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# **EXECUTIVE PROGRAMME**

## **SUPPLEMENT**

### **FOR**

## **TAX LAWS & PRACTICE**

### **(INDIRECT TAX PART-B)**

*(Relevant for Students appearing in December 2017 Examination)*

## **Module I-Paper 4**

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# 1. Overview of GST

## Introduction

Taxation is one of the vital components of development of any country. The revenue from taxation is used to finance public goods and services such as infrastructure, sanitation, transportation and all other amenities which are provided by the government. From the view of economists, a tax is a non-penal, yet compulsory transfer of resources from the private to the public sector levied on a basis of predetermined criteria and without reference to specific benefit received. Each rupee of tax contributed helps Government to provide better infrastructure, rural revival and social well-being. Taxation is also considered as a major tool available to Government for removing poverty and inequality from the society. On the other hand, tax reform is an essential component of any comprehensive strategy for structural adjustment & the resumption of growth. (Chibber&khalilzadehShirazi 1988)

There are two types of taxes which are levied in India and they are; Direct tax, which is levied directly to an individual's income in the form of Income Tax and Indirect tax, that is paid indirectly by the final consumer of goods and services while paying for purchase of goods or for enjoying services. Although the immediate liability to pay tax falls upon another person such as manufacturer, provider of services or seller of goods.

Constitution of India is the foundation and source of powers to legislate all laws in India. The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Central and the State. Article 246 of the Indian Constitution, distributes legislative powers including taxation, between the Parliament of India and the State Legislatures. In the previous tax regime, the Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax) but, the tax was collected and retained entirely by the States. As for services, it was the Centre alone that was empowered to levy service tax.

Broadly, the previous Indirect tax regime can be looked at from the point of view of Central and State laws. For the Central Government, Central Excise, Customs and Service tax were the three main components of indirect taxes. While for State Government, Value Added Tax (VAT) and CST were the major taxes along with Octroi, Entertainment Tax etc.

Introduction of the Value Added Tax was considered to be a major step and important breakthrough in the sphere of indirect tax reforms in India. Despite the success of VAT, there were certain shortcomings in the structure of VAT. The reasons for such shortcomings were the form of mosaic of taxes being levied on goods and services, such as luxury tax, entertainment tax, etc., not subsumed in the VAT thereby marginalizing the benefits of comprehensive tax credit mechanism.

The previous tax regime has remained inefficient in fully removing the cascading effect of taxes. Besides, there were several other taxes, which both the Central Government and the State Government levied on production, manufacture and distributive trade, where no set-off was available in the form of input tax credit. These taxes added to the cost of goods and services through "tax on tax" which the final consumer had to bear.

## Challenges of Previous Tax Structure

Some of the challenges under the previous indirect tax structure could be attributed to Central Excise wherein there were variable rates under Excise Duty such as 2% without CENVAT 6%, 10%, 18%, 24%, 27%, coupled with multiple valuation system and various exemptions. Further, under VAT, different states were charging VAT at different rates, which were resulting in imbalance of trade between the states. At the same time under VAT, there was lack of uniformity in terms of registration, due date of payment, return filing assessment procedures, refund mechanism, appellate process etc., thus complicating the compliance mechanism. For example: A business establishment having offices in different states are required to follow the laws of the respective states.

Few such challenges are listed below:

1. In respect of taxation of goods, CENVAT was confined to the – manufacturing stage and did not extend to the distribution chain beyond the factory gate. As such, CENVAT paid on goods could not be adjusted against State VAT payable on subsequent sale of goods. This was true both for CENVAT collected on domestically produced goods as well as that collected as additional duty of customs on imported goods.
2. CENVAT was itself made up of several components in the nature of cesses and surcharges such as the National Calamity Contingency Duty (NCCD), education and secondary and higher education cess, additional duty of excise on tobacco and tobacco products etc. This multiplicity of duties complicated the tax structure and often use to obstruct the smooth flow of tax credit.
3. While input tax credit of CENVAT or additional duty of customs paid on goods was available to service providers paying Service Tax, they were unable to neutralize the State VAT or other State taxes paid on their purchase of goods.
4. State VAT was payable on the value of goods inclusive of CENVAT paid at the manufacturing stage and thus the VAT liability of a dealer used to get inflated by this component without compensatory set-off.
5. Inter-State sale of goods was liable to the Central Sales Tax (CST) levied by the Centre and collected by the States. This was an origin-based tax and could not be set-off against VAT in many situations.
6. State VAT and CST were not directly applicable to the import of goods on which Special Additional Duties (SAD) of customs were levied at a uniform rate of 4% by the Centre. Input tax credit of these duties was available only to those manufacturing excisable goods. Other importers had to claim refund of this duty as and when they pay VAT on subsequent sales.
7. VAT dealers were unable to set-off any Service Tax that they may have paid on their procurement of taxable input services.
8. State Governments also levied and collected a variety of other indirect taxes such as luxury tax, entertainment tax, entry tax etc. for which no set-off was available.

## 2. GST International Scenario

Internationally, countries are moving towards simplification of tax structures. The adoption of Goods and Services Tax has been the most important development in several countries over the last half-century. Today, it is one of the widely accepted indirect taxation system prevalent in more than 140 countries across the globe. Globally, GST has been structured as a destination based comprehensive tax levied at a specified rate on sale and consumption of goods and services within a country. It facilitates creation of national tax standards with consumers paying uniform rates of GST, thereby enabling flow of seamless credit across the supply chain.

GST was first levied by France in 1954. Today, Malaysia is the most recent country to join the bandwagon. In countries where GST has been adopted, manufacturers, wholesalers, retailers and service providers charge GST at the specified rate on price of the goods and services from consumers and claim input credits for GST paid by them on procurement of goods and services (raw material).

Globally, the broad principles of GST are as under:

- GST is a broad-based tax
- GST is a destination based tax
- GST is technically paid by suppliers but it is actually funded by consumers
- GST is collected through a staged process i.e. a tax on the value added to goods or services at every point in the supply chain
- GST is a tax on the consumption of products from business sources, and not on personal or hobby activities
- Under GST, input tax credit is provided throughout the value chain for creditable acquisition.

### Models of GST

Although most countries have adopted similar principles of GST, there remain significant differences in the way it is implemented. These differences result not only from the continued existence of exemptions and special arrangements to meet specific policy objectives, but also from differences of approaches in the definition of the jurisdiction of consumption and therefore of taxation. In addition, there are a number of variations in the application of GST, and other consumption taxes, including different interpretation of the same or similar concepts; different approaches to time of supply and its interaction with place of supply; different definitions of services and intangibles and inconsistent treatment of mixed supplies.

Different countries follow different model of GST based upon their own legislative and administrative structure and their requirements. Some of these models are:

- Australian Model wherein, tax is collected by the Centre and distributed to the States
- Canadian Model wherein there are three variants of taxes
- Kelkar-Shah Model based on Canada Model wherein taxes are collected by the Centre however, two different rates of tax are to be levied by the Centre and the States and

- Bagchi-Poddar Model which envisages a combination of Central Excise, Service Tax and VAT to make it a common base of GST to be levied both by the Centre and the States separately.

Most countries follow a unified GST regime. However, considering the Federal nature of Indian Constitution, dual model of GST was proposed, where the power to levy taxes would be subjectively distributed between Centre and States thus, GST will be levied by both, the Centre as well as the States and there will be separate levies in the form of Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST) and Integrated Goods and Services Tax (IGST) enabling the tax credit across these three variants of taxes. Currently, Brazil and Canada also follow dual GST model.

### 3. GST in India

GST is one of the biggest taxation reforms in India aiming to integrate State economies and boost overall growth by creating a single, unified Indian market to make the economy stronger. GST is a comprehensive destination based indirect tax levy of goods as well as services at the national level. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming an array of tax levies, overcoming the limitations of existing indirect tax structure, and creating efficiencies in tax administration.

GST is a consumption or destination based tax levied on the basis of the “Destination principle.” It is a comprehensive tax regime covering both goods and services, and be collected on value-added at each stage of the supply chain. Further, GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. Simply put, Goods and Services Tax is a tax levied on goods and services imposed at each point of supply. GST is a national level tax based on value added principle just like State level VAT which was levied as tax on sale of inter-state goods.

The essence of GST is in removing the cascading effects of both Central and State taxes by allowing setting-off of taxes throughout the value chain, right from the original producer and service provider’s point up to the retailer’s level. GST is thus not simply VAT plus service tax, but a major improvement over existing system of VAT and disjointed Service Tax ushering in the possibility of a collective gain for industry, trade and common consumers as well as for the Central Government and the State Governments.

GST, as a well-designed value added tax on all goods and services, is the most elegant method to eliminate distortions and to tax consumption.

Taxes which have been subsumed under GST are as follows:

<b>Central taxes</b>	<b>State taxes</b>
Central Excise Duty Duties of Excise (Medicinal and Toilet Preparations) Additional Duties of Excise (Goods of Special Importance) Additional Duties of Excise (Textiles and Textile Products) Additional Duties of Customs (commonly known as CVD) Special Additional Duty of Customs (SAD) Service Tax Cesses and surcharges insofar as they relate to supply of goods or services	State VAT Central Sales Tax Purchase Tax Luxury Tax Entry Tax (All forms Entertainment Tax (except those levied by the local bodies) Taxes on advertisements Taxes on lotteries, betting and gambling State cesses and surcharges insofar as they relate to supply of goods or services

## History of GST

The origin of Goods and Services could be traced back to July 17, 2000, when the Government of India set up the Empowered Committee of State Finance Ministers with the Hon'ble State Finance Ministers of West Bengal, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Uttar Pradesh, Gujarat, Delhi and Meghalaya as members with the following objectives:

- to monitor the implementation of uniform floor rates of sales tax by States and Union Territories;
- to monitor the phasing out of the sales-tax based incentive schemes; to decide milestones and methods of States to switch over to VAT; and
- to monitor reforms in the Central Sales Tax system existing in the country.

Subsequently, Hon'ble State Finance Ministers of Assam, Tamil Nadu, Jammu & Kashmir, Jharkhand and Rajasthan were also notified as the members of the Empowered Committee.

On August 12, 2004, the Government of India decided to reconstitute the Empowered Committee with all the Hon'ble State Finance/Taxation Ministers as its members. Later on, it was decided to register the body as a Society under the Societies Registration Act, 1860. GST has been in the pipeline for a long time, for its passage and implementation.

Here is a brief flash back mentioning the key milestones of the journey of GST in India:

**2003:** The Kelkar Task Force on Indirect Tax had suggested a comprehensive Goods and Services Tax (GST) based on VAT principle.

**February, 2007:** An announcement was made by the then Hon'ble Union Finance Minister in the Central Budget (2007- 08) to the effect that GST would be introduced with effect from April 01, 2010.

**September, 2009:** The Empowered Committee (EC) decided to constitute a Working Group consisting of Principal Secretaries / Secretaries (Finance / Taxation) and Commissioners of Trade Taxes of all States/UTs to give their recommendations on:

- the commodities and services that should be kept in the exempted list;
- the rules and principles of taxing the transactions of services including the transactions in inter-State services; and
- finalization of the model suggested for inter-state transaction/movement of goods including stock transfers in consultation with the State Bank of India and some other nationalized banks.

**November, 2009:** Based on inputs from Government(s) of Centre and States, Empowered Committee released its First Discussion Paper on GST.

**March, 2011:** The Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 to give concurrent taxing powers to the Union and States was introduced in Lok Sabha. The Bill suggested the creation of Goods and Services Tax Council and a Goods and Services Tax Dispute Settlement Authority. The Bill was lapsed in 2014 and was replaced with the Constitution (122<sup>nd</sup> Amendment) Bill, 2014.

**November, 2012:** A "Committee on GST Design", consisting of the officials of the Government of India, State Governments and Empowered Committee (EC) was constituted.

**January, 2013:** The Empowered Committee deliberated on the proposed design including the Constitution (115<sup>th</sup>) Amendment Bill and submitted the report. Based on this Report, the EC recommended certain changes in the Constitution Amendment Bill and decided to constitute three below mentioned Committees of Officers to discuss and Report on various aspects of GST:

- Committee on Place of Supply Rules and Revenue Neutral Rates;
- Committee on dual control, threshold and exemptions;
- Committee on IGST and GST on imports.

