Summary of Model GST law

The model GST law has been released on 14th June, 2016. It outlays the basic structure of the CGST act; SGST acts to be based on the structure laid out. The draft of the IGST act has been also released as a part of the Model GST law.

The key features of the Model are summarised as under:

1. **Scope of GST :**
   The act is extended to whole of India including Jammu & Kashmir. There can be different appointed dates in different states.

2. **Basic Definitions:**
   Section 2 of the act contains 109 definitions. Few important definitions are covered as under:
   - Business: The definition of Business is an inclusive definition and covers various spheres of transactions including the services. It includes any trade, commerce, manufacture, profession, vocation or any other similar activity, **whether or not it is for a pecuniary benefit**. Further, it includes any transactions without considering the volume, frequency, continuity or **regularity of such transaction**.
   - Consideration: It includes the payment made or to be made in money or otherwise for supply of goods or services. It includes **the monetary value of any act or forbearance** in respect of or in response to inducement of the supply of goods and services.
   - Goods: It includes every kind of moveable property other than actionable claims and money. It also includes **securities**, growing crops, grass and things attached or forming part of the land.
   - Services: It means anything other than goods. It includes actionable claims and intangible property but not money.

3. **Supply: (Sec3)** It includes
   - All forms of supplies, sale, transfer, barter, exchange, license, rental, lease or disposal etc.
   - Import of service with or without consideration.
   - **Certain supplies to be treated as supply without consideration are (Schedule-I):**
     - **Permanent transfer/disposal of business assets**.
     - Temporary application of business assets to a private or non-business use (defined as supply of service in Schedule-II).
     - **Services put to a private or non-business use.**
     - **Assets retained after deregistration**.
     - Supply of goods and / or services by a taxable person to another taxable or non- taxable person in the course or furtherance of business.
   - Transaction between agent and principal for an agreed commission or brokerage.
   - Supply of any branded service by an aggregator under a brand name or trade name owned by him.

   Schedule II lays down the transactions to be treated as supply of goods and supply of services. Apart from the said schedule, Central Govt. (CG) or State Govt. (SG) may notify as to which transactions to be treated as supply of goods or supply of services. (It may lead to increase in taxes if the rate of GST on supply of goods and supply of services are separate.)

4. **Levy and Collection of tax:**
   CG or SG may notify the goods and services on which the tax shall be levied under reverse charge basis.
   A registered taxable person whose aggregate turnover is less than Rs.50 lakh can opt for Composition scheme. The rate of tax payable will be 1% of the turnover during the year.
   The scheme cannot be availed by any supplier who deals in inter-state supplies.

5. Time of supply:

A) ***Forward charge:***

(1) Supply of Goods: The liability to pay CGST / SGST on the goods under *forward charge* shall arise at the time of supply which is the **earliest** of the following dates:

Scenarios	Point of taxation
Where goods are removed	Date of removal of goods
Where goods are not removed	Date on which goods are made available to recipient
In other cases	Date of invoice, payment of the supply or the date of receipt of goods in books of the recipient

(2) Supply of Services: The liability to pay CGST/SGST on services under *forward charge* shall arise at the time of supply as follows:

Scenarios	Point of taxation
a) Invoice issued within prescribed time period	date of issue of invoice or the date of receipt of payment } whichever is earlier
b) Invoice not issued within prescribed period	date of completion of provision of service or date of receipt of payment } whichever is earlier
c) Where provisions (a) or (b) do not apply	date on which the recipient shows the receipt of services in his books of account

B) ***Reverse charge:***

Goods and services: The liability to pay CGST / SGST on the goods under *reverse charge* shall arise at the time of supply which is the **earliest** of the following dates:

a)	Date of receipt of goods
b)	Date of receipt of invoice
c)	Date of making payment
d)	Date of debit in the books of accounts

C) ***Continuous Supply:***

(1) Goods: The liability to pay CGST/SGST on services under *continuous supply* shall arise at the time of supply as follows:

Scenarios	Point of taxation
Successive statements of accounts/ payments exist	Date of expiry of such period
No Successive statements of accounts/ payments exist	Date of issue of invoice or date of receipt of payment, } whichever is earlier

(2) Services: The liability to pay CGST/SGST on services under *continuous supply* shall arise at the time of supply as follows:

Scenarios	Point of taxation
Where due date is ascertainable from the contract	Date of payment liable to be made
Where due date is not ascertainable from the contract	Date of payment or Date of invoice } whichever is earlier
Payment linked to completion of the event	Time of completion of the event

D) ***Specific scenarios***: The point of taxation of CGST/SGST on supply of goods and services under the specific scenarios shall be determined in the following manner:

Scenarios	Point of taxation
Where it is not possible to determine when the supply will take place (e.g. sale on approval basis)	when it becomes known that the supply has taken place or, 6 months from date of removal, whichever is earlier
Where supply of services ceases under a contract before the completion of the supply	when the supply ceases

