

# Draft GST Model Law

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# Draft Model GST Law

as released by EC of State Finance Ministers  
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# *Salient features*

- The Draft Model GST Law consists of 162 clauses
- 25 Chapters along with 4 schedules
- Valuation Rules 2016 under GST.
- Draft IGST Act, 2016 consists of 33 clauses divided into 11 Chapters
- different dates may be appointed for different provisions of this Act

## new Definitions (Sec. 2)

- (2) “**address of delivery**” means the **address of the recipient of goods**
- (3) “**address on record**” means the address of the recipient as available in the records of the supplier;
- (6) “**aggregate turnover**” means the *aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act and value of goods/services charged under **reverse charge**, as the case may be*
- (9) “**Appellate Tribunal**” means the National Goods and Services Tax Appellate Tribunal constituted under section 81
- (11) “**appropriate Government**” means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST

- (40) **“electronic cash ledger”** means the cash ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf;
- (41) **“electronic credit ledger”** means the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf
- (46) **“fixed establishment”** means a place (other than the place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;
- (47) **“fund”** means the **Consumer Welfare Fund** established under section 40;
- (75) **“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;

(78) “**principal place of business**” means the place of business specified as the principal place of **business in the certificate of registration where the taxable person keeps and maintains the accounts and records as specified under section 42 ;**

(105) “**usual place of residence**” means

- (a) in case of an individual, the place where he ordinarily resides;
- (b) in other cases, the place where the person, as defined in sub-section (74), is incorporated or otherwise legally constituted;

# Meaning of Supply (Sec.-3)

- (1) Supply includes
  - (a) all forms of supply of goods and/or services such as **sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made** for a consideration by a person in the course or furtherance of business,
  - (b) **importation of service**, whether or not for a consideration and **whether or not** in the course or furtherance of business, and
  - (c) a supply specified in **Schedule I**, made or agreed to be made **without a consideration**.
- (2) **Schedule II**, in respect of matters mentioned therein, shall **apply for determining** what is, or is to be treated as a supply of goods or a supply of services.
  - (2A) Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the **transaction between such principal and agent shall be deemed to be a supply**.
- (3) Subject to sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—
  - (i) a supply of goods and not as a supply of services; or
  - (ii) a supply of services and not as a supply of goods; or
  - (iii) neither a supply of goods nor a supply of services.

## SCHEDULE I

### MATTERS TO BE TREATED AS SUPPLY **WITHOUT CONSIDERATION**

1. Permanent transfer/disposal of business assets.
2. **Temporary application** of business assets to a private or non-business use.
3. Services put to a private or non-business use.
4. Assets retained after de-registration.
5. Supply of goods and / or services by a taxable person to another taxable or nontaxable person in the course or furtherance of business

Provided that the supply of goods by a registered taxable person to a job-worker in terms of section 43A shall not be treated as supply of goods



## **Registration: Sec. 19**

*A **supplier** is required to get registered under the GST if his aggregate turnover in a Financial Year exceeds **Rs. 9 lakhs***

*No threshold exemption for persons making **Inter-State supply** and those who are required to pay GST under reverse charge mechanism.*

# *Point of taxation*

## *Time of supply of goods*

- Date on which the goods are removed for supply to the recipient (movable goods); or
- Date on which the goods are made available to the recipient (immovable goods); or
- Date of issuing invoice by supplier; or
- Date of receipt of payment by supplier, or
- Date on which recipient shows the receipt of the goods in his books of account.

**Which ever is earlier**

# Point of taxation

## Time of supply of services

- (i) The date of **issue of invoice** or the date of **receipt of payment**, whichever is earlier, **if the invoice is issued within the prescribed period of thirty days** ; or
- (ii) The date of **completion** of the provision of service or the date of **receipt of payment**, whichever is earlier, **if the invoice is not issued within the prescribed period of thirty days** ; or
- (iii) The date on which the recipient shows the **receipt of services** in his books of account, in a case where the provisions of (i) or (ii) do not apply.

# Returns: Sec 25-31

**Monthly Return:** Every registered taxable person shall have to file a monthly return within **20 days** after the end of such month.

**Return for Composition Scheme:** A registered taxable person paying tax under composition scheme shall have to furnish a return for each quarter or part thereof, electronically, **within 18 days** after the end of such quarter.

**TDS Return:** Every registered taxable person who is required to deduct tax at source shall furnish a return, electronically, **within 10 days** after the end of month in which deduction is made.

**Return for Input Service Distributor:** Every Input Service Distributor shall file return for every calendar month or part thereof, electronically, **within 13 days** after the end of such month.

**First Return:** Every registered taxable person shall have to furnish the first return from the date on which he became liable to registration till the end of the month in which the registration has been granted.