**March, 2013:** A not for profit, non-Government, private limited company was incorporated in the name of Goods and Services Tax Network (GSTN) as special purpose vehicle setup by the Government primarily to provide IT infrastructure and services to the Central and State Government(s), tax payers and other stakeholders for implementation of the Goods and Services Tax (GST).

**August, 2013:** The Parliamentary Standing Committee submitted its Report to the Lok Sabha. The recommendations of the Empowered Committee and the recommendations of the Parliamentary Standing Committee were examined by the Ministry in consultation with the Legislative Department. Most of the recommendations made by the Empowered Committee and the Parliamentary Standing Committee were accepted and the Draft Amendment Bill was suitably revised.

**September, 2013:** The final draft Constitutional Amendment Bill incorporating the above stated changes was sent to the Empowered Committee(EC) for consideration.

**November, 2013:** The EC once again made certain recommendations on the Bill after its meeting in Shillong. Certain recommendations of which were incorporated in the draft Constitution (115<sup>th</sup> Amendment) Bill and the revised draft was again sent to EC for its consideration.

**June, 2014:** The draft Constitution Amendment Bill in March, 2014 was sent to the Empowered Committee after approval of the new Government.

**December, 2014:** The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 seeking to amend the Constitution to introduce the Goods and Services Tax (GST) and subsume state Value Added Tax, octroi and entry tax, luxury tax, etc. was introduced in the Lok Sabha on December 19, 2014 by the Hon'ble Minister of Finance, Mr. Arun Jaitley.

**May, 2015:** Constitution Amendment (122<sup>nd</sup>) Bill was passed by Lok Sabha on May 06, 2015.

**May, 2015:** In Rajya Sabha, Bill was referred to a 21-member Select Committee of Rajya Sabha.

**July, 2015:** Select Committee submitted its report to Rajya Sabha on July 22, 2015.

**June, 2016:** On June 14, 2016, the Ministry of Finance released draft model law on GST in public domain for views and suggestion.

**August, 2016:** On August 03, 2016, the Constitution (122<sup>nd</sup>Amendment) Bill, 2014 was passed by Rajya Sabha with certain amendments.

**August, 2016:** The changes made by Rajya Sabha were unanimously passed by Lok Sabha, on August 08, 2016.

**September, 2016:** The Bill was adopted by majority of State Legislatures wherein approval of at least 50% of the State Assemblies was required

**September, 2016:** Final assent of Hon'ble President of India was given on 8th September, 2016

**April, 2017:** Parliament passed the following four bills:

- Central Goods and Services Tax (CGST) Bill
- Integrated Goods and Services Tax (IGST) Bill
- Union Territory Goods and Services Tax (UTGST) Bill
- Goods and Services Tax (Compensation to States) Bill

**April, 2017:** President's assent was given to four key legislations on Goods and Services tax.

### **GST Council**

GST Council is the main decision-making body that has been formed to finalize the design of GST. This governing body of GST comprises of Union Finance, is the Chairman of the council, the Minister of State (Revenue) and the State Finance/ Taxation Ministers. The duty of the Council is to make recommendations to the Union and the States. It has been provided in the Constitution (one hundred and first amendments) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services. In the GST Council, a decision will be taken by a three-fourth majority with the Centre having a one-third vote and the states the remaining two-third.

Functions of the GST Council seeked to include making recommendations on:

- taxes, cesses, and surcharges levied by the Centre, States and local bodies which may be subsumed in the GST;
- goods and services which may be subjected to or exempted from GST;
- Model GST laws, principles of levy, apportionment of IGST and principles that govern the place of supply;
- threshold limit of turnover below which goods and services may be exempted from GST;
- rates including floor rates with bands of GST;
- special rates to raise additional resources during any natural calamity;
- special provision with respect to Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- any other matters

### **Framework of GST**

India being a federal country, both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual

GST was therefore proposed keeping in mind the Constitutional requirement of fiscal federalism.

Along with the amendment in the Constitution, to empower the Centre and the States to levy and collect the GST, four legislations were given assent by the President, which are:

- The Central GST Act, 2017
- The Integrated GST Act, 2017
- The GST (Compensation to States) Act, 2017 and
- The Union Territory GST Act, 2017

## 4. Introduction to CGST Act, 2017

The GST Council in its 11th meeting held on 4th March, 2017 approved the “draft Central GST” bill which makes provisions for levy and collection of tax on intra-state supply of goods or services or both by the Central Government.

The Union Government presented the Central Goods and Service Tax Bill, 2017 in Lok Sabha on 27th March, 2017 and the same was passed by Lok Sabha on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented by the President on 13th April, 2017.

### Important Definitions

Section 2 of the CGST Act, 2017 contains the definitions of various terms used at several places in the Act. Some of the important definitions are reproduced as follows:

- a) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal
- b) “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 sub-clause (a);
  - (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
  - (d) supply or acquisition of goods including capital goods 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;
  - (f) admission, for a consideration, of persons to any premises;
  - (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;
  - (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
  - (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;
- c) “business vertical” means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

i. Explanation.--For the purposes of this clause, factors that should be considered in determining whether goods or services are related include--

- the nature of the goods or services;
- the nature of the production processes;
- the type or class of customers for the goods or services;
- the methods used to distribute the goods or supply of services; and
- the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities

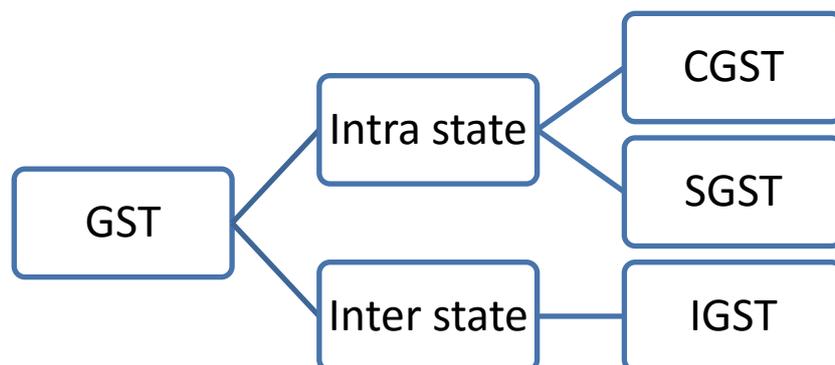
- d) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business
- e) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify
- f) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify
- g) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply
- h) "fixed establishment" means a place (other than the registered 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
- i) "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
- j) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

- k) “input service” means any service used or intended to be used by a supplier in the course or furtherance of business
- l) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office
- m) “inward supply” in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration
- n) “outward supply” in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business

### Levy of GST

GST is levied on supply of all goods or services or both except supply of alcoholic liquor for human consumption. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST. Electricity has also been kept out of GST.

The structure provided under GST is dual in nature and under this, the Centre and the States simultaneously levy tax on a common base. The GST levied by the Centre on intra-State supply of goods and / or services is called the Central GST (CGST) and that levied by the States/ Union territory is called the State GST (SGST)/ UTGST. Similarly, Integrated GST (IGST) is levied and administered by Centre on every inter-state supply of goods and services.



## **Liability under GST**

Under the GST regime, liability to pay tax arises when a person crosses the turnover threshold of Rs.20 lakhs (Rs. 10 lakhs for North Eastern & Special Category States) except in certain specified cases where the taxable person is liable to pay GST even though he has not crossed the threshold limit. The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter- State supply of goods and/or services.

A Composition Scheme, which is mainly devised for small taxpayers, provides concessional rate of tax and filing of quarterly returns instead of monthly return. To be eligible for registration under Composition scheme it is required that the aggregate turnover of a registered tax payer should not exceed Rs. 75,00,000/- in the preceding financial year.(The limit is Rs. 50,00,000/- for North Eastern & Special Category States)

*North Eastern and Special Category States are Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim, and Himachal Pradesh*

*According to section 2(6) of the CGST Act, 2017 "aggregate turnover" means the aggregate value of all taxable supplies(excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess*

## 5. Supply

Taxable event means that event on happening of which the liability of tax is fixed. Under the previous regime, taxable event for various taxes were different. Some of these taxes and their taxable event are listed below:

Type of Tax	Taxable Event
Excise Duty	Manufacture
Service Tax	when a service was provided or agreed to be provided
Central Sales Tax	Sale of goods (levied by Central Government)
Value Added Tax	Sale of Goods (levied by State Government)

Under GST the taxable event is SUPPLY of goods or services or both. Supply has been very subjectively and inclusively defined in the act and section 7 of the Central Goods and Services Act, 2017 specifies the scope of supply. "Supply" under GST can be divided into following parts;

- (a) Supply in the form of sale, transfer, barter, exchange, licence, rental, lease or disposal made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration (whether or not in the course or furtherance of business);
- (c) the activities specified in Schedule I, (made or agreed to be made without a consideration); and
- (d) the activities specified in Schedule II (to be treated as supply of goods or supply of services)

### Characteristic of Supply

To characterize a transaction as supply following points need to be kept in mind:

- Supply means supply of goods or services. Supply of anything other than goods or services doesn't amount for supply under GST. Goods as well as services have been defined in the GST Law. Both securities and money is excluded from the definition of goods as well as services, however, activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged are included in services.
- Supply should be a taxable supply
- Supply should be made by a taxable person
- Supply should be made within taxable territory

## Schedule I under CGST

**Schedule I** lists activities that are to be treated as supply even if they are without a consideration. The important point to note here is that though the following activities will be considered as supply even if there is no consideration involved, it is required that the activity is done either in the course or furtherance of business. The forms of Supply listed in Schedule I are as follows:

- **Permanent transfer or disposal of business assets where input tax credit(ITC) has been availed on such assets** : When ITC is availed on a particular asset and the asset is disposed off or transferred permanently without a consideration, it will be considered as supply and attract GST. Example: Suppose, if for office purpose, XYZ ltd purchases 10 laptops worth Rs. 500000 + GST Rs. 25000 and further avails ITC of Rs. 25000 on GST paid, and after few years XYZ ltd. gives away these laptops to office staff, it will be deemed as supply without consideration.
- **Branch transfer:** Supply of goods or services between related parties and between distinct persons (as in section 25) will attract tax. Thus, even if goods or services are transferred from head office to branch office, GST liability will arise. Although gifts from an employer to an employee not exceeding Rs. 50,000 will not be considered as supply
- **Principal – Agent Transaction:** In the previous indirect tax regime, supply of goods between principal to his agent or agent to its principle was not taxable but under GST, such a supply will be taxable.
- **Import of services:** Any services imported by a taxable person from a related person or from any of his other establishments, will attract GST. Thus, for example if a head office which is located out of India provides interior designing services to its branch office in India, the service will be a taxable service under GST.