E) ***Residuary:*** When the point of taxation cannot be determined from the above rules, the following rule shall be followed:

- Where a periodical return is to be filed, the date on which such return is to be filed, or,
- In any other case, the date on which CGST/ SGST is paid

6. Value of supply:

- Value of taxable supply of goods and services shall be the transaction value (actual price paid or payable only where the price is the sole consideration for the supply and the supplier and the recipient of the supply are not related to each other).
- Where the above method cannot be applied, the GST Valuation (Determination of the Value of Supply of Goods and Services)Rules, 2016 provides other methods to be applied hierarchy wise:
  - **Rule 4:** Transaction value of goods and services of like kind:
    Transaction value of the like quantity and quality at and about the same time adjusted with the difference in time, quantity, freight and insurance charges etc.
  - **Rule5**: Computed value method:
    Value can be computed by adding the cost of production, cost of services, design charges, profit and general expenses of same kind or class of goods or services.
  - **Rule 6:** Residual method:
    Value determined by using reasonable means consistent with the principles & general provisions of these rules.
  - **Rule 7**: Rejection of declared value:
    The relevant officer may determine the value as per the above stated rules if there is reasonable doubt for the reasons to be recorded in writing, that the declared value does not represent the transaction value.
  - **Rule 8:** Valuation in certain cases:
    The rule prescribes the valuation method in case of pure agent and money changer.

Valuation Rules are similar to those of Custom Valuation Rules, 2007. Rule 8 of the Valuation Rules regarding the supply of services is similar to the existing provisions in current law.

7. Input tax credit

- ITC of the inputs /semi-finished/ finished goods held in stock held immediately preceding the date of registration can be taken.
- Time limit of taking ITC has been prescribed as one year from the date of invoice for credit.
- ITC for the supplies relating to the business and taxable supplies including zero rated supplies shall be eligible to be availed.
- Transfer of input tax credit is allowed in case of sale, transfer, amalgamation etc.
- ITC is not available in the following cases:
  - Motor vehicles except the services provided are transportation of goods, passengers or imparting training on motor vehicles.

- Goods /services in relation to food, beverages, outdoor catering etc. primarily for personal consumption of the employees
    - Goods /services acquired in execution of works contract for construction of immovable property except plant & machinery
    - Goods acquired by a principal, the property in which is not transferred to any other person, which are used in the construction of immovable property, other than plant and machinery
    - Goods used for private or personal consumption.
    - Tax paid under composition levy.
- ITC shall be available only when the recipient has tax invoice or other similar document; received goods /services; tax charges has been paid to the Govt. by the supplier and return has been furnished.
- No ITC for an invoice of goods /services pertaining to a FY is available after the return for the month of September following the end of FY or the relevant annual return is filed, whichever is earlier.
- <u>Job work:</u> the credit is eligible for input goods and capital goods, if the same are received back within 180 days or 2 years respectively, otherwise an amount equal to the ITC availed along with interest to be paid.
- Manner of utilisation of ITC:
    - CGST: CGST,IGST
    - SGST: SGST, IGST
    - IGST: IGST, CGST, SGST

8. <u>Registration</u>

- Registration required in all the states of the supplies of goods and services made by the assessee.
- Registration to be obtained within 30 days from the date of becoming liable to be registered.
- Threshold of aggregate turnover* for registration is Rs.9 lacs (Rs.4 lacs in North Eastern States including Sikkim).
- Voluntary registration can also be done.
- Mandatory registrations in the following cases:
    - Casual taxable person,
    - Non- resident person,
    - Person involved in inter-state supplies
    - Persons liable to pay taxes under reverse charge mechanism
    - Input service distributor
    - Persons who deduct tax
    - Person who supply goods/services on behalf of other registered taxable person whether as agent or otherwise.
    - Electronic commerce operator, aggregator who supplies services under his brand name or his trade name
    - Other persons as notified by CG or SG.
- Registration of casual taxable person and non-resident person shall be effective for 90 days and have to make an advance deposit of the estimated tax liability.
- Cancellation of the registration under CGST/SGST act shall also be considered as cancellation under SGST/CGST act respectively.

(**<u>Note</u>**: Aggregate turnover* is aggregate value of taxable and non-taxable supplies, exempt supplies and exports of goods/services of a person having same PAN (includes on all India basis and excludes GST levied on it).

9. **Tax invoice, Credit & Debit Notes**

- Tax invoice to be issued at the time of supply of goods/services showing the description, quantity, value of goods and tax charged thereon etc.
- A bill of supply has been prescribed for non-taxable supplies.
- Credit/Debit notes to be issued before the 30th day of September the end of FY or the relevant annual return is filed, (whichever is earlier), where the taxable value in the invoice is found more/less than the value to be taxed.