**Annual return:** Every registered taxable person except certain specified person shall have to furnish an annual return for every financial year electronically on or before the **31st day of December** following the end of such financial year.

**Final return:** Every registered taxable person who applies for **cancellation of registration** shall have to furnish a final return **within three months** of the date of cancellation or date of cancellation order, whichever is later, in a prescribed form.

\*late fee of rupees **one hundred for every day** during which such failure continues subject to a maximum of **rupees five thousand**.

# Manner of availing ITC

- Every registered taxable person is entitled to ITC provided he has filled return
- No Credit is available **after the expiry of one year from the date of issue of tax invoice** relating to such supply,
- Proportionate ITC is available where supplies are used partially for business
- Proportionate ITC is available where supplies are used for taxable including zero rated and non-taxable supplies
- ITC can be transferred to **newly constituted business**
- A taxable person shall not be entitled to take input tax credit in respect of any invoice, after the filing of the return under section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.
- **Any wrong taken of ITC, shall be recovered in the manner as may be prescribed in this behalf.**

# Material sent for Job work

- Registered person is entitled to take credit of input tax on inputs sent to a job-worker for job-work if the said **inputs**, after completion of job-work, are received back by him **within one hundred and eighty days** of their being sent out
- Registered person entitled to take credit of input tax on capital goods sent to a job-worker for job-work if the said **capital goods**, after completion of job-work, are received back by him **within two years** of their being sent out

# Valuation of Supply (Sec.-15)

- a) **Transaction Value Method**: The value of goods and/or services shall be the transaction value i.e.the value determined in monetary terms.
- b) **Comparison Method**: Where value of supply cannot be determined under the Transaction Value Method, the value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.
- c) **Computed Value Method**: Where value cannot be determined under the Comparison method, it shall be based on a computed value which shall include cost of production, manufacture or processing of the goods or, the cost of the provision of services, the charges, if any, for design & brand and amount towards profit & general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.
- d) **Residual Method**: Where the value cannot be determined under the Computed Value method, the value shall be determined using reasonable means consistent with the principles and general provisions of the Valuation Rules.

# Accounts : Sec 42

- Every registered person shall keep and maintain, at his **principal place of business**, as mentioned in the certificate of registration,
- Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts **audited by a chartered accountant or a cost accountant**
- Every registered person shall retain them until the expiry of **sixty months from the last date of filing of Annual Return** for the year pertaining to such accounts and records



# ASSESSMENT- Sec. 44-48

**Self-Assessment –sec 44**

**Provisional Assessment- sec 44A**

**Scrutiny of returns- sec 45 :**

**Assessment of non-filers of returns: sec 46**

**Assessment of unregistered persons: sec 47**

**Summary assessment in certain special cases: sec 48**

# Audit:Sec.49

**Audit by tax authorities:** may undertake audit of the business transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed.

**Special audit:** Authorities may direct such taxable person by notice in writing to get his records including books of account examined and audited by a **chartered accountant or a cost accountant** as may be nominated by the [Commissioner] in this behalf .

# Demand and Recovery: Sec 51-53

**Determination of tax not paid or short paid or erroneously refunded :Sec 51**

- A. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason **other than fraud or any willful misstatement or suppression of facts:** interest and a penalty not exceeding ten percent of tax or ten thousand rupees, whichever is higher*
- B. B. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized **by reason of fraud or any willful-misstatement or suppression of facts:** interest payable thereon under section 36 and a penalty equivalent to the tax specified **in the notice.***
- C. General provisions relating to demand of tax*

## Tax collected but not deposited with the Central/State Government: sec 52

- **regardless of whether the supplies in respect of which such amount was collected are taxable or not**
- **penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act**
- **The proper officer shall issue an order within one year from the date of issue of the notice**

# Other Provisions

- **Tax wrongfully collected and deposited with the Central or a State Government: sec 53**
- **Recovery of tax: sec 54 – any amt recoverable under the act**
- **Payment of tax and other amount in installments: sec 55**
- **Transfer of property to be void in certain cases: sec 56**
- **Tax to be first charge on property: sec 57**
- **Provisional attachment to protect revenue in certain cases: sec 58**
- **Continuation of certain recovery proceedings: sec 59**

# INSPECTION, SEARCH, SEIZURE AND ARREST

- **Power of inspection, search and seizure: 60**
- **Inspection of goods in movement:61**
- **Power to arrest:62**
- **Power to summon persons to give evidence and**
- **produce documents:63**
- **Access to business premises:64**
- **Officers required to assist CGST/SGST officers:65**

# OFFENCES AND PENALTIES

- Any **Registered Person** shall be liable to a **penalty of rupees ten thousand or an amount equivalent to the tax** evaded or the tax not deducted or short deducted or deducted but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.
- Any **registered person who repeatedly** makes short payment of tax shall be liable to a penalty of **rupees ten thousand or ten percent of the tax short paid**, whichever is higher
- Any person : shall be liable to a penalty which may extend to rupees **twenty five thousand**

# PROSECUTION AND COMPOUNDING OF OFFENCES

## Prosecution: in case of evasion of tax:

1. > 250.00 lakh

Imprisonment up to five yrs

2. > 50 < 250 lakh

Imprisonment up to three yrs

3. > 25 < 50 lakh

Imprisonment up to one yr.