## Schedule II under CGST

**Schedule II** of the CGST Act, 2017 specifies activities to be treated as supply of goods or supply of services

Form of supply	Description	Supply of
Transfer	Transfer of title in goods	Goods
	Any transfer of right or undivided share in goods without transfer of title	Service
	Transfer of title in goods under an agreement where property in goods passes at a future date on payment of full consideration	Goods
Land and Building	Any lease, tenancy, easement, licence to occupy land	Service

	Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly	Service
Treatment or process	Any treatment or process which is applied to another person's goods	Service
Transfer of business assets	Permanent transfer or disposal of goods forming part of business assets by or under the directions of the person carrying on the business whether or not for consideration	Goods
	Where, by or under the direction of a person carrying on a business, goods held or used for purpose of business are put for any private use or made available to a person for any use other than for the purpose of business, at the direction of the person carrying on the business, whether or not for a consideration.	Service
	Any goods forming a part of business assets will be deemed to be transferred in furtherance of business, before any person ceases to be a taxable person  Exception <ul style="list-style-type: none"> <li>• The business is transferred as a going concern</li> <li>• The business is carried on by a personal representative who is deemed to be a taxable person</li> </ul>	Goods
Immovable property	Renting of immovable property	Service
Construction or Sale	Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier	Service
Intellectual Property rights	Temporary transfer or permitting the use or enjoyment of any intellectual property right	Service
Information technology	Development, design, programming, customisation, adaptation, upgradation, enhancement,	Service

software	implementation of information technology software	
Action	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	Service
Rights to use goods	Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration	Service
Composite Supplies	Works Contract as defined under Section 2(119)	Service
	Supply of goods, as a part of any service or in any manner, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration	Service
Supply by unincorporated association	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Goods

### Activities which are neither supply of goods nor supply of services

Section 7(2) states that notwithstanding anything contained in sub-section 7(1) of the CGST Act

1. Schedule III activities or
2. activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall neither be treated as supply of goods nor as supply of services

Schedule III activities include

1. Services by employee to employer
2. Services by any court or tribunal
3. Functions performed by the Members of Parliament etc.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling

## 6. Composite and Mixed Supply

When two or more goods are sold in a combination it becomes difficult to identify the rate of tax to be levied. For such goods or services, CGST Act, 2017 has provided with two terms -- “Composite Supply” and “Mixed Supply”. Composite supply is similar to the concept of “bundled service” which is under service tax laws in the existing regime. Both Composite supply and Mixed supply consist of two or more taxable supplies of goods or services or both but the main difference between the two is that Composite supply is naturally bundled i.e., goods or services are usually provided together in normal course of business. They cannot be separated. Whereas in Mixed supply, the goods or services can be sold separately

*Section 2(30) of the CGST Act, 2017 defines “composite supply” as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, 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;*

*Illustration.—* 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 a principal supply

*Section 2(74) of the CGST Act, 2017 defines “mixed supply” as 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.*

*Illustration.—* A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks 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

Section 8 of the CGST Act, 2017 states that, the tax liability on a composite or a mixed supply shall be determined in the following manner, namely :—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

*Where “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary [Section 2(90) of CGST Act, 2017]*

## 7. Composition Levy

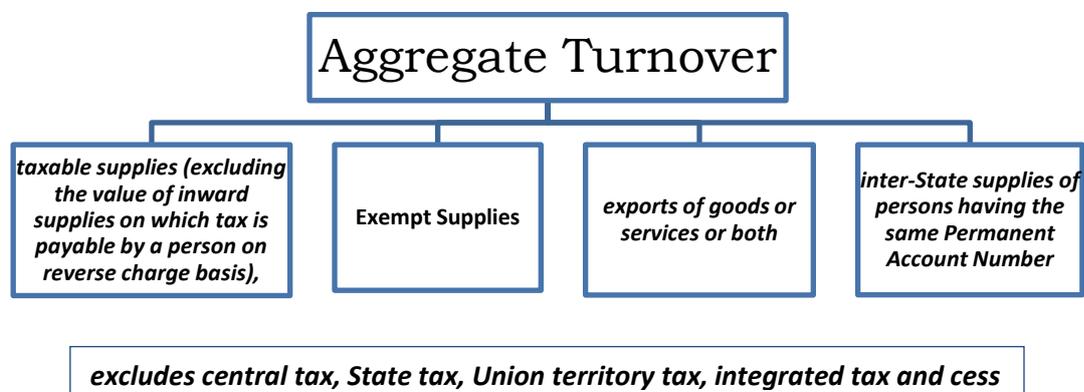
Section 10 of the CGST Act states that notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed seventy five lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding particular amount of percentage of the turnover in State or turnover in Union territory for following specified category subject to such conditions and restrictions as may be prescribed:

1%	Manufacturer
2.5%	supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.
0.5%	Other suppliers

[ \*There will be equal SGST and thus the total tax payable under Composition Scheme will be 2% for Manufacturers, 5% for Restaurant and 1% for Traders]

A reduced limit of 50 lakhs rupees have been kept for special category states (Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim and Himachal Pradesh)

Section 2(6) defines “aggregate turnover” as the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess



The threshold limit may be increased to such higher amount, not exceeding one crore rupees, through a notification by Government on recommendation of Council.

Subject to the provisions of sub-sections (1) and (2) of section 10, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods

#### **Condition & Restrictions [Section 10(2)]**

- a) The scheme is not available for services sector, except restaurants.
- b) Supplier of goods which are not taxable under the CGST Act/SGST Act/UTGST Act is not eligible to register under this scheme.
- c) Tax payers making inter- state supplies is not eligible for composition scheme
- d) Tax payer making supplies through ecommerce operators who are required to collect tax at source shall not be eligible for composition scheme
- e) Tax Payer who is not a manufacturer of such goods as may be notified by the Government on the recommendation of the council is also not eligible for composition scheme

Section 10 (4) states that a registered person under composition scheme is not permitted to collect tax and neither he will be eligible for any input tax credit.

All registered persons having same PAN must opt to pay tax under composition scheme.

Section 17(5)(e) also states that notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect goods or services or both on which tax has been paid under section 10

The composition scheme is optional and the option availed of by a registered person under sub-section 10(1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the specified limit.

## 8. Time of Supply

Point of taxation means the point in time when goods have been deemed to be supplied or services have been deemed to be provided. The point of taxation enables us to determine the rate of tax, value, and due dates for payment of taxes. Under GST the point of taxation, i.e., the liability to pay CGST / SGST, will arise at the time of supply as determined for goods and services. CGST Act, 2017 states provisions to determine time of supply of goods under section 12 and time of supply of services under section 13 of the Act.

### Time of Supply of Goods

Type	Goods (Sec 12)
General provision (sub section 2)	(Earliest of the three) <ul style="list-style-type: none"> <li>date of issue of invoice</li> <li>last date when invoice is required to be issued (sec 31(1))</li> <li>receipt of payment</li> </ul>
Excess amount amount received is up to Rs. 1000 in excess to the amount indicated in tax invoice	(at the option of supplier) date of issue of invoice (with respect to such excess amount)
<p>Here “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment and</p> <p>“the date of receipt of payment” shall be the earliest of the following:</p> <p>date on which the payment is entered in the books of account of the supplier or</p> <p>the date on which the payment is credited to his bank account</p>	
Reverse Charge Basis (sub section 3)	(Earliest of the three) <ul style="list-style-type: none"> <li>the date of the receipt of goods</li> <li>the date of payment as entered in the books of account or payment is debited in his bank account, whichever is earlier</li> <li>the date immediately following thirty days from the date of issue of invoice or any other document</li> </ul>
where it is not possible to determine the time of supply, the date of entry in the books of account of the recipient of supply	
Vouchers (sub section 4)	<ul style="list-style-type: none"> <li>the date of issue of voucher, if the supply is identifiable at that point or</li> <li>the date of redemption of voucher, in all other cases</li> </ul>

Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall--

in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

in any other case, be the date on which the tax is paid.

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

### Time of Supply of Services

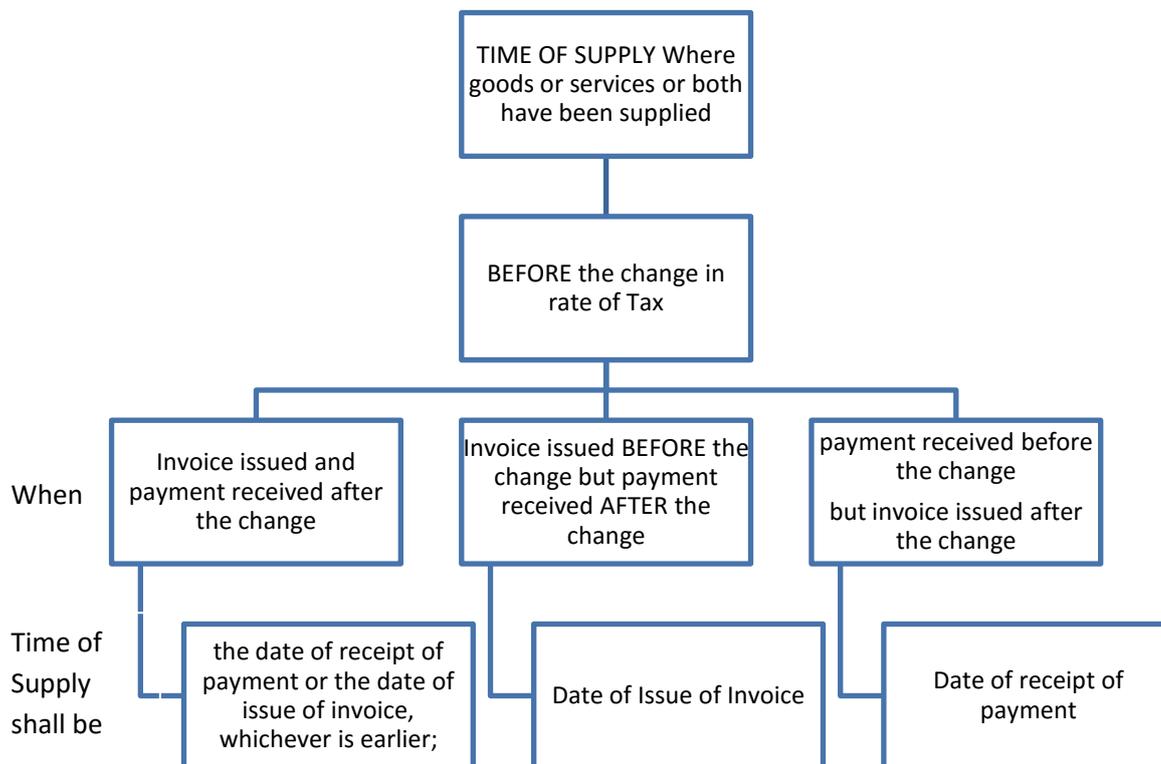
Type	Services (Sec 13)
General provision (sub section 2)	Earliest of: <ul style="list-style-type: none"> <li>• date of issue of invoice, if issued within time prescribed under Section 31(2) or date of receipt of payment, whichever is earlier</li> <li>• date of provision of service, if invoice not issued within time prescribed Under Section 31(2) or date of receipt of payment, whichever is earlier</li> <li>• date of receipt as entered in the books of account, in other cases</li> </ul>
Excess amount amount received is up to Rs. 1000 in excess to the amount indicated in tax invoice	(at the option of supplier) date of issue of invoice (with respect to such excess amount)
Here "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment and "the date of receipt of payment" shall be the earliest of the following: <ul style="list-style-type: none"> <li>• date on which the payment is entered in the books of account of the supplier or</li> <li>• the date on which the payment is credited to his bank account</li> </ul>	
Reverse Charge Basis (sub section 3)	(Earliest of the following) <ul style="list-style-type: none"> <li>• the date of payment as entered in the books of account or payment is debited in his bank account, whichever is earlier</li> <li>• the date immediately following sixty days from the date of issue of invoice or any other document</li> </ul>

<p>Supply of services by associated enterprises where the supplier of service is located outside India,(earlier of the two)</p> <ul style="list-style-type: none"> <li>• the date of entry in the books of account of the recipient</li> <li>• the date of payment</li> </ul>	
<p>Vouchers (sub section 4)</p>	<ul style="list-style-type: none"> <li>• the date of issue of voucher, if the supply is identifiable at that point or</li> <li>• the date of redemption of voucher, in all other cases</li> </ul>
<p>Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall--</p> <ul style="list-style-type: none"> <li>• in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</li> <li>• in any other case, be the date on which the tax is paid.</li> </ul>	
<p>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</p>	

### **Time of Supply in case of change in rate of tax**

Section 14 of the CGST Act, 2017 states that the time of supply, where there is a change in the rate of tax in respect of goods or services or both.