10. **Returns:**

Assesses	Return Type	Timelines
All assesses except ISD, composition scheme payers and person paying TDS	Outward Supplies- Monthly	On or before 10th of next month
	Inward Supplies- Monthly	On or before 15th of next month
	Monthly return	Within 20 days from end of the month
	Annual Return	On or before 31st December following the end of relevant FY
Composition payers	Quarterly return	Within 18 days from end of quarter
TDS payers	Monthly returns	Within 10 days from end of the month
ISD	Monthly returns	Within 13 days from end of the month

- Return to be treated as valid only after payment of tax.
- No returns can be furnished if return for last tax period not furnished.
- Tax to be paid before the date of the return filing.
- Nil returns to be submitted in case of no supply of goods/services.
- Rectification of error or omission in the returns shall not be allowed after the due date of filing the return for the month of September following the end of the relevant FY or filing of the relevant annual return, whichever is earlier.
- Subject to the prescribed conditions/restrictions (not yet prescribed) can avail the ITC on provisional basis. On final assessment, the difference shall be paid or refunded, as the case may be.
- Final return on cancellation of registration to be submitted within three months from date of order of cancellation or date of cancellation, whichever is earlier.
- Penalty of late filing:
    - Annual return: Rs. 100 /day for each day of default (max to 0.25% aggregate turnover)
    - Other than annual return: Rs. 100 /day for each day of default (max to Rs.5000)

11. **Payment of tax**

- Deposit made towards tax, interest, penalties shall be paid online using debit /credit cards, NEFT etc. which will be credited to electronic cash ledger account.
- Self-assessed ITC claimed in the return shall be credited to electronic credit ledger account.
- Payment towards tax, interest, penalties can be made from electronic cash or credit ledger accounts subject to the rules, conditions prescribed.
- Interest period shall be calculated from the first day such tax was due to be paid.
- TDS:
    - Specified persons shall deduct TDS @1% of the contract value where it exceeds Rs.10 lakhs.
    - TDS deducted shall be paid within 10 days of the end of the month of deduction and the certificate to be furnished in 5 days of payment of tax.
    - The late fee for furnishing of the certificate is Rs.100/ day subject to Rs.5000.

12. **Refunds:**

- Refund for an amount can be claimed within a period of 2 years from the relevant date.
- Refund to be granted on the principal of unjust enrichment. If amount claimed is less than Rs.5,000, then only self-declaration to be made, otherwise documentary evidences to be furnished to establish no unjust enrichment.
- The said limitation does not apply in case of payments made under protest.
- Unutilised ITC can be claimed as refund in case of inverted duty structures and exports (accumulation of ITC)
- Proper officer may grant provisional refund of 80% of the claim and the rest 20% can be refunded after due verification of the documents.
- Order of refund shall be issued within 90 days of the receipt of application.
- Interest at the prescribed rates will be paid for delay in case of refund beyond 3 months.
- In cases of unjust enrichment, refund order shall be granted and the amount shall be credited to the Consumer Welfare Fund.
- Refund of unutilised credit is also allowed in case of export of goods/services except in cases where export duty is payable and inverted duty structure.

13. **Accounts and records:**

- Records to be maintained at the registered place of business: certificate of registration, a true and correct account of production, or manufacture of goods, of inward or outward supply of goods and/or services, of stock, of goods, of input tax credit availed, of output tax payable and paid, and such other, particulars as may be prescribed.
- Assesses to get his accounts audited if the turnover exceeds a prescribed limit by CA or ICWA and submit to the proper officer.
- Accounts to be retained till the expiry of 60 months from the last date of filing of Annual Return for the year pertaining to such accounts and records.
- Party to an appeal or revision /proceeding shall retain the books of accounts and other records for a period of one year after final disposal of such appeal/revision/proceeding or months from the last date of filing of Annual Return for the year pertaining to such accounts and records, whichever is later.

14. **Job Work:**

- Goods can be sent by the principal to the job worker without the payment of tax, subject to:
  - The goods are brought back to the place of the principal after the job work and removed from there with payment of tax or without payment of tax in case of exports.
  - Supply goods from place of job worker on payment of tax or without tax in case of exports. The place of business of the job worker shall be declared as additional place of business of principal except when the job worker is registered or principal is engaged in supply of such goods as may be notified in this behalf.
- The responsibility for accountability of the goods including payment of tax thereon shall lie with the principal.

15. **Electronic Commerce:**

- Every electronic commerce operator shall deduct an amount at the time of credit of any amount to the account of the supplier of goods / services, or, at the time of payment of any amount in cash or by any other mode, whichever is earlier at the rate prescribed later.
- The e-commerce operator shall deposit the amount so deducted as well as submit a statement of all amounts deducted within 10 days after the end of the month in which such collection is made.

