

2. Analysis of various aspects of GST

2.1 Ten Things you must know about GST

1. GST applicable on 'supply'

In GST regime, all 'supply' such as sale, transfer, barter, lease, import of services etc of goods and/ or services **made for a consideration** will attract CGST (to be levied by Centre) and SGST (to be levied by State). As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

Further, certain supplies, even if made **without consideration**, such as permanent transfer of business assets, **self-supply** of goods or services, assets retained after deregistration etc will attract GST. Interestingly, even a '**barter**' of goods transaction which were hitherto un-taxed in VAT regime, will attract GST.

2. GST payable as per time of supply

The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions prescribe what will time of supply for goods and services. The provisions contemplate payment of GST at the earliest for

- a. 'Goods'- Removal of goods or receipt of payment or issuance of invoice or date on which buyer shows receipt of goods
- b. 'Service's- Issuance of invoice or receipt of payment or date on which recipient shows receipt of services

It can be observed that there are **many parameters** in determining 'time' of supply. Thus, determining the 'time' of supply and further maintaining reconciliation between revenue as per financials and as per GST rules could be a major challenge to meet.

3. Determining Place of Supply could be the key

At present inter-State supply of goods attract Central Sales Tax. Now, it provides that an inter-State supply of **goods** and/ or **services** will attract IGST ((i.e. CGST plus SGST). Thus, it would be crucial to determine whether a transaction is a 'intra-State' or 'Inter-State' as taxes will be applicable accordingly. In this regard, the draft GST law provides separate provisions which will help an assessee determine the place of supply for goods and services.

Typically for 'goods' the place of supply would be location where the good are **delivered**. Whereas for 'services' the place of supply would be **location of recipient**. However, there are multiple scenarios such as supply of services in relation to immovable property etc wherein this generic principle will not be applicable and specific rule will determine the place of supply. Thus, the business will have to scroll through all the place of supply provisions before determining the place of supply.

4. Valuation in GST

GST would be payable on the 'transaction value'. Transaction value is the **price actually paid or payable** for the said supply of goods and/or services between un-related parties. The transaction value is also said to include all expenses in relation to sale such as packing, commission etc. Even **subsidies** linked to supply will be includable. As regards **discounts/ incentives**, it will form part of 'transaction value' if it is allowed **after** supply is effected. However, discounts/ incentives given **before or at the time** of supply will be permissible as deduction from transaction value.

The law also provides for Valuation Rules to help determine value in certain cases. The Valuation Rules appear to be drafted by taking few provisions from current Valuation provisions in vague in Excise (for e.g. concept of 'transaction value'), Service Tax (for e.g. concept of 'pure agent') and Customs (for e.g. concept of 'goods of like kind and quality').

5. Input tax credit in GST

Current CENVAT Credit regime disallows CENVAT Credit on various services such as motor vehicle related services, **catering services, employee**

insurance, construction of civil structure etc. Similarly, State VAT laws restrict input tax credit in respect of construction, motor vehicle etc. Current, this denial of credits leads to un-necessary cost burden on assessee.

It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to United Kingdom VAT law).

However, surprisingly, *inter-alia*, aforesaid credit would continue to be not available (in respect of both goods or services). Further, credit is proposed to be denied on goods and/or services used for private or **personal consumption**, to the extent they are so consumed. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!). Also, another round of litigation as interpretation issues will crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

6. Inter-State supply of goods for consideration to attract additional tax

Draft GST law provides that an additional tax upto 1% will be levied by Centre on inter-State supply of **goods** (and not on services) made for consideration. Thus, effectively inter-State branch transfers will not attract this 1% additional Tax. This additional tax will be assigned to States from where the supply of goods originates. This additional tax will be applicable for a period of two years and could be extended further by GST Council.

The credit of this additional levy will not be available as thus it will be a cost in the supply chain.

7. There would be 33 GST laws in India

In GST regime, there will be one CGST law and 31 SGST law for each of the States including two Union Territories and one IGST law governing inter-State supplies of goods and services.

8. Rate of GST is not yet specified in the draft GST law

The rate of GST is **not specified** in draft GST law. However, various News reports suggest that the Revenue Neutral Rate (RNR) as proposed by the Chief Economic Advisor Shri. Arvind Subramanian could be 17%-18%. Further, there could be lower rate (of 12%-14%) for concessional goods and higher rate (upto 40%) for luxury goods (such as luxury cars, tobacco products etc).

9. Time limit for show cause notices (SCN)

Time limit for issuance of SCN is generic cases (i.e. other than fraud, suppression etc) would be **three years** and in fraud, suppression etc cases it would be **five** years. Its pertinent to note that the time limit prescribed for issuance of SCN for generic cases is much more than the current time limit prescribe in excise law (i.e. 12 months) and service tax legislation (i.e. 18 months). This will give much leeway to the Authorities while issuing SCN and sleepless night to assesseees for three years!

10. Old provisions re-introduced

Most of the current provisions such as reverse charge, tax deduction, pre-deposit, prosecution (!), arrest (!) etc have been continued in the proposed draft GST law.

The new GST law seems to be a new wine in old bottle as most of the current in-efficiencies has been continued in the proposed GST law.