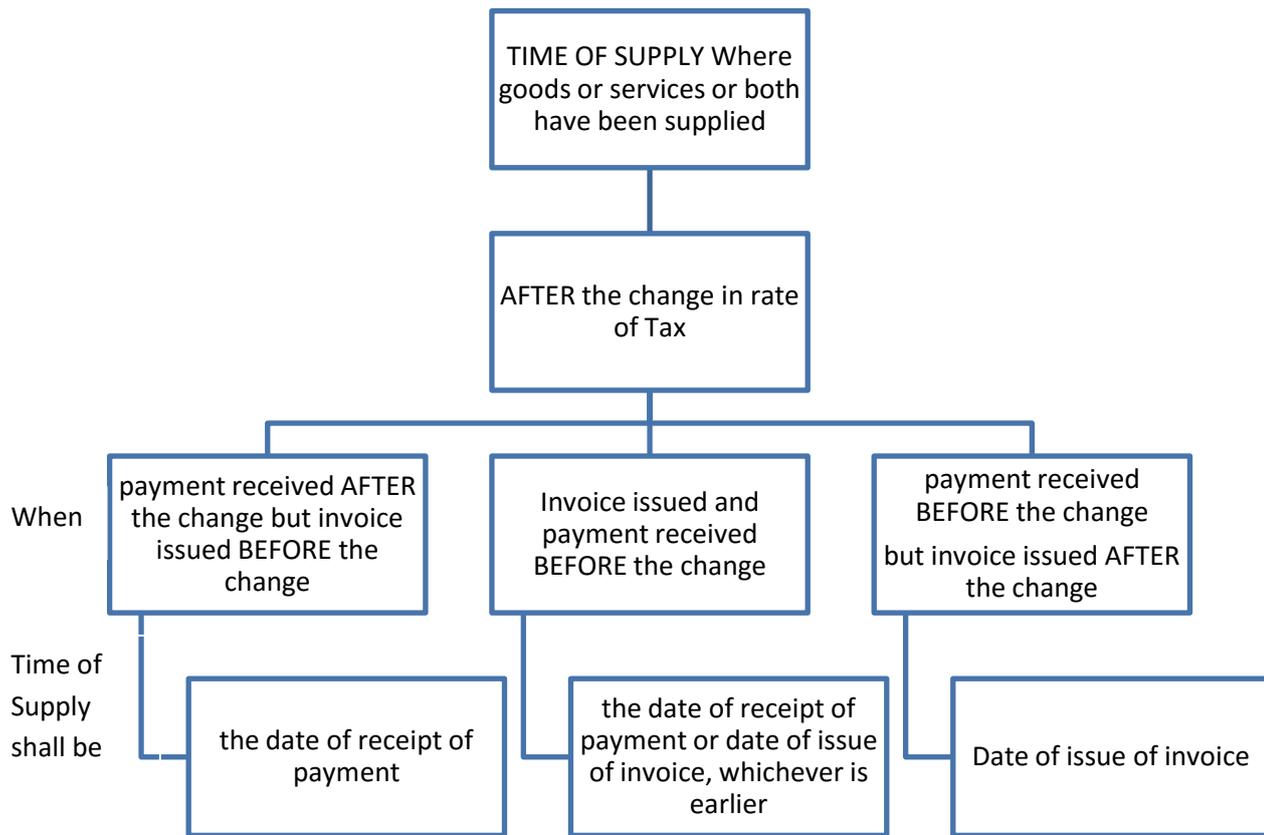
- A. In case the goods or services or both have been supplied before the change in rate of tax, the time of supply can be determined as follows:
- 1) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
  - 2) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
  - 3) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment



B. In case the goods or services or both have been supplied after the change in rate of tax, the time of supply can be determined as follows:

- 1) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
- 2) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
- 3) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.



*“the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

## 9. Value of Supply

Section 15 of the CGST Act states that, the value of taxable supply under GST is the transaction value. Transaction value means the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

“consideration” in relation to the supply of goods or services or both includes--

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

### **Deposit is not consideration**

A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [proviso to section 2(31) of CGST Act]

<b>Value of Supply</b>		
<b>Includes</b>	<b>Excludes Discount</b>	
any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST Act	Before or at the time of supply: if discount has been duly recorded in invoice	After the supply: established in terms of an agreement and specifically linked to relevant invoices.
any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;		input tax credit, attributable to discount have been reversed by recipient
incidental expenses including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply		

of services;		
interest or late fee or penalty for delayed payment of any consideration for any supply		
subsidies directly linked to the price excluding subsidies provided by the Central Government and State Government		

Persons shall be deemed to be “related persons” if--

- (i) such persons are officers or directors of one another’s businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family

## 10. Input Tax Credit

“Input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy (Section 2(62) of the CGST Act)

Input Tax Credit (ITC) is considered as a cornerstone of GST. In the previous tax regime, there was a non-availability of credit at various points of supply chain, which led to a cascading effect of tax and increased the cost of goods and services. This flaw has been removed under GST and a seamless flow of credit throughout the value chain will be provided which will help in reducing the cascading effect of tax.

To avail the benefit of ITC it is required that the person availing such benefit is registered under GST. An unregistered person is not eligible to take the benefit of ITC. Section 155, of the CGST Act, 2017 states that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Section 16 of the CGST Act, 2017, states the condition and eligibility to obtain ITC. Following four conditions are required to be fulfilled by a registered taxable person:

- he should be in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
- he should have received the goods or services or both;
- the supplier should have actually paid the tax charged in respect of the supply to the government; and
- he should have furnished the return under section 39.

(where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment)

Availability of ITC to recipient has been made dependent on payment of tax by supplier. Thus, even if the receiver has paid the amount of tax to the supplier and the goods and/or services so procured are eligible for ITC, no credit would be available, till the time tax so collected by the supplier is deposited to the Government. Also if a recipient fails to pay the amount of supply along with tax payable thereon within 3 months from the date of issue of invoice, the recipient will be liable to pay along with the output tax liability an amount equal to the input tax credit availed by the recipient along with interest thereon

## Input Tax Credit Restriction

Goods and Services Tax aims at providing seamless flow of credit throughout supply chain. However, below is a list of few situations as mentioned in section 17 of Central GST Act, 2017 where input tax credit will not be available:

- a.) *Goods or services partly used for business purpose* :The Act specifically states that input tax credit can only be taken for the amount of input tax paid on goods or services or both used for the purpose of business. Thus, if goods or services or both are used partly for purpose of business and partly for other purpose, only that amount of input tax which is attributable to the purpose of business will be allowed as credit.
- b.) *Zero rated and Exempted Supplies* :Where Goods or services or both are used partly for taxable supplies including zero rated supplies under IGST or under CGST Act, and partly for exempted supplies, only that amount of input tax which is attributable to the taxable supplies including zero rated supplies will be allowed as credit.
- c.) *Motor Vehicle and other conveyance* :Input tax credit is not available on motor vehicle and other conveyance. However,if motor vehicle and other conveyance are used for taxable supply of transportation of such vehicles/conveyances, transport of passengers or imparting training on flying,driving and navigating such vehicles or conveyances or for transportation of such goods, Input Tax Credit will be allowed.
- d.) *Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery* :Input tax credit is not available on supply of above mentioned services except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply. Thus, if a caterer uses a service of another caterer, Input Tax Credit will be allowed.
- e.) *Membership of a club, health and fitness centre* : Input tax credit is not available on supply of membership of a club, health and fitness centre
- f.) *Rent-a-cab, life insurance and health insurance* :Input tax credit is not available on supply of services of rent-a-cab, life insurance and health insurance. However, wherethe Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force or such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply, input tax credit will be available.
- g.) *Travel benefits extended to employees on vacation such as leave or home travel concession* : Input tax credit is not available on travel benefits extended to employees on vacation such as leave or home travel concession
- h.) *Works contract services* :Input tax credit is not available on works contract services when supplied for construction of an immovable property (other than plant and machinery). However, Input Tax Credit will be allowed when it is an input service for further supply of works contract service
- i.) *Construction on own account* :Input tax credit on goods or services by a person for construction of immovable property, other than plant and machinery, is not allowed.

- j.) *Tax paid under Composition Scheme* :If tax has been paid under composition scheme on supply of goods or services or both, input tax credit is not allowed.
- k.) *Goods or services or both received by a non-resident taxable person* :Input Tax Credit is not allowed when goods or services or both are received by a non-resident taxable person, however, if goods are imported by such non-taxable person, input tax credit will be allowed.
- l.) *Goods or services or both used for personal consumption* : Input tax credit is not allowed for goods or services or both used for personal consumption
- m.) *Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples*:Input tax credit is not allowed with respect to goods lost, stolen, destroyed or written off as well as on goods given as gifts or free samples will also be not allowed.

## 11. Job Work

A large number of industries depend upon outside support for completing manufacturing activity. Job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called 'principal'.

Section 143 of CGST Act, 2017 states that a Principal under intimation and subject to such conditions as may be prescribed can send inputs or capital goods to a job worker without payment of tax for further process or treatment and from there subsequently to another job worker(s) and shall either bring back such inputs/capital goods after completion of job work or otherwise within 1 year/3years of their being sent out or supply such inputs/capital goods after completion of job work or otherwise within 1 year / 3 years of their being sent out, from the place of business of a job worker on payment of tax within India or with or without payment of tax for export.

(Capital Goods excludes moulds and dies, jigs and fixtures, or tools.)

Further, a principal can supply goods from the place of business of job worker if the principal declares the place of business of the job worker as his additional place of business, except in following two conditions:

- where the job worker is registered under section 25; or
- where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal. Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Under GST regime, when goods are sent from a taxable person to a Job worker it shall be treated as supply and will be liable to GST if the goods so sent are not received back within 1 year or 3 years in case of inputs or capital goods as the case may be.

For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

### **Input Credit in case of Job Work**

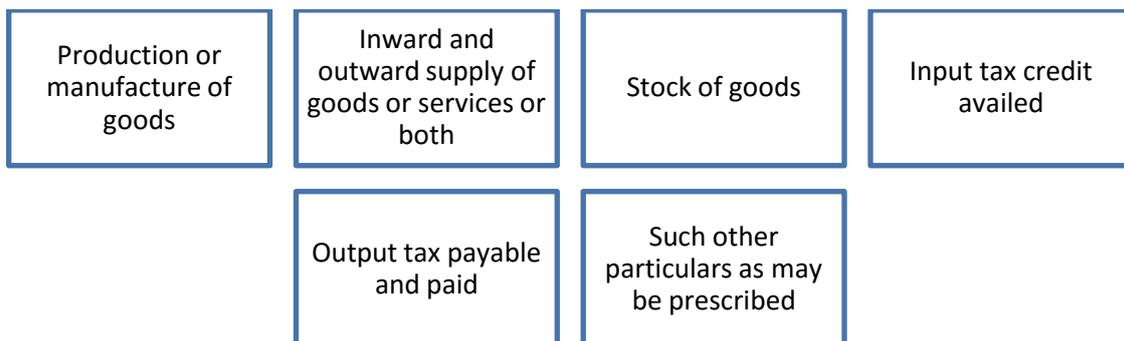
Section 19 of the CGST Act, 2017 states that the principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

Although section 16 of the CGST Act, 2017 specifically states that ITC will be provided only when goods are actually received, but under Job work this condition is exempted and ITC can be availed even if inputs or capital goods are directly sent to the Job Worker without being first brought to the place of business of Principal.

## 12. Accounts and Records

Section 35 of the CGST Act, 2017 states that a registered person is required to maintain proper accounts and records and keep it at his registered, principal place of business. If there is more than one place of business specified in the certificate of registration, the accounts relating to each place of business is required to be kept at such places of business. To facilitate digitisation, there is a facility to maintain accounts and other records in electronic form under GST.

List of accounts required to be maintained are as follows:



Owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, **irrespective of whether he is a registered person or not**, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. The Commissioner is empowered to notify a class of taxable persons to maintain additional accounts or documents for specified purpose or to maintain accounts in other prescribed manner

The time duration for retention of accounts and records under GST is until expiry of **seventy-two months** from the due date of furnishing of annual return for the year pertaining to such accounts and records. (Section 36 *CGST Act, 2017*)

A registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

### 13. Tax invoice, Credit and Debit notes

Whenever a transaction takes place, different kinds of documents are issued under different circumstances, like invoice, credit note, debit note and bill of supply.

#### Invoice

An invoice indicates what must be paid by the buyer to the seller. On every sale/purchase an invoice is issued by the supplier i.e., person making the sale. An invoice provides a detailed account of the products or service along with details of supplier, purchaser, tax charged and other particulars such as discounts, terms of sale etc.