- The amount collected and deposited to govt. shall be deemed payment on behalf of the supplier, which can be claimed by the supplier in the electronic cash ledger account.
- The details of the outward supplies furnished by e-commerce operator shall match with the details of the supplier. In case of discrepancies, both persons should try to resolve the same.
- In case, the same is not resolved, the excess tax shall be added to output tax liability of the supplier for the month succeeding the month in which discrepancy is noticed.
- Any officer below rank of JC may ask for additional details from the e-commerce operator which shall be furnished in next 5 working days of service of notice, failure to which may lead to penalty of Rs.25,000.

16. Assessment

- Every taxable person shall himself asses the tax payable and furnishes a return under relevant section.
- Provisional assessment:
    - If the assessee is not able to determine the taxes to be paid on supply of goods/services, then taxes can be paid on provisional basis.
    - A bond along with required surety /security has to be furnished binding the taxable person to make the payment of the differential payment of the taxes.
    - The final assessment order shall be passed by the proper officer in next 6 months of passing the provisional order. The time period can be further extended by 6 months by JC/AC on sufficient cause to be shown.
    - Interest shall be paid on the differential amount from the first day after due date of payment of tax till the date of actual payment.
- Returns can be scrutinised to verify the correctness by the proper officer. Explanation if sought by the proper officer, has to be provided within 30days.
- Non-filers of return: Best judgement can be done if the assessee does not file the return within 15 days of service of notice to non-filers of returns.
- Unregistered persons: Assessment order determining the tax liability of a person liable to be registered can be determined based on best judgement. The order can be issued within a period of 5 years from the due date of filing the annual return of the tax period under consideration.
- Summary assessment: If the proper officer has reasonable evidence showing liability of person coming to his notice can proceed to issue assessment order (with permission of AC/DC). The person in charge of goods may be deemed to be the taxable person in case taxable person is not ascertainable. The notice can be withdrawn by application made by deemed taxable person within 30 days or own motion by dept., if the order is erroneous.

17. Audit:

- Audit to be informed in advance to the assessee (at least fifteen working days) prior to conduct of audit.
- Audit shall be completed within 3 months of the production of the documents in the audit or actual institution of audit at the business premises, whichever is later.
- The time can be extended further by 6 months in case the Commissioner is satisfied for the reasons recorded. He may extend the period by 6 months for the reasons to be recorded in writing.
- Special audit:
    - It is invoked in case the officer (not below AC/DC) has an opinion that the value is not correctly ascertained or the credit has been taken in excess of the limits.
    - In such cases, with prior approval of Commissioner, assessee may be directed to get his accounts audited from CA or CWA nominated by the Commissioner.

- The duly signed and certified report has to be submitted in 90 days by the CA/CWA to the officer. The time period can be extended by another 90 days for any material or sufficient reason.
- The assessee to be given reasonable opportunity of being heard in regard to the findings of special audit, to be used against him during the proceedings.

18. **Demands and Recovery**

Particulars	Tax not paid / short paid / erroneously refunded on account of Other than fraud/ wilful misstatement / suppression of facts	Tax not paid / short paid / erroneously refunded on account of fraud/ wilful misstatement / suppression of facts
Time period for issue of order	3 years from the due date or the actual date, whichever is earlier, for filing of annual return/ 3 years from the date of erroneous refund	5 years from the due date or the actual date, whichever is earlier, for filing of annual return/ 5 years from the date of erroneous refund
Penalty before service of Notice	No penalty payable, if tax and interest is paid	Penalty @ 15%, if tax and interest is paid
Penalty after issue/ communication of Notice	No penalty payable, if tax and interest is paid within 30 days of issue of notice	Penalty @ 25% payable, if tax and interest is paid within 30 days of communication of notice
Penalty after issue/ communication of Order	Not prescribed.	Penalty @ 50% of tax, if tax and interest is paid within 30 days of communication of order else 100% of tax
Maximum levy of Penalty in the order	10% of the tax or Rs.10,000/- whichever is higher	Not prescribed.

Proceedings shall be deemed to be concluded in case the penalties are paid in the manner tabled above.

Tax collected but not deposited with the central or state govt.:

- Proper officer shall issue a show cause notice as to why said amount be not deposited to the State or Central Govt. and the penalty equivalent to the amount be not levied.
- Interest shall be levied from the date of collection of the amount till the date of payment of such amount to the Govt.
- The order shall be issued within one year from the date of issue of the invoice after giving a reasonable opportunity of being heard.

Recovery:

Proper officer may deduct the tax amount:

- due to such person from any amount payable to such person
- detaining and selling any goods belonging to such person
- commencement of garnishee proceedings
- Distrain any movable or immovable property belonging or under control of such taxable person.

During the pendency of any proceedings, if the Commissioner opines that provisional attachment of the property of the assessee is in the interest of the revenue, then he can order the same.

