ANANT VJ TYAGI
CHARTERED ACCOUNTANT
CONTACT No - +91-8377064203
EMAIL ID: avjeet91@gmail.com

MODEL GST LAW
DECODING OF DEFINITIONS

INTRODUCTION:

Today, GST is most prominent subject in India. Government has prescribed revised Model GST Law after adding or deleting some topics. Till time, Government has achieved some major milestone in this journey. Although, some milestones are yet to achieve. Here we are providing analysis of some important definitions provided under Model GST Law for your ready reference.

1. ACTIONABLE CLAIM:

Model GST Law states that -"actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882).

As per Transfer of Property Act - "actionable claim" **means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property**, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Analysis

- In simple words, we can say that actionable claim is right to take action in court of law to recover an **unsecured debt**.
- Actionable claim excludes the claim which have been adjudicated or decreed.
- A mere right to use is not actionable claim.
- It includes:
    - Claim for arrears of rent
    - An option to repurchase the properties sold.
    - Earnest money becoming payable.
    - Dividend dues on shares
- However, breach of contract does not give rise to any debt. Hence it is not actionable claim.
- Under GST, Actionable claim shall be treated as goods. All the provision relates to goods would be applicable on actionable claim.

2. AGENT:

Model GST Law States that – "agent" means a person, including a factor, broker, commission agent, arhatia, del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, **who carries on the business of supply or receipt of goods or services on behalf of another, whether disclosed or not.**

Analysis

- Definition of agent states that – "whether disclosed or not". It means there is no such mandatory requirement for principal or agent to disclose their relationship before their customers or clients. However, we shall suggest that it would be preferable to disclose their respective designation before clients or customer to avoid any ambiguity.
- As per definition agent includes:
  - Factors
  - Brokers
  - Commission agent
  - Arhatia
  - Del-credere agent
  - Auctioneer
- This list is illustrative list not exhaustive list. Other category of persons, whatever name called, who satisfy the conditions of this definition may also be treated as agent.
- In old Model GST law, intermediary was also covered under the definition of agent. But now, definition of agent does not include the intermediary.

3. BUSINESS:

Model GST Law states that business includes:

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

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

(c) Any activity or 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

(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

Analysis

- Under GST, business would also include adventure or wager along with trade, profession, commerce, manufacture & vocation.
- Business activity may be for financial benefit or not since definition states that "whether or not for pecuniary benefits."
- Activities undertaken by government as public authorities would also be treated as deemed business.
- Now, admission of a person to any premises would also be treated as business provided it should be against consideration. This clause may create various ambiguity.

4. CAPITAL GOODS:

Model GST Law states that – "capital goods" means goods, the **value of which is capitalized in the books of accounts** of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Analysis

- Older inclusive definition of capital goods has now been removed.
- Now, capital goods mean goods which are capitalized in books of accounts.
- Capitalization means a situation "when the costs to acquire an asset are expensed over the life of that asset rather than in period it as incurred."
- Further, such capital goods should be used in course of business. It means goods should not be used for personal purpose.

5. COMPOSITE SUPPLY:

Model GST Law states that - "composite supply" means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, **which are naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Analysis

- When supply comprising two or more supplies of goods/services which are naturally bundles, it is called composite supply.
- **For instance**,
  Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

6. GOODS:

Model GST Law states that - "goods'' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Analysis

- Goods include only movable property not immovable.
- Money and securities would not be treated as goods. Therefore, money & securities would be outside the ambit of GST.
- Actionable claim would be treated as goods & hence liable to GST.

7. MIXED SUPPLY:

Model GST Law states that – "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Analysis

- Mixed supply is not composite supply.
- Mixed supply contains two or more individual supply not auxiliary supply.
- In mixed supply, goods/services may be supplies independently for a single price.
- **For instance,**
  A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

8. PLACE OF BUSINESS:

Model GST Law states that - "place of business" includes –

(a) A place from where the business is ordinarily carried on, and includes a warehouse, a godown or **any other place where a taxable person stores his goods**, provides or receives goods and/or services; or

(b) A place where a taxable person maintains his books of account; or

(c) A place where a taxable person is engaged in business through an agent, by whatever name called.

Analysis

- All places shall be treated as place of business from where "business" is ordinarily carried on.
- Warehouses, godown would be treated as place of business.
- All other place, whatever name called where taxable person stores his goods shall be treated as place of business.
- Now, question is that – if taxable person stores goods in vessels, should vessels be treated as place of business and liable to registration? It is impractical to take registration for each vessel.
- A place where books of accounts are maintained shall be treated as place of business.
- A place where agent is deputed on behalf of principal shall be treated as place of business. It may be treated as branch/agency/additional place of business.

9. SERVICES:

Model GST Law states that - "services'' means anything other than goods.

Analysis

- Services mean all things except goods. However, one may refer to **Schedule II** of GST law to identify declare category of services.
- Transaction in money would not be treated as services. However, exchange of currency to another currency for which a separate consideration is charged shall be treated as services.
- For instance, commission charged to convert dollar into India rupees.
- Mere money and securities shall not be covered under ambit of services.
- Securities are neither goods nor services under GST law. Hence not liable to GST.

10. WORKS CONTRACT:

Model GST Law states that - "works contract" means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property.

Analysis

- Definition of works contract is more or less same as provided under service tax law.
- Transfer of property of goods along-with supply of labour under a contract would be treated as works contract.
- Works contract would be treated as services under GST law. Hence all the provisions applied to services shall be applicable on works contract.