Section 31 of the CGST Act, 2017 specifies the time limit for raising invoice for goods as follows–

- At the time of removal of goods for supply to the recipient, where the supply involves movement of goods; or
- At the time of delivery of goods or making available thereof to the recipient, in any other case

The tax invoice should contain the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

A registered taxable supplier of services is required to raise invoice at the following timeline:

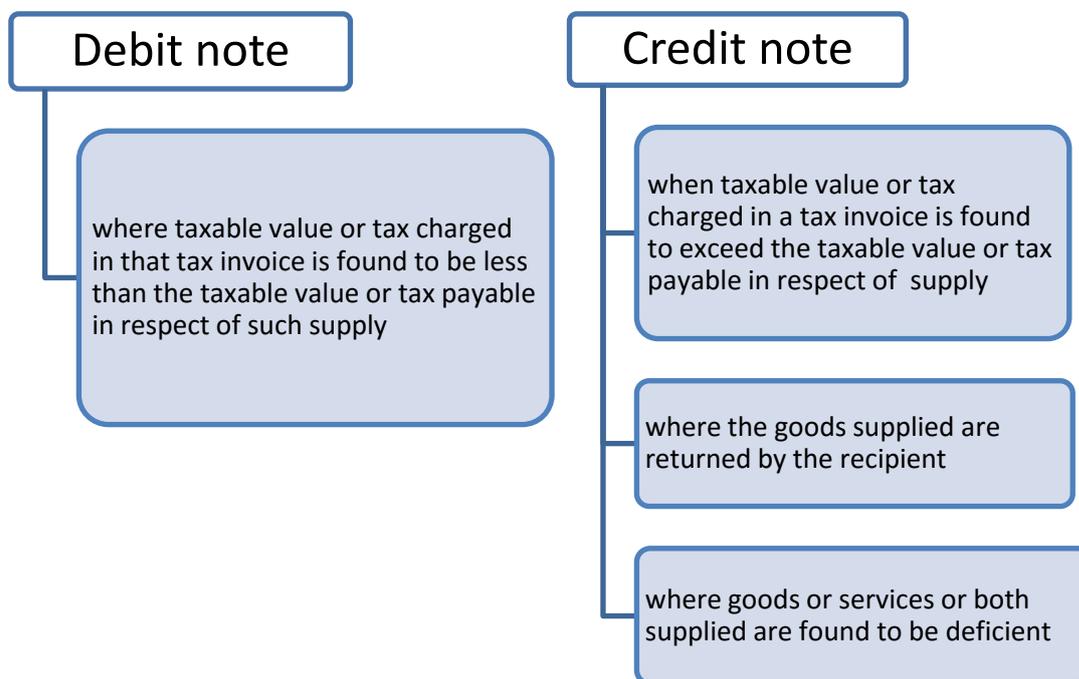
General provision	In case of taxable supply of services, invoice shall be issued within a prescribed period from the date of supply of service
Continuous Supply of service where successive statements of accounts or successive payments are involved	before or at the time each such statement is issued or, as the case may be, each such payment is received
Continuous supply having ascertainable due date	on or before the due date of payment
Continuous supply having unascertainable due date	before or at the time when the supplier of service receives the payment
Continuous Supply where the payment is linked to the completion of an event	on or before the date of completion of that event
When contract ceases before completion of supply	at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation

Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier. Here, “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

The Government may, on the recommendations of the Council, by notification, specify the categories of goods or services in respect of which a tax invoice shall be issued or any other document issued in relation to the supply shall be deemed to be a tax invoice.

### **Credit note and debit note**

A registered person is required to issue credit note or debit note under certain circumstances. Following table summarizes such situations:



## 14. Registration

In any tax system, registration is the most fundamental requirement for identification of tax payers ensuring tax compliance in the economy. Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input Tax Credit for the taxes on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input Tax Credit of tax paid by him.

### Persons Liable to register

Section 22 of the CGST Act, 2017 specifies the list of persons liable for registration and section 24 of the CGST Act, 2017 lists categories of persons who are required specifically to take registration even if they are not covered under section 22 of the Act. Following is a summarised list:

1. *Supplier*: Supplier of taxable goods or services or both exceeding the specified threshold limit of Rs. 10 lakhs (for special category States) and Rs. 20 lakhs for other states and Union territories
2. *Licensee*: Every person who is a registered licensee or holds a license under an existing law, on the day immediately preceding the appointed day i.e 1<sup>st</sup> July
3. *Transferee*: Where a business, which is carried by a taxable person is transferred as a going concern shall be liable to be registered with effect from the date of such transfer or succession
4. *Transferee under a scheme*: Transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal
5. *Interstate supplier*: An interstate supplier is compulsorily required to get registered under GST
6. *Casual Taxable person*: A person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business is termed as a casual taxable person. Such persons if making taxable supply of goods or services or both comes under the ambit of taxable persons
7. *Payer of Reverse charge*: Persons who are required to pay tax under reverse charge shall get registered under GST
8. *Person under Section 9(5) of CGST Act, 2017*: As stated in section 9(5) of CGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services
9. *Non-resident*: A non-resident taxable person making taxable supply
10. *Deductor of tax at source*: Persons who are required to deduct tax under section 51, whether or not separately registered under this Act

11. *Supplier on behalf of another person*: Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise
12. *Input Service Distributor*: Whether or not separately registered under this Act
13. *Supplier through Electronic Commerce Operator*: Persons who supply goods or services or both (other than supplies specified under sub-section (5) of section 9), through such electronic commerce operator who is required to collect tax at source under section 52
14. *Electronic Commerce Operator*: Every Electronic Commerce Operator
15. *Supplier of online information*: Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person
16. *Any other person*: Any other person or class of persons as notified by the Government on recommendations of the Council

### **Persons not liable for registration**

The following persons have been specifically kept out of the purview of registration under GST:

- Person supplying exempted goods or services or goods or services which are not liable for tax under GST.
- An agriculturist, to the extent of supply of produce out of cultivation of land.

## 15. Returns

As per law, a taxpayer is required to file a document with the administrative authority which is commonly known as a “return”. There are various types of returns under GST like the Monthly return, Return for Composition Scheme, TDS return, Return for Input Service Distributor, Annual return and final return. Under GST, everything will be online and will be updated regularly.

The entire procedure of filing returns can be divided into 5 parts as follows



Following returns have been specified in the Act:

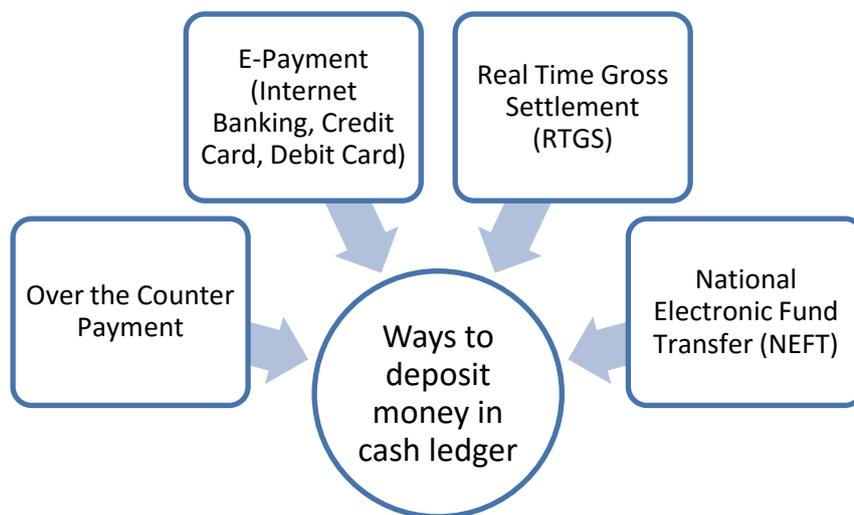
Applicability	Type	Timeline
Every registered person (other than an ISD, a non-resident taxable person and a person paying tax under the provisions of section 10/51/52)	Outward Supplies	On or before 10 <sup>th</sup> of next month
	Inward Supplies	After the 10th day but on or before the 15th day of the month succeeding the tax period
	Monthly return	On or before 20 <sup>th</sup> of next month
Registered Composition Supplier	Quarterly Return	Within 18 days after the end of each quarter
Every Registered non-resident Taxable Person	Inward and Outward Supplies	<ul style="list-style-type: none"> <li>➤ Within 20 days after the end of a calendar month or</li> <li>➤ Within 7 days after the last day of the period of registration (section 27 (1)),</li> </ul> whichever is earlier
Every Input Service Distributor (ISD)	Details of Tax invoices	Before 13 <sup>th</sup> of next month
Every Registered Person deducting tax at source (section 51)	Details of TDS	Within 10 days after the end of the month in which deductions is made
Every E-commerce operator required to collect tax (section 52)	Details of TCS	Within ten days after the end of the month in which collection is made
Every Registered Person (except ISD, Non resident taxable, Section 10,51,52 and Casual Taxable Person)	Annual Return	31 <sup>st</sup> December of the following Financial Year
Taxable Person whose registration	Final return	Within three months of

has been cancelled or surrendered		<ul style="list-style-type: none"> <li>➤ the date of cancellation or</li> <li>➤ date of order of cancellation,</li> </ul> whichever is later
		Before the expiry of six months from the last day of the quarter in which such supply was received

## 16. Payment

As India is moving towards digitisation, GST has provided an easy and simple way of payment of taxes. Under GST regime, all the taxpayers will get three electronic ledgers namely E-cash Ledger, E-credit Ledger & E-liability Ledger through their GST profile.

**E-cash ledger:** The electronic cash ledger under sub-section (1) of section 49 shall be maintained for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the Common Portal for crediting the amount deposited and debiting the payment there from towards tax, interest, penalty, fee or any other amount. Thus, Payment can be made in cash by debiting the e-cash ledger maintained on the common portal.



Money can be deposited in the Cash Ledger by modes as depicted in the above diagram. Over the Counter Payment can be made in branches of Banks Authorized (for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft) to accept deposit of GST.

**E- debit or credit ledger:** Every registered taxable person is required to record and maintain an electronic liability ledger and all amounts payable will be debited in the said register. The electronic credit ledger shall be maintained by each registered person who is eligible for input tax credit under the Act on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger. Payment of every liability by a registered taxable person can be made by debiting the e liability ledger or e- cash ledger Any amount of demand debited or amount of penalty imposed or liable to be imposed in the electronic tax liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court or if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order, the electronic tax liability register shall be credited accordingly.

Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the Common Portal.

Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:--

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;
- (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

If a person liable to pay tax, fails to pay such tax or any part thereof shall for the period for which the tax or any part thereof remains unpaid, is liable to pay, on his own, interest not exceeding 18%. Whereas if a taxable person who makes an undue or excess claim of input tax credit or undue or excess reduction in output tax liability, shall pay interest at such rate not exceeding 24%.

### Utilisation of ITC

The new indirect tax regime will follow a dual model of GST with the Centre and States simultaneously levying tax on a common base. On every transaction within state (Intra State)/ Union Territory, both Central GST and State GST/IGST will be levied, whereas on transactions between different states or a state and a union territory or between different union territories, Integrated GST will be levied.

The input tax credit allowed can be utilised in the following manner:

ITC		
Intra-State		Inter-State
CGST	SGST	IGST
Credit to be utilised sequentially CGST IGST	Credit to be utilised sequentially • SGST • IGST	Credit to be utilised sequentially • IGST • CGST • SGST
Cross utilisation of CGST and SGST is not available		

### Utilization of CGST Credit

CGST credit has to be first utilized against CGST liability and if any balance is available, same can be utilized against IGST.

### Utilization of SGST

SGST has to be first utilized against SGST liability and if any balance is available, same can be utilized against IGST.

### Utilization of IGST

IGST has to be first utilized against IGST liability and if any balance is available, same can be utilized against CGST and if still any balance is available same can be utilized against SGST.

## 17. Refunds

Refund refers to an amount that is due to the tax payer from the tax administration. According to section 54 of the CGST Act, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application **before the expiry of two years from the relevant date**. If there is any balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable may claim such refund in the return furnished under section 39

A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

### Refund of unutilised input tax credit

Section 54(3) of CGST Act, 2017 states that, subject to the provisions of section 54(10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period. Section 54(10) provides for recovery of any penalty, tax or interest from any refund due.

#### *Refund allowed in following cases (first proviso)*

zero rated supplies made without payment of tax or

where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies other than nil rated or fully exempt supplies, except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council

#### *Refund not allowed (second and third proviso)*

goods exported out of India are subjected to export duty

if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

The refund application shall be accompanied by:

- Documentary evidence to establish that a refund is due to the applicant
- evidence to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund was collected from, or

paid by, him and the incidence of such tax and interest had not been passed on to any other person.