# APPEALS

## Appeals to First Appellate Authority :sec 79

- Appeal Can't be filed within **three months** unless the appellant has deposited a sum equal to **ten percent of the amount in dispute**
- Adjudicating Authority hear and decide every appeal within a period of **one year** from the date on which it is filed

# Constitution of the National Appellate Tribunal

- Central Government on the recommendation of GST Council
- Headed by National President
- Every State GST Tribunal will be headed by a State President.
- Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed

## Appeals to the Appellate Tribunal

- No appeal can be filed if amount not **exceed one lakh** rupees
- Appeal shall be filed within **three months**
- No appeal shall be filed unless the appellant has deposited a sum equal **to ten percent of the amount in dispute**
- Tribunal shall hear and decide every appeal within a period of **one year**

## Appearance by authorised representative: Sec 86

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any chartered accountant, a cost accountant or a company secretary, who holds a valid certificate of practice and who has not been debarred from practice; or
- (d) any person who has acquired such qualifications as the Central Government (or the State Government) may, on the recommendation of the Council, prescribe for this purpose.

# Appeal to the High Court

- a) filed **within one hundred and eighty** days from the date on which the order appealed against is received by the Commissioner of GST or the other party;
- b) **accompanied by a prescribed fee ;**
- c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

# Appeal to the Supreme Court: Sec 88

- Any aggrieved party can file an appeal to Hon'ble Supreme Court

## Transitional Provisions

- Migration of existing taxpayers to GST
- Amount of CENVAT credit carried forward in a return to be allowed as input tax credit
- Exempted goods returned to the place of business on or after the appointed day
- Duty paid goods returned to the place of business on or after the appointed day
- Inputs removed for job work and returned on or after the appointed day
- Pending refund claims to be disposed of under earlier law
- Claim of cenvat credit to be disposed of under the earlier law
- Goods sent on approval basis returned on or after the appointed day
- Treatment of long term construction / works contracts

# **GST Business Process**

## **(Draft Reports)**

# Draft Report on Registration Model- assumptions

## Assumptions of Registration Business Process

- A legal person without GST registration can neither collect GST nor claim any input tax credit (ITC)
- There will be a threshold of Gross Annual Turnover *including exports and exempted supplies* on all India basis
- Once a dealer crosses the required threshold or he starts a new business, registration application must be filed within 30 days
- Effective date of registration would be the date of application in all cases i.e. whether the application has been filed within prescribed time limit of 30 days or otherwise
- Provision of voluntary registration is available to dealers
- Compounding turnover up to which the registered person can opt to pay tax at a specified percentage of the turnover



- All UN bodies seeking to claim refund of taxes paid by them would be required to obtain a unique identification number (ID)
- The concept of Input Service Distributor (ISD) is available in GST also
- Existing dealer will get registration automatically
- Tax authorities, in case of enforcement cases, may grant sue-moto registration
- State wise separate registration
- Multiple registrations within one State to business verticals is allowed
- Casual Dealers are allowed to do business and claim ITC
- State wise PAN-based 15-digit Goods and Services Taxpayer Identification Number (GSTIN).
- Monthly Returns
- No threshold for inter-state dealers

# Cancelation/Surrender of registration

- Closure of business of tax payer;
- Gross Annual Turnover including exports and exempted supplies (to be calculated on all-India basis) *falling below threshold for registration*;
- **Transfer of business** for any reason including due to death of the proprietor of a proprietorship firm;
- **Amalgamation** of taxable person with other legal entities or de-merger;
- **Non commencement of business** by the tax payer within the stipulated time period of six months prescribed under the GST laws (**Suitable provision to be made in the GST law**).

# Draft report on payment of GST

through e-banking/Credit/Debit Cards/Cash.