19. **Inspection, Search, Seizure and Arrest:**

Inspection, search and seizure:

- The proper officer not below the rank of JC, may direct any CGST/SGST officer to inspect or search the business places of the assessee or confiscate the goods, where there is a reason to believe that:
    - the transaction has been suppressed, or,

- any person engaged in business of transportation or warehousing has stored the goods or kept the accounts so as to evade taxes.

- The officers have the power to seal or break open the door of any premises or to break open any almirah, box, receptacle in which any goods, accounts, etc. are suspected to be concealed.
- An inventory of goods in the prescribed manner shall be prepared.
- The person in charge of a conveyance carrying any consignment of goods of value more than Rs.50,000 shall carry with him such prescribed documents as may be prescribed.
- All officers of Police, Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central Government engaged in the collection of land revenue, and all village officers are empowered and required to assist the CGST/SGST officers for the purpose of this act.

Arrest:
Commissioner is empowered to authorise any CGST/SGST officer to arrest a person, committing certain specified offences such as supply of goods without invoice, collecting but not paying tax etc., wherein the amount of tax evaded exceeds an amount of Rs.25 lakhs.

20. Offences and penalties

Offences	**Penalties levied**
Collect taxes, but not paid to the govt., collects TCS in contravention of the act and non-payment to govt. of the same, fraudulent availment of refund, non-maintenance of proper books of accounts, tampers destroys material evidences etc.	Rs.10,000 or an amount equivalent to the tax evaded / tax not deducted /short deducted/deducted but not paid /ITC availed/passed on/ distributed irregularly, or refund claimed fraudulently, as the case may be, Whichever is higher
Short payment of tax repeatedly (short payment in three return for last six consecutive tax periods)	Rs.10,000 or 10% of tax short paid Whichever is higher
Aids or abets in contravention of the law, fails to issue an invoice or fails to account an invoice in books, fails to appear before CGST/SGST officer when issued a summon for appearance to produce a document in a an enquiry.	Extend up to Rs.25,000
General penalty	Extend up to Rs.25,000

Detention and confiscation:

- Any goods are transported or stored while they are in transit or not accounted in the books respectively in violation of the Act, then, such goods or conveyance of transport shall be liable to be confiscated. The same can be released on payment of interest, tax and penalty or furnishing an equivalent amount of security.
- In specified circumstances, like evasion of duty, non-accounting in books, supplying goods with no registration etc. shall be liable to be confiscated. Such goods can be released on payment of fine which in no case exceed the market value of goods.
- The conveyance of transportation of the confiscated goods is also liable to be confiscated.

- No confiscation can be made without proper show cause notice or without giving a reasonable opportunity of being heard.

21. Prosecution and compounding of offences

Following punishments has been prescribed for the offences, such as supply of goods without invoice/ incorrect invoice/ false invoice, fraudulent refund, falsifying financial records, etc.:

Amount of tax evaded	**Punishment**	**Nature of offence**
Above Rs. 2.5 crores	Imprisonment for a term upto 5 years with fine	Cognizable and non bailable
Above Rs. 50 lakhs but less than Rs. 2.5 crores	Imprisonment for a term upto 3 years with fine	Non cognizable and bailable
Above Rs. 25 lakhs but less than Rs. 50 lakhs	Imprisonment for a term upto 1 years with fine	Non cognizable and bailable
Repeatedly convicted	Imprisonment for a term upto 5 years with fine	Non cognizable and bailable

- The offences may be compounded by the Competent Authority, subject to certain exceptions.
- Also, the compounding payment would be between the minimum of Rs. 10,000 or 50% of the tax involved, whichever is higher and would be subject to a maximum of Rs. 30,000 or 150% of the tax involved, whichever is higher.

22. Appeals

First appellate authority	• Appeal can be filed by aseessee or the commissioner of GST on his own motion. • Appeal to be filed within 3 months of the date of the order against which the appeal is filed. The time can be extended by 1 month , sufficient cause to be shown. • 10% of the disputed amount to be paid for filing appeal in CGST. • 10% of the disputed amount and 100% of the admitted amount to be paid for filing appeal in SGST. Also, the limit of 10 % can be extended to 50% if the dispute is considered as serious case (matter involving duty more than Rs.25 crores) • He may confirm, modify or annul the decision/order. • Appeal filed shall be tried to be decided within an year of filing of appeal.
Revisionary power of Commissioner	• In case of SGST law, the Commissioner has been given revisionary powers. • He can stay the operation of the order for such period as he deems fit and make further inquiry for passing a revised order.
Constitution of NATGST	• National Goods and Service tax Appellate Tribunal shall be constituted on recommendation of the Council. • It shall be headed by the National President. • Each state will have a branch headed by State President. • Qualifications, constitution etc. will be as prescribed. • After heading the president position, they shall not be entitled to appear, act or plead before the Appellate Tribunal.
Appeals to the Appellate Tribunal	• Appeal to the Tribunal shall be filed within 3 months of the date of the order. • Memorandum of Cross objections can be filed within 45 days of the date of filing the appeal to the Appellate Tribunal.
Order of Appellate Tribunal	• An order confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. • The order can be rectified by for a mistake apparent on record by commissioner within three months of the date of original order. • Appeal filed shall be tried to be decided within an year of filing of appeal.