*However, amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.*

After receipt of the application or declaration as the case may be, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order within **sixty days** from the date of receipt of application and the amount so determined shall be credited to the Consumer Welfare Fund. (Section 54(5) & (7))

### **Consumer Welfare Fund**

Refund is normally credited to the Consumer Welfare Fund constituted by the Government except if amount is relatable to:

- refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- refund of unutilised input tax credit under sub-section (3);
- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- refund of tax in pursuance of section 77;
- the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify (Section 54(8))

Section 57 of the CGST Act, 2017 states that the following amounts will be credited in the Consumer Welfare Fund

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it

All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed. The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

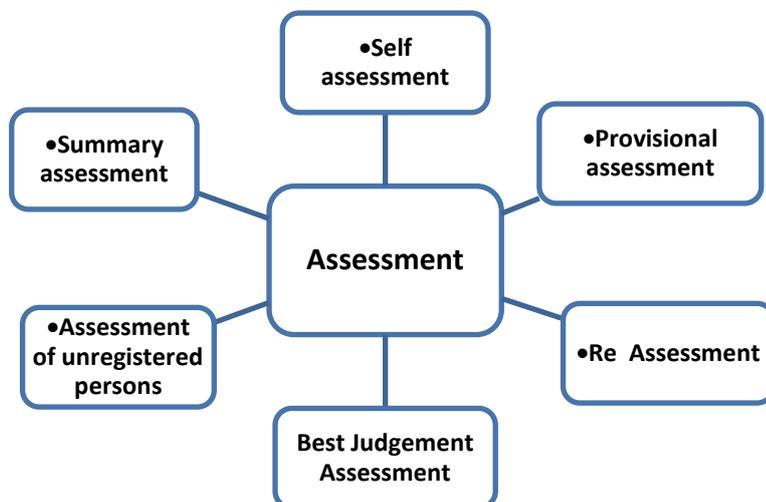
### **Interest on delayed refunds**

Section 56 of the CGST Act, 2017 states that if any tax ordered to be refunded under section 54 is not refunded within sixty days from the date of receipt of application interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

Where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund. Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

## 18. Assessment

Assessment means determining tax liability under the CGST Act, 2017 and includes the following types of assessment:



Section 59 of the CGST Act, states that every registered person is required to self-assess the taxes payable under this Act and furnish a return for each tax period.

A provisional assessment is done when the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, and request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him. (Section 60 of the CGST Act, 2017). The proper officer is required to pass final assessment order within 6 months from the date of the communication of order. The period specified may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

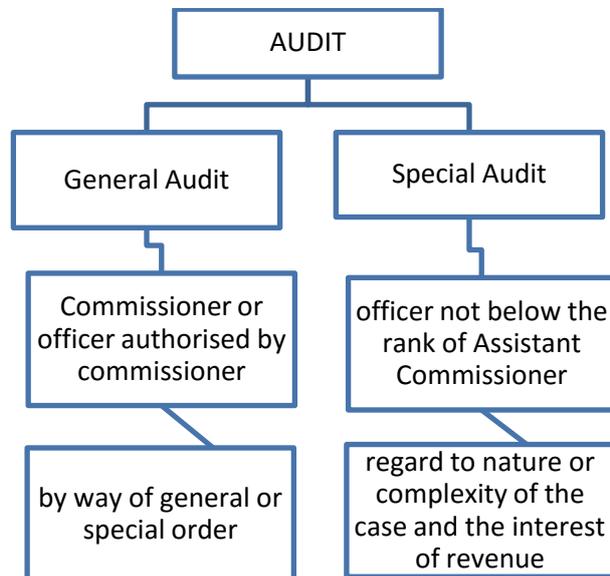
Assessment of unregistered persons is done where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Section 64 of the CGST Act, 2017 states that a Summary Assessment can be done by a proper officer, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner if the officer believes that any delay in assessment can adversely affect the interest of the revenue.

## 19. Audit

Audit under GST can be of following two types:



**General Audit:** Section 65 of the CGST Act, 2017 states that The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. A prior notice of not less than fifteen working days will be sent to the registered person before the audit is conducted. The audit needs to be completed within a period of three months from the date of commencement of the audit, but a further extension for a period of six months may be provided by the Commissioner for the reasons recorded in writing. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

During the course of audit, the authorised officer may require the registered person,—

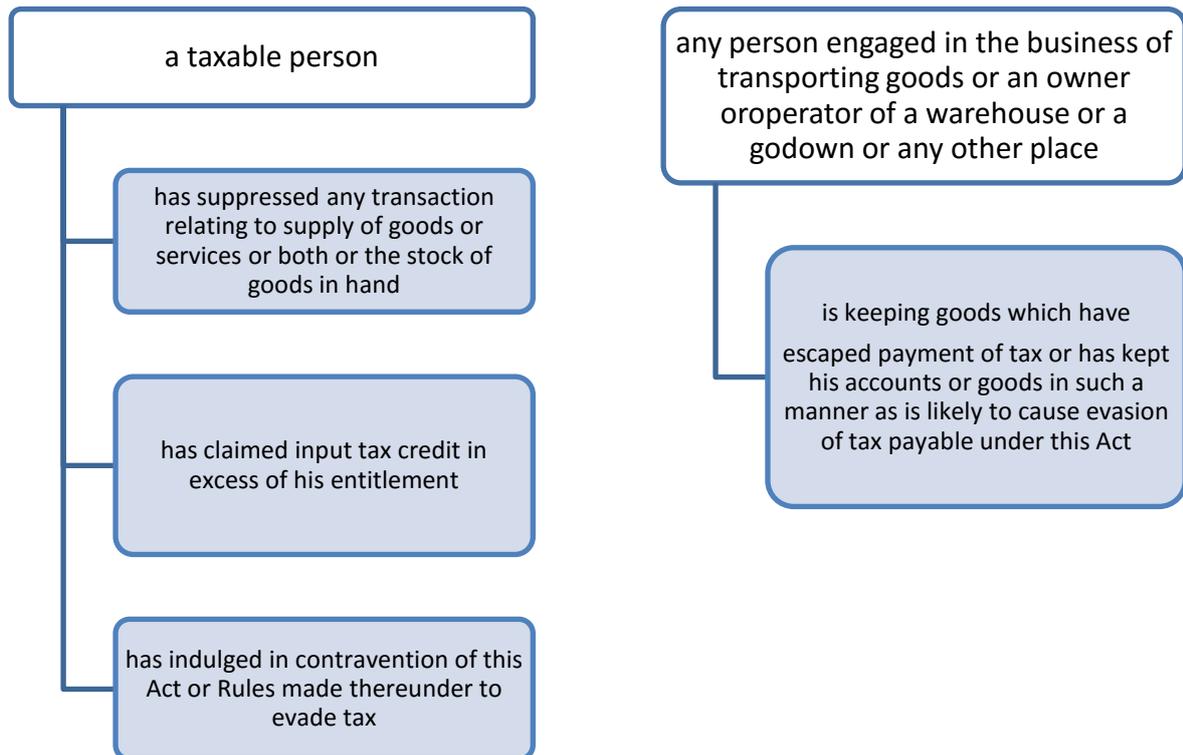
- (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

**Special Audit:** If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited.

A report of audit signed and certified by the appointed Chartered Accountant or Cost Accountant is required to be submitted within 90 days although this period can be further extended to 90 days. The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him under this Act or the rules made thereunder. Where the special audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate required action.

## 20. Inspection, search, seizure and arrest

“Inspection” means, careful examination or scrutiny. Under Goods and Services Tax (GST), there is a provision of inspection which acts as deterrent for tax evasion. These provisions help restricting tax evaders gain unfair advantage over authentic tax payers. Chapter XIV of the Central Goods and Services Tax Act, 2017 deals with the provisions of Inspection, Search, Seizure and Arrest. Section 67 of CGST Act, 2017 read with Rules states that where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that



The officer may authorise in writing any other officer of Central tax or State tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place. The authorisation to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation will be in form GST INS- 01

Seizure is defined as taking of something by force. Section 67 of Central Goods and Services Tax Act, 2017, read with respective rules states provisions relating to seizure. The salient points of seizure are as follows:

#### Order of Seizure

- a proper officer not below the rank of Joint Commissioner or an officer authorised by such proper officer can make an order of seizure in form GST INS-02.

#### Order of Prohibition

- Where Goods cannot be seized the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer

#### Preparation of Inventory

- When goods are seized the officer is required to prepare an inventory of such goods or books or documents seized containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

### **Bond for release of seized goods**

Goods seized by a proper officer or an authorised officer can be released on a provisional basis upon execution of a bond for the value of goods and furnishing of a security. The bond so executed will be in Form GST INS-04 and the security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable. In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

### **Procedure in respect of seized goods**

If the goods so seized are of perishable or hazardous nature, such goods can be released by an order under Form GST INS-05 only after the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower and produce the proof of payment. If the taxable person doesn't pay the amount, the Commissioner has the power to dispose of such goods or things and the amount realized thereby will be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

### **Arrest**

Section 69 of the CGST Act, 2017 grants power to a Commissioner to authorise any officer of Central Tax to arrest such person who has committed following offence:

## Offence (Section 132(1))

(a) supplies any goods or services or both without issue of any invoice, with the intention to evade tax	(b) issues any invoice or bill without supply of goods or services or both leading to wrongful availment or utilisation of input tax credit or refund of tax	(c) avails input tax credit using such invoice or bill without supply of goods or services or both	(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due
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### Punishment (Section 132(1))

When a person commits any of the offences stated above the punishment will be as follows

Where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds	
500 lakh Rupees	200 to 500 lakh Rupees
imprisonment for a term which may extend to 5 years and with fine	imprisonment for a term which may extend to 3 years and with fine

### (Section 132 (2))

Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

## 21. Introduction to IGST, 2017

The GST Council in its 11th meeting held on 4th March, 2017 approved the “draft Integrated GST” bill to make a provision for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

The Union Government presented the Integrated Goods and Service Tax Bill, 2017 in Lok Sabha on 27th March, 2017 and the same was passed by Lok Sabha on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented by the President on 13th April, 2017.

### Important Definitions

Section 2 of the IGST Act, 2017 contains the definitions of various terms used at several places in the Act. Some of the important definitions are reproduced as follows:

- a) “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

*Explanation*--For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time

- b) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India
- c) “export of services” means the supply of any service when,--
- (i) the supplier of service is located in India;
  - (ii) the recipient of service is located outside India;
  - (iii) the place of supply of service is outside India;
  - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
  - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8
- d) “fixed establishment” means a place (other than the registered 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
- e) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India
- f) “import of services” means the supply of any service, where--
- (i) the supplier of service is located outside India;
  - (ii) the recipient of service is located in India; and
  - (iii) the place of supply of service is in India

- g) location of the recipient of services” means,--
- a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
  - b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
  - c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
  - d) in absence of such places, the location of the usual place of residence of the recipient
- h) “location of the supplier of services” means,--
- a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
  - b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
  - c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
  - d) in absence of such places, the location of the usual place of residence of the supplier
- i) “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.--For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body,--

- (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution
- j) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,--
- (i) advertising on the internet;
  - (ii) providing cloud services;
  - (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming

## 22. Nature of Supply

GST is a destination based tax i.e., consumption tax, which means tax will be levied where goods and services are consumed and will accrue to that state thus, it is of immense importance that the place of supply of any transaction is determined correctly. To determine the correct place of supply, it is important that the nature of supply be understood first. Following table list provisions as contained in IGST Act, 2017, to know whether a supply will be treated as Inter State or Intra State supply.

The following services shall be treated as inter state supply-

<b>Inter State Supply (Sec 7)</b>		
<b>Supply of</b>	<b>Goods</b>	<b>Services</b>
Where location of the supplier and the place of supply are in	two different States; two different Union territories; or a State and a Union territory	
Import	till they cross the customs frontiers of India	No specific requirement (all services imported will be treated as inter state supply)
<i>Following supply of goods or services or both will be treated as inter-State trade or commerce</i>		
<ul style="list-style-type: none"> <li>supplier located in India and the place of supply is outside India</li> <li>to or by a Special Economic Zone developer or a Special Economic Zone unit</li> <li>in the taxable territory, not being an intra-State supply and not covered elsewhere in this section</li> </ul>		

The following supplies shall be treated as intra state supply:

<b>Intra State Supply (Sec 8)</b>		
<b>Supply of</b>	<b>Goods</b>	<b>Services</b>
Where location of the supplier and the place of supply are in	same State or same Union territory	
<i>Following supply of goods will not be considered as Intra State Supply</i>		
	supply of goods to or by a Special Economic Zone developer or a Special Economic	

	Zone unit	
	goods imported into the territory of India till they cross the customs frontiers of India	
	supplies of goods made to a tourist as referred to in Section 15	

Following will be treated as establishments of distinct persons:

- an establishment in India and any other establishment outside India;
- an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory

A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

#### **Supplies in territorial waters (Sec 9)**

Notwithstanding anything contained in this Act,—

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
- (b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

## 23. Place of Supply

Place of supply is important to determine the nature of sale (inter-state, intra-state, import or export) and the State where State component of GST will accrue.