# Salient features of payment of GST

- **Electronically generated challan from GSTN Common Portal ;**
- **hassle free, anytime, anywhere mode of payment of tax;**
- Convenience of making payment online;
- Logical tax collection data in electronic format;
- **Faster remittance of tax revenue** to the Government Account;
- Paperless transactions;
- Speedy Accounting and reporting;
- Electronic **reconciliation** of all receipts;
- Simplified procedure for banks;
- Warehousing of Digital Challan

# Mode of payments

- Net Banking by assessee or through Debit/Credit cards
- Over the Counter payment (OTC) through authorized banks up to Rs 10000/- only
- Payment through NEFT/RTGS from any bank
- No counter payments in departments

# Stake holders in payment

1. GSTN (Goods and Service Tax Network);
2. e- FPBs (Electronic Focal Point Branches) of authorized banks;
3. e-Kuber of RBI;
4. Central Accounts Section (CAS) of RBI, Nagpur;
5. e-PAOs (Electronic Pay and account Offices) / e-Treasuries of State Governments;
6. Pr. CCA, CBEC (Principal Chief Controller of Accounts) / Accountant General of the States;
7. Tax authorities of Centre and States

# **Draft Report on Refunds**

# Draft Report on Refund

## Situations where refund arises:

- **Excess Payment of Tax due to mistake or inadvertence**
- **Export (including deemed export)**
- **Finalization of Provisional Assessment**
- **Refund of Pre-deposit for filing appeal including refund arising in pursuance of an appellate authority's order**
- **Payment of Duty/Tax during investigation, but no/less liability arises at the time of finalization of investigation/ adjudication**
- **Refund for Tax payment on Purchase by UN bodies, Supplies to CSD Canteens, Para-military forces canteens, etc.**
- **Refund from Manufacturing / Generation/ Production/ Creation of Tax- free supplies or Non-GST Supplies**
- **Refund of Carry Forward Input Tax Credit**
- **Refund on account of year-end or volume based incentives provided by the supplier through credit notes**
- **Tax Refund for International Tourists**



# Relevant Dates for Refunds

Event	Date (with in one year)
refund arises on account of <b>excess payment of GST</b> due to mistake or inadvertence	Date of payment of GST
<b>export of goods</b> under claim of rebate of GST paid on exported goods or refund of accumulated input credit of GST when goods are exported.	Date on <b>which proper officer</b> under the Custom Act gives an order for export known as “LET EXPORT ORDER ”
<b>export of services</b> under claim of rebate of GST paid on exported services or refund of accumulated input credit of GST when services are exported	Date of <b>Bank Realisation Certificate (BRC)</b>
refund arises on account of <b>finalization of provisional assessment.</b>	Date of the finalization order

<p>refund arises in pursuance of an <b>appellate authority's order</b> in favor of the taxpayer.</p>	<p>Date of appellate authority's order</p>
<p>refund arises on account of <b>payment of GST during investigation, etc.</b> when no/less liability arose at the time of finalization of investigation proceedings or issuance of adjudication order.</p>	<p>Date of adjudication order</p>
<p>refund arises on account of accumulated credit of GST in case of a liability to <b>pay service tax in partial reverse charge cases.</b></p>	<p>Date of providing of service</p>
<p>refund arising out of payment of GST on petroleum products, etc. to Embassies or UN bodies or to CSD canteens, etc. on the basis of applications filed by such persons</p>	<p>Date of payment of GST</p>
<p>refund of accumulated ITC on account of <b>inverted duty structure</b> i.e. due to tax rate differential between output and inputs.</p>	<p>Last day of the financial year</p>
<p><b>Refund to International Tourist</b></p>	<p><b>On their return, At Designated Airports/ports</b></p>

# Documents required for refunds

- **Copy of TR-6 / GAR-7/ PLA / copy of return** evidencing payment of duty.
- **Copy of invoices (in original)** (for the purpose of evidencing the supply of goods and the fact that duty is not reflected in the same).
- **Documents evidencing that the tax burden has not been passed on to the buyer.**
- Any other document as prescribed by the refund sanctioning authority i.e
  - **Shipping Bill (Export Promotion copy);**
  - **Mate's Receipt / Transporter's Challan (in case of export by road);**
  - **Export invoice;**
  - **Packing list;**
  - **Bill of Lading/ Airway Bill;**
  - **Bank Realization Certificate (BRC).**
  - **Refund can be claimed within two yrs from the date.**

# Role of Professionals

- **Restructuring of Business operations & Strategies,**
- **Valuation of transactions other than sale or non-monetary items valuation**
- **Input-Output ratio**
- **Job Work valuation with or without material**
- **Stock Valuation**
- **Stock Transfers to Units/Branches/Consignee/ Agents**
- **Free samples for promotion/testing on returnable or non-returnable basis**
- **Rejection of Raw material/FG**

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- **FOC items**
- **Land/Property and other Gifts**
- **Goods on loan basis**
- **Sale subject to Approval**
- **Sales in combo pack**
- **High sea sales**
- **Tools amortization**
- **Tools/Dies manufactured and kept by supplier**
- **Destruction of RM/PLANT/FG**
- **Shortage/Excess receipt of material**
- **Audit under GST**
- **Consultancy**

# GST & Common man

- Will it reduce the price of Products?
- Will it reduce the cost of services?
- Will it increase Government revenue?

*Thank You*