	• Proceedings of Appellate Tribunal shall be deemed to be the judicial proceedings of Civil Court.
Appeal to the High Court	Cases involving substantial question of law to be admitted. Appeals to be filed within 180 days of the order.
Appeal to Supreme Court	Appeals lie to Supreme Court in following matters : • against order of High Court • matter where two or more States, or a State and Centre, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or • matter where two or more States, or a State and Centre, have a difference of views regarding place of supply.

- Refund of pre-deposit, where applicable, would be made with interest from the date of deposit till the date of refund.
- An order by GST officer sanctioning prosecution would be non-appealable under the GST Act.

23. <u>Advance rulings</u>

- Authority for Advance Ruling shall be located in each state and comprise of one member from Central Government and one member from State Government.
- Matters for which ruling may be sought are as under:
  - classification of any goods/services;
  - applicability of a notification having a bearing on the rate of tax;
  - principles to be adopted for the purposes of determination of value of the goods / services;
  - admissibility of ITC of tax paid or deemed to have been paid;
  - determination of the liability to pay tax on any goods /services under the Act;
  - requirement of registration under the act;
  - whether an activity amounts to or results in a supply of goods and/or services.

- No appeal shall be submitted when the question raised is already pending or already been decide by the First Appellate Authority, the Appellate Tribunal or any Court.
- Advance rulings to be pronounced within 90 days of the receipt of application.
- Advance rulings can be appealed within 30 days of the rulings.
- Order of the appellate authority in an appeal against the advance rulings shall be given within 90 days of date of filing the appeal.
- The advance rulings can be rectified for the mistakes apparent from record within six months from the date of the order.
- The advance rulings to be void ab initio in case where it has been attained by way of fraud, misrepresentation of facts, suppression of material facts.

24. <u>Liability to pay in certain cases:</u>

<u>Situation</u>	**<u>Liability on</u>**
transfer of business	• Joint and several liability of the transferee and the transferor of the business
amalgamation /merger of companies	• If effective date of order is before the date of the court order, the transactions till the date of court order shall be treated in individual books as if no merger/amalgamation has taken place.
company in liquidation	• Intimation of appointment of liquidator to be given within 30 days • Dues of tax, interest or penalty to be communicated to the liquidator within 3 months by the Commissioner • Directors held liable for recovery of the dues of the company unless contrary is proved.
partners of firm to pay tax	• Joint and several liability of the firm and the partners of the firm • Partner retiring shall intimate dept. Within one month otherwise his

	liability shall continue in the firm towards the dept.
guardians, trustees	• Liable for the tax, interest and penalty dues as determined and recoverable from minor or other incapacitated person is he was a major or capacitated person.
Court of Wards	• Court of Wards, the Administrator General, the Official Trustee or any receiver/ manager as determined and recoverable from the taxable person as if he were conducting the business.
Other cases	• In case of death of person, his business is continued, then the legal representative • In case of death of person, his business is discontinued, then the estate of the deceased • HUF/AOP: Joint and several liability of the members of the Partitioned HUF and AOP • Dissolution of a firm: Joint and several liability of the firm and the partners of the firm • Ttermination of the guardianship or trust: Beneficiary shall be liable for the payment of tax dues.

25. <u>Miscellaneous provisions</u>

- Every taxable person will be given a GST compliance rating score which will be updated at regular intervals and also be placed in public domain.
- Certain specified persons to furnish Annual Information Return relating to payment of tax and transactions in goods and services. Failure to the same leads to penalty of Rs.100 per day the default continues.
- GST officers empowered to may make test purchases and drawl of samples to check compliances.
- Central and State Government are given extensive powers to make rules, issue notifications with retrospective effect under those rules, to carry into effect the purposes of the act.
- Mode of service of notice to also include by way of hand delivery, by courier, e-mail, facsimile, on dashboard of taxpayers website, SMS and by publication in newspaper circulating in locality of taxpayer.

