th of the succeeding month.

→There is no mention about ISD in the Act.

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→ Every registered dealer, other than casual and non-resident dealer, is required to file annual return on or before 30th December after end of FY.

18. Tax needs to be paid on or before filing of return

- It has been provided in the model law that the tax should be paid before filing of return.
- If tax is not paid, the return filed shall be deemed to be invalid.

19. Tax deduction at source (TDS)

- CG or SG may mandate deduction of tax @ 1% on payment made or credited by:

i. Department of CG or SG
ii. Local authorities
iii. Governmental agencies
iv. Other notified categories

- It should be deducted on specified goods or service to be notified
- Applicable when total value of such supply under a contract exceeds Rs. 10 lacs
- TDS should be deducted within 10th of next month. Delay in payment would attract late fee of Rs. 100 per day

20. Assessment

Every registered person shall self assess the tax payable by him under the Act
Returns furnished by taxpayer would be subject to scrutiny by department
Department may carry out best judgment assessment in case of non-filers of return and unregistered person.

21. Audit

Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or cost accountant.
The department officer may carry out the audit of any assessee by a special or general order
The audit should be completed with 3 months from the date of commencement of audit
There is provision of special audit by CA or CMA also in case of exceptional circumstances.

22. There are provision for recovery of tax, interest, imposition of penalties, detention and confiscation of goods, arrest and prosecution.

23. Provisions for appeals and reviews have also been provided.

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24. Facility of Advance Ruling would be available. However, presently, no provision has been made for settlement commission.

25. Transitional Provisions
Transitional provisions have not been discussed in detail. It has only provided that the taxable person may carry forward the unutilised balance of cenvat credit of excise and service tax taken under Cenvat Credit Rules, 2004 and VAT credit lying with him on the date of switching over to GST.
The credit may be carried forward in such manner as may be prescribed.

Conclusion:

On cursory look at the GST Act, it appears that the same has been drafted in very simplified manner avoiding much of provisions, proviso, explanations and other jargons. It also appears that the same is line with the industry expectations and one can expect that it would certainly be able to achieve the objective of simplifying the Indirect Tax laws in India.

For further information and our services, please contact:
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