### Place of Supply of Goods

Place of Supply of Goods other than supply of goods imported into, or exported from India.

Section 10 of the IGST Act, 2017, specifies place of supply of goods, other than supply of goods imported into, or exported from India.

Supply involving <b>movement of goods</b> (whether by the supplier or the recipient or by any other person)	•location of the goods at the time at which the movement of goods terminates for delivery to the recipient
<b>Delivery of goods</b> (by the supplier to a recipient or any other person on the direction of a third person) either by way of transfer of documents of title to the goods or otherwise	•it shall be deemed that the third person has received such goods and principal place of business of such person shall be the place of supply
Supply <b>not involving movement of goods</b> (whether by the supplier or the recipient)	•location of such goods at the time of the delivery to the recipient
<b>Installation/Assembling</b> of goods	•place of such installation or assembly
Goods supplied <b>on board a conveyance</b>	•location at which such goods are taken on board

Place of Supply of Goods imported into, or exported from India.(Section 11)

Place of supply of goods,--

- (a) imported into India shall be the location of the importer;
- (b) exported from India shall be the location outside India.

## Place of Supply of Services

Place of Supply of Services other than supply of goods imported into, or exported from India.

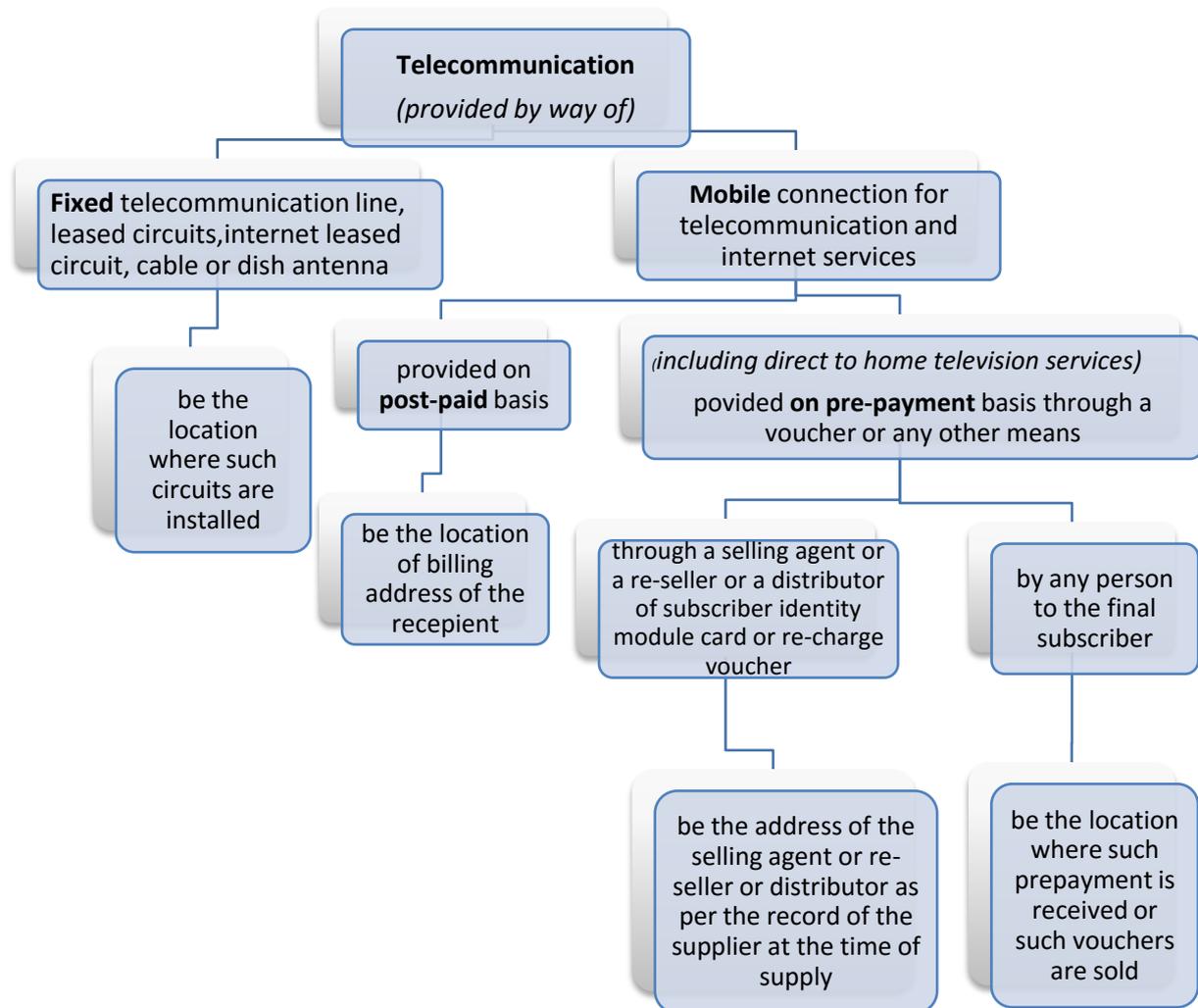
Section 12 of the Integrated GST Act, 2017 lists place of supply of services, where location of supplier and recipient is in India.

<b>(Sub Section) Applicability</b>	<b>Type</b>	<b>Place of Supply of Service</b>
(2) General Provision	Made to a registered person	location of such person
	Made to unregistered person	- location of recipient where address on records exist - location of the supplier of services in other cases
(3) Immovable property, boat or vessel	services provided by architects, interior decorators or any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work	location at which immovable property or boat or vessel is located or intended to be located
	By way of lodging accommodation, including a houseboat or vessel	
	Accommodation for organising marriage or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; etc	
	Any ancillary services to the above services	
	If immovable property or boat or vessel is located or intended to be located outside India	the place of supply shall be the location of the recipient
Immovable Property/boat/vessel	located in more than one	proportionate allocation amongst states as per the

	State	value of service received or as per the contract or as may be prescribed
(4) Specific services	Services like beauty parlour, fitness, restaurant and catering services etc.	location where the services are actually performed
(5) Training and performance appraisal	Made to a registered person	location of such person
	Made to unregistered person	location where the services are actually performed
(6) Services by way of	admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto	where the event is actually held or where the park or such other place is located.
(7) Organisation of a cultural, artistic, sporting event etc., and services ancillary to organisation of any of the events or assigning of sponsorship of such events	Made to a registered person	location of such person
	Made to unregistered person	the place where the event is actually held
	event held outside India	location of the recipient
	Held in more than one State	proportionate allocation amongst states as per the value of service received or as per the contract or as may be prescribed
(8) Transportation of goods, including by mail or courier	registered person	location of such person
	unregistered person	location at which such goods are handed over for their transportation
(9) Passenger transportation service	registered person	location of such person
	unregistered person	place where the passenger embarks on the conveyance for a continuous journey
Right to passage is given for future use and the point of embarkation is not	Made to a registered person	Location of such person
	Made to unregistered person	- location of recipient where address on records

known at the time of issue of right to passage		exist - location of the supplier of services in other cases
*The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time		
(10)On board a conveyance	including a vessel, an aircraft, a train or a motor vehicle	location of the first scheduled point of departure of that conveyance for the journey
(12) Banking and other financial services	including stock broking services to any person	- location of the recipient of service on records of supplier or - if location of recipient is not available, location of the supplier of services
(13) Insurance services	Made to a registered person	location of such person
	Made to unregistered person	location of the recipient of Services on the records of the supplier of services.

(11) Place of supply of Telecommunication services



- In any other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services
- If pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

## Introduction to UTGST Act, 2017

The Central GST Act, 2017 (CGST Act) will be applicable on all the intra state transactions of supply of goods and/or services and is the revenue of the Central Government. As CGST would be levied on all the transactions of taxable goods and services, and is therefore applicable in all the states and union territories of India. The Integrated GST Act, 2017 (IGST Act) will be applicable on all the inter-state transactions of goods and services. It is regulated by the Central Government and therefore will be applicable on all the transactions of goods and services applicable in India or import / export transactions. However, for the purpose of levy and collection of SGST levied on each intra state transactions of goods and services, all the states / union territories of India are required to have their own state / union territory legislation. This Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Union territories and for matters connected therewith or incidental thereto.

## Applicability of the UTGST Act

This Act may be called the Union Territory Goods and Services Tax Act, 2017. It would be applicable in the following union territories.

- a) Andaman and Nicobar Islands,
- b) Lakshadweep,
- c) Dadra and Nagar Haveli,
- d) Daman and Diu,
- e) Chandigarh and
- f) other territory.

The Delhi and the Pondicherry are the other two union territories but this Act will not be applicable there as they have their own state legislature and government. State GST would be applicable in their case.

Some Definition prescribed in the Act are as follows:

**Definitions:** In this Act, unless the context otherwise requires:

- 1) “appointed day” means the date on which the provisions of this Act shall come into force;
- 2) “Commissioner” means the Commissioner of Union territory tax appointed under section 3;
- 3) “designated authority” means such authority as may be notified by the Commissioner;
- 4) “exempt supply” means supply of any goods or services or both which attracts *nil* rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;
- 5) “existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made

- before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
- 6) "Government" means the Administrator or any Authority or officer authorised to act as Administrator by the Central Government;
  - 7) "output tax" in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;
  - 8) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

## **Administration**

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act. The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Subject to the conditions specified in the notification issued under sub-section (1),

- a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;
- b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

## **Levy and Collection of UTGST**

As per the provision of Section of the UTGST Act, there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent, as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

However, the Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be

levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

The GST Council has already approved the total tax rates of 0%, 5%, 12%, 18% & 28%. The highest applicable approved rate of UTGST has been prescribed at 20%. Though the highest rate of tax as charges as UTGST would not be more than 14% but an enabling limit of 20% has been prescribed in law to avoid need of changing the law, in case of need to revise the rate of tax in future.

The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

The Union territory tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

For eg: A registered taxable person receives agricultural produce say paddy from an agriculturist, than such registered taxable person would be liable for payment of tax at the applicable rate on paddy as an agriculturist is not liable for registration.

The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

## **Exemption from GST**

As per the provision of section 8 of the Act, the Central Government on the recommendations of the GST Council, by notification exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable on such supply.

The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

*Explanation* —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

### **Input Tax Credit and its adjustment**

As per the provision of section 9 of the Act, the amount of input tax credit available in the electronic credit ledger of the registered person on account of:

- a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
- b) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

The Union territory tax shall not be utilised towards payment of central tax.

### **Migration of existing taxable person to UTGST**

Every person registered under any of the existing laws and having a valid Permanent Account Number would be migrated to UTGST and shall be issued a provisional registration certificate. Such taxable person would be required to furnish the prescribed information and file such documents as may be prescribed. which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.

The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24 of the Central Goods and Services Tax Act.

### **Transitional Provision – Input Tax Credit**

A registered person, other than a person opting to pay tax under section 10 of the Central Goods and Services Tax Act as composition levy, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax and Entry Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law, not later than ninety days after the said day, in such manner as may be prescribed.

These credits will not be eligible if:

- 1) The returns under the existing law for the period ending on a day immediately preceding appointed day are not filed with 90 days of the appointed day;
- 2) The said credit are not eligible as input tax credit in the GST law;
- 3) Taxable person has not furnished the returns under the existing law for a period of 6 months before appointed day;

- 4) Where the credit related to goods cleared under exemption;

### **Input Tax Credit on Capital Goods**

The Vat laws of some territory provides for the input tax credit on capital goods. At some places, inputs tax credit is available in two equal installments. The registered taxable person would be eligible for the unavailed input tax credit on capital goods under existing law, which is not carried forward in a return in their electronic credit ledger. However, these credits would not be eligible to taxable person who opt to pay tax u/s 10 as composition leby. Further, these credits would be eligible only if such credits are eligible as input tax credits under GST laws also.