26. <u>Transitional Provisions</u>

- Cenvat credit/ ITC shall be allowed to be carried forward under CGST/SGST act respectively furnished under the earlier law by him, in respect of the period ending with the day immediately preceding the appointed day.
- Unavailed cenvat credit/ITC on capital goods, not carried forward in a return, to be allowed under CGST/SGST acts respectively.
- Credit of certain eligible duties and taxes under CGST/SGST in respect of inputs held in held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day shall be allowed subject to conditions mentioned in **Note1**.
- Credit of eligible duties and taxes on inputs held in stock shall be allowed to a taxable person switching over from composition scheme to normal tax payment under CGST/SGST laws subject to conditions mentioned in **Note1.**
- If the taxable person switching over to composition scheme, the Cenvat credit and ITC inputs held in held in stock and inputs contained in semi-finished or finished goods held in stock shall be debited to the electronic credit ledger or electronic cash ledger. Any balance lying in the ITC or cenvat credit in electronic credit ledger shall lapse.
- No tax is payable under GST if the goods exempted under earlier law is returned to the place of business within 6 months of the appointed day.
- If the duty paid goods are returned to the supplier within 6 months of the appointed date, he shall be entitled to take the tax credit on such goods and the purchaser of the goods shall not be liable to make the payment of tax on the goods.

- No tax shall be payable on the Inputs removed for job work and returned within 6 months of the appointed date. The period can be further extended to two months. The details of the inputs sent to job worker shall be disclosed separately by the manufacturer and job worker on appointed day in the prescribed manner.
- No tax shall be payable on the semi- finished goods removed for job work and returned within 6 months of the appointed date. The period can be further extended to two months. The details of the semi-finished goods sent to job worker shall be disclosed separately by the manufacturer and job worker on appointed day in the prescribed manner.
- No tax shall be payable on the finished goods removed for job work and returned within 6 months of the appointed date. The period can be further extended to two months. The details of the finished goods sent to job worker shall be disclosed separately by the manufacturer and job worker on appointed day in the prescribed manner.
- The invoice/ document issued pursuant to the upward and downward revision in the contracts already existing on the appointed date shall be issued within 30 days of the appointed date. It shall be considered to be issued under this act.
- Pending refund claims, claim of cenvat credit, reviews, reference, appeal, revisions etc. in regard to output liability or treatment of any amount refundable or recoverable pursuant to assessment or adjudication etc. shall be dealt in accordance with the provisions of earlier law and the refund granted shall be paid in cash. The amount recoverable form the assessee shall be treated as arrears of revenue and will not be admissible as input tax credit.
- Tax paid under earlier law on retention payments, periodic/progressive supply of goods/services will not be paid again
- GST to be levied on Supplies made under works contract on or after the appointed date.
- ITC on account of services received prior to appointed date shall be eligible for distribution as credit even if invoices received after appointed date
- Tax paid on goods lying with agents, goods sent on approval basis returned on or after appointed date (received within 6 months) shall be allowed.
- No IGST shall be paid on import of services or inter -state supplies of goods /services made on or after the appointed date to the extent the tax paid under the provisions of current law.

Note 1

Conditions for seeking the credit under the new laws:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said person is not paying tax under section 8;

(iii) the said taxable person was eligible for cenvat credit on receipt of such inputs and/or goods under the earlier law but for his being a composition taxpayer under the said law;

(iv) the said taxable person is eligible for input tax credit under this Act;

(v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty / tax under the earlier law in respect of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the appointed day; and

(vi) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

IGST specific provisions:

27. **Place of Supply of Goods (section 5 in IGST):**

Scenarios	Place of Supply of Goods
Supply involves movement of goods	Location at the time at which the movement of goods terminates for delivery to recipient.
Supply does not involve movement of goods.	Location of such goods at the time of delivery.
Delivery of goods by way of transfer of documents of title to the goods or otherwise, before or during their movement, to recipient or any other person on the direction of a third person (as an agent or otherwise)	Principal place of business of third person (the place which is mentioned in the registration certificate). (considered as goods received by third person)
Goods installed or assembled at site.	Place of such installation or assembly.
Goods supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle.	Location at which such goods are taken on board.
In any other case (not covered above).	Determined by law made by the Parliament in accordance with the recommendations of the Council.

28. **Place of supply of services (section 6 in IGST):**

Nature of Service	**Place of Supply of Service**
Services in relation to immovable property including ancillary services: a) Services of architects, interior decorators, other related experts or estate agents etc., grant of rights to use immovable property etc. b) Lodging accommodation by a hotel, inn, guest house etc. by whatever name called (including house boat or any other vessel) c) Accommodation and other facilities provided at the property for organizing any marriage/reception etc. and other official, social, cultural, religious or business function.	Location at which the immovable property, boat or vessel is located.
Restaurant & catering, personal grooming, fitness, beauty treatment, health services, cosmetic & plastic surgery.	Location of the performance of the service.
Training and performance appraisal services given to	• Registered person – location of such person. • Other than registered person - location where the services are actually performed.
Admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto.	Location of the event/ park/ other place etc., as the case may be.

• Services of organising and ancillary thereto of cultural, artistic, sporting, scientific, educational or entertainment event (including conference, fair, exhibition, celebration or similar events). • Assigning of sponsorship of any of the above events.	• Registered person – location of such person. • Other than registered person - location where the services are actually performed.
Services of transportation of goods including mail or courier to	• Registered person – location of such person. • Other than registered person - location where the services are actually performed.
Services of Passenger transportation to	• Registered person – location of such person. • Other than registered person - place where the passenger embarks on the conveyance for the continuous journey. • Right to passage is given for future use and point of embarkation is not known: o Registered person: location of such person. o Unregistered person: location of recipient , where address on record exist or the location of supplier of services.
Service on board a conveyance such as vessel, aircraft, train or motor vehicle.	Location of the first scheduled point of departure of that conveyance for the journey.
Telecommunication services including data transfer, broadcasting, cable and direct to home television services: • Fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna; • Mobile connection for telecommunication and internet services provided on post-paid basis; • Mobile connection for telecommunication and internet services are provided on pre-payment through a voucher or any other means.	• Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed. • Location of billing address of the service receiver on record of the service provider. • Location where such pre-payment is received or such vouchers are sold. If prepaid service is availed through electronic network – the location of the service recipient as per the record of the service provider.
Services of banking or other financial services including stock broking	• Location of service receiver as on records of the service provider. • If service is not linked to account of the recipient of services -- location of the supplier of services.
Insurance services	• Registered person – location of such person. • Other than registered person – location of service receiver as on records of the service provider.
Advertisement services to the central government, state government, a statutory body or a local authority meant for identifiable states.	Each such State.
Services not covered above.	• Registered person – location of such person. • Other than registered person - location of the service receiver available on the records of the service provider or location of the service provider.

29. <u>Apportionment of taxes:</u>

- IGST, interest and penalties collected in the inter-state supplies shall be apportioned to the Centre at the rate equivalent to CGST on similar intra state supply.
- Balance amount of the IGST shall be apportioned to the State where such supply takes place.

30. Settlement of cases:

- Constitution:
  - National Goods and Services Tax settlement Commission shall be constituted headed by National chairman.
  - It will have one bench for one or more than one states, known as State Settlement Commission. It shall be headed by State Chairman.
- Application for a case / identical cases involving periodical notices & pending before adjudicating authority /First Appellate Authority can be made for settlement.
  - All the required returns are furnished
  - SCN or order by IGST officer has been issued and is pending before the First Appellate Authority.
  - Additional tax accepted by the assessee exceeds 5 lakh rupees.
  - The additional amount of tax as well as the interest thereon has been paid by the assessee.
- The application shall contain full and true disclosure if tax liability, which has not been disclosed to jurisdictional IGST officer, the manner in which the liability is arrived, the additional amount of tax payable and other prescribed particulars.
- An application for settlement cannot be made if :
  - case is pending before Appellate Tribunal or any Court;
  - It pertains to determination of question in respect of rate of tax / determination of liability on any goods and / or services.

- **Procedure**:
  - Settlement Commission (the Commission) shall issue a notice within 7 days of the application, to the assessee to state as to why the application should be allowed to be proceeded with.
  - The commission shall allow or reject the application within 45 days from date of notice by way of an order.
    If no notice has been issued or no order has been passed, the application shall be deemed to be allowed.
  - The commission may call for a report from the jurisdictional IGST officer within 7 days of order of the acceptance of the application.
  - The report shall be furnished within 60 days of the date of receipt of the communication, if the report is not furnished, the commission may proceed further without the report.
  - If the commission opines that further enquiry is required, he may order direct any designated officer for the same within 15 days of the receipt of the report from jurisdictional IGST officer.
  - The report shall be furnished by the officer within 90 days.
  - If the report is not furnished within the stipulated time, the commission may proceed to pass the order without such report.
  - The order shall be passed within 12 months of making the application failing which the proceedings shall abate and the relevant authority where the matter was pending before the application shall dispose the case.
  - If it is found that the settlement has been sought on the basis of fraud and misrepresentation, then the proceedings shall be revived at the appellate authority, it was originally dealt by and the order shall be passed by before the expiry of two years from the date of receipt of communication of the settlement being void.
- The commission may order the provisional attachment of the property if he opines that it is necessary in order to protect the revenue.
- The commission may reopen the completed cases within 5 years of the application for proper disposal of the cases pending before it. The commission should have valid reasons recorded in writing to reopen the completed assessments.

- The commission may grant immunity from prosecution and penalty if the assessee has fully cooperated and made full and true disclosures of his tax liability.
- The commission has the powers to send back the case back to the IGST officer in case the assessee has not cooperated with the commission and shall be fully entitled to use the material produced/results of the enquiry etc. discovered during the course of proceedings.
- Order of the commission shall be conclusive and cannot be reopened except otherwise provided/
- No applications can be made by an assessee to the commission in any matter if the person is found convicted of any offence in this act or the case was sent back to the IGST officer of the First Appellate Authority.
- No assessee can avail the facility of the commission more than twice.
- The commission can rectify an order passed by it for the mistake apparent from the record.