### **Input Tax Credit on Input Stocks**

The eligible inputs tax credits in respects of inputs held in stocks, inputs held in semi finished goods and inputs held in stock of finished goods on a day immediately preceding the appointed day will be eligible as input tax credit to be taken as UTGST in the electronic ledger.

The following registered taxable person will be eligible for the input tax credit:

- a) Who was not liable to be registered.
- b) Who was involved in dealing with exempted goods or tax free goods.
- c) Goods which have suffered tax at first point of sale and their subsequent sale is not liable to tax in the UT under the existing law but which are liable to be taxed in GST.
- d) Where a person is entitled to tax at the time of sale.

However, the Input tax credit is available subject to the following conditions:

- i. such inputs or goods are used or intended to be used for making taxable supplies under GST;
- ii. the said registered person is eligible for input tax credit on such inputs under GST;
- iii. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- iv. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day. However,, in case such taxable person is not in possession of invoice or tax paying document, such person can take credit at such rate as may be prescribed. However he would be required to pass the benefit of reduced taxes to his recipients.

### **Input Tax Credit: Taxable as well as exempted Goods**

A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger:

- i. the amount of credit of the value added tax and entry tax, if any, carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
- ii. the amount of credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held

in stock on the appointed day, relating to such exempted goods or tax free goods in accordance with the provisions of sub-section (3).

### **Input Tax Credit: Goods in Transit**

In case of goods which are in transit on the appointed day, a registered taxable person shall be entitled to take credit of VAT and entry tax on goods received on or after the appointed day, the tax on which has been paid before appointed day. However, the eligibility of input tax credit is subject to following conditions:

- the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day. The competent authority has power to extend the period of 30 days by another period not exceeding 30 days on sufficient cause being shown to it.
- Furnish such statement in respect of such credit in such manner as may be prescribed.

### **Switch over from Composition levy**

A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:

- i. Such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- ii. the said registered person is not paying tax under section 10 of the Central Goods and Services Tax Act;
- iii. the said registered person is eligible for input tax credit on such inputs under this Act;
- iv. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and
- v. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

### **Transitional provisions relating to job work**

Where any inputs or semi finished goods received at a place of business had been despatched as such or despatched after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day.

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months.

Provided further that if such inputs are not returned within a period of six months or the extended period from the appointed day, the input tax credit shall be liable to be

recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act.

Provided also that the person despatching the goods may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

The tax under this sections shall not be payable only if the person despatching the goods and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

## **Miscellaneous Transition Provisions**

### **Return of taxable goods**

Where any goods on which tax, if any, had been paid under the existing law at the time of sale thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the tax paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer.

However, if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply and GST would be payable on returns of such goods.

### **Revision of price of goods supplied before appointed day**

Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised upwards on or after the appointed day, the registered person who had sold such goods shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act, such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised downwards on or after the appointed day, the registered person who had sold such goods may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act. However, such supplier would be allowed to reduce his taxable outward supply liability only if the recipient of the invoice or credit note reduces the corresponding input tax credit.

### **Refund Claims**

The claims of refund of input tax credit, tax or interest filed by a taxable person before or after the appointed day would be processed only under the law in which the claims are filed and UTGST law would not be applicable on such claims. Such claims would be

allowed to be paid to taxable person only in cash even if there are contrary provisions in the existing law.

Provided that where any claim for refund of the amount of input tax credit is fully or partially rejected, the amount so rejected shall lapse. However, the claimant would be eligible to file appeal in respect of such rejection of claim. The reference to such appeal has been provided in section 182 of CGST Act.

Further, no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

### **Proceedings of output tax under the existing law**

Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash in accordance with the provisions of the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

### **Proceedings of Assessment or adjudication under existing law**

Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

### **Revision of Return after the appointed day**

Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of input tax credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or input tax credit is found to be admissible to any taxable person, the same shall be refunded to him in cash

under the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

### **Tax paid goods supplied after the appointed day**

Notwithstanding anything contained in section 12 of the Central Goods and Services Tax Act, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the existing law.

Notwithstanding anything contained in section 13 of the Central Goods and Services Tax Act, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994.

Where tax was paid on any supply, both under any existing law relating to sale of goods and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

### **Goods sent on approval basis**

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day.

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months.

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act and are returned after the period specified in this sub-section.

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within the period specified in this sub-section.

### **Tax deducted at Source (TDS)**

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any existing law relating to sale of goods and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 of the Central Goods and Services Tax Act, as made applicable to this Act, shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

### **INSPECTION, SEARCH, SEIZURE AND ARREST**

As per section 11 of the Act, all officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, and officers of central tax and officers of the State tax shall assist the proper officers in the implementation of this Act.

The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

## **DEMANDS AND RECOVERY**

A registered person who has paid the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

Further, a registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of the central tax and the Union territory tax payable.

Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of central tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of central tax and credit the amount so recovered to the account of the Government under the appropriate head of Union territory tax.

Where the amount recovered under sub-section (1) is less than the amount due to the Government under this Act and the Central Goods and Services Tax Act, the amount to be credited to the account of the Government shall be in proportion to the amount due as Union territory tax and central tax.

## **ADVANCE RULING**

“advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the Central Goods and Services Tax Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

“Appellate Authority” means the Appellate Authority for Advance Ruling constituted under section 16;

“applicant” means any person registered or desirous of obtaining registration under this Act;

The Central Government shall, by notification, constitute an Authority to be known as the (name of the Union territory) Authority for Advance Ruling provided that the Central Government may, on the recommendations of the Council, notify any Authority located in any State or any other Union territory to act as the Authority for the purposes of this Act.

The Authority shall consist of:

- i. one member from amongst the officers of central tax; and
- ii. one member from amongst the officers of Union territory tax, to be appointed by the Central Government.
- iii. The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

## **Constitution of Appellate Authority for Advance Ruling**

The Central Government shall, by notification, constitute an Appellate Authority to be known as the (name of the Union territory) Appellate Authority for Advance Ruling for

Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority:

The Appellate Authority shall consist of:

- i. the Chief Commissioner of central tax as designated by the Board; and
- ii. the Commissioner of Union territory tax having jurisdiction over the applicant.

## **MISCELLANEOUS**

Subject to the provisions of this Act and the rules made thereunder, the provisions of the Central Goods and Services Tax Act, relating to,

- (i) scope of supply;
- (ii) composition levy;
- (iii) composite supply and mixed supply;
- (iv) time and value of supply;
- (v) input tax credit;
- (vi) registration;
- (vii) tax invoice, credit and debit notes;
- (viii) accounts and records;
- (ix) returns;
- (x) payment of tax;
- (xi) tax deduction at source;
- (xii) collection of tax at source;
- (xiii) assessment;
- (xiv) refunds;
- (xv) audit;
- (xvi) inspection, search, seizure and arrest;
- (xvii) demands and recovery;
- (xviii) liability to pay in certain cases;
- (xix) advance ruling;
- (xx) appeals and revision;
- (xxi) presumption as to documents;
- (xxii) offences and penalties;
- (xxiii) job work;
- (xxiv) electronic commerce;
- (xxv) settlement of funds;
- (xxvi) transitional provisions; and
- (xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall *mutatis mutandis* apply.

The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

### **Power to make rules**

The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act. Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees Rs. 10,000.

Every rule made by the Central Government, every regulation made by the Board and every notification issued by the Central Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in

session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

### **Power to issue Instructions or Directions**

The Commissioner may, if he considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the Union territory tax officers as he may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

### **Removal of Difficulties**

If any difficulty arises in giving effect to any provision of this Act, the Central Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

# THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

## Background

The GST Council in its 10<sup>th</sup> meeting held on 18<sup>th</sup> February, 2017 approved the “GST compensation to states” bill that provides for the compensation of loss arising out of introduction of Goods and Service Tax in India. An Act to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax for the period of five years in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The Union Government presents the Goods and Service Tax (Compensation to States) Bill, 2017 in lok sabha on 27<sup>th</sup> March, 2017 and the same has been passed by lok sabha on 29<sup>th</sup> March, 2017. The Rajya sabha passed the bill on 6<sup>th</sup> April, 2017 and was assented by the President on 12<sup>th</sup> April, 2017.

This Act may be called the Goods and Services Tax (Compensation to States) Act, 2017 “the Act”. It extends to the whole of India and shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

## Salient Features of Compensation Act

The Compensation Act provides for the manner of ascertaining the amount of compensation payable to States during the transition period of five years by the Centre on account of revenue loss attributable to levy of goods and services tax. It would inter-alia involve the followings:

- Ascertaining the base year
- Identifying the revenue of base year
- Projected revenue
- Computation of compensation
- Release of compensation

The compensation shall be met out from compensation cess for which the provisions in relation to collection, payment return, refund etc. have been provided for in the Compensation Act.

**Objectives of the Act:** The Act provides for the following:

1. It provides for the compensation of loss to the states arising out of introduction of Goods and Service Tax in India
2. The financial year 2015-16 shall be taken as base year for the purpose of calculating compensation amount payable to the States.
3. The revenue to be compensated consists of revenues from all the taxes that are levied by the States which are now to be subsumed under goods and services tax, as audited by the comptroller and auditor general of India.
4. The projected growth rate of revenue during transition period shall be 14%.

5. The compensation shall be released bi-monthly on provisional basis and final adjustment shall be made after getting audited accounts of the year from the Comptroller and Auditor General of India.
6. In case of eleven special category states referred to in article 279A of the Constitution, the revenue forgone on account of exemption of taxes granted by states shall be counted towards the definition of Revenue for the base year 2015-16 for calculating compensation.
7. The revenues of the states that were not credited to the consolidated funds of states government but were directly collected by “mandi” or “municipality” would also be included in the definition of revenue if these were subsumed in the goods and services tax.
8. To generate revenue to compensate states for five year for loss suffered by the states on account of implementation of goods and service tax, by levy a cess on such goods as recommended by the GST Council over and above the GST rate on that item.
9. The proceeds of the cess shall be credited to the fund called Goods and Service Tax compensation fund and all the compensation payable to the states as GST compensation shall be paid from the above mentioned fund. The balance if any left out in the GST compensation fund after five year shall be equally shared between the Centre and the States.

Some Definition prescribed in the Act are as follows:

**Definitions:** In this Act, unless the context otherwise requires:

- a) “central tax” means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;
- b) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;
- c) “cess” means the goods and services tax compensation cess levied under section 8;
- d) “compensation” means an amount, in the form of goods and services tax compensation, as determined under section 7;
- e) “Council” means the Goods and Services Tax Council constituted under the provisions of article 279A of the Constitution;
- f) “Fund” means the Goods and Services Tax Compensation Fund referred to in section 10;
- g) “input tax” in relation to a taxable person, means,
  - i. cess charged on any supply of goods or services or both made to him;
  - ii. cess charged on import of goods and includes the cess payable on reverse charge basis;

- h) “Integrated Goods and Services Tax Act” means the Integrated Goods and Services Tax Act, 2017;
- i) “integrated tax” means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;
- j) “prescribed” means prescribed by rules made, on the recommendations of the Council, under this Act;
- k) “projected growth rate” means the rate of growth projected for the transition period as per section 3;
- l) “Schedule” means the Schedule appended to this Act;
- m) “State” means,
  - i. for the purposes of sections 3, 4, 5, 6 and 7 the States as defined under the Central Goods and Services Tax Act; and
  - ii. for the purposes of sections 8, 9, 10, 11, 12, 13 and 14 the States as defined under the Central Goods and Services Tax Act and the Union territories as defined under the Union Territories Goods and Services Tax Act;
- n) “State tax” means the State goods and services tax levied and collected under the respective State Goods and Services Tax Act;
- o) “State Goods and Services Tax Act” means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;
- p) “taxable supply” means a supply of goods or services or both which is chargeable to the cess under this Act;
- q) “transition date” shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;
- r) “transition period” means a period of five years from the transition date; and
- s) “Union Territories Goods and Services Tax Act” means the Union Territories

The words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act shall have the meanings respectively assigned to them in those Acts.

### **Base Year**

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year.

### **Projected Growth Rate**

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent 14% per annum.

For eg: If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows:

Projected Revenue for 2018-19 =  $100 (1+14/100)^3$

### **Base Year Revenue**

Subject to the provision of sub-sections (2), (3), (4), (5) and (6), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into goods and services tax "GST" namely:

- a) the value added tax 'VAT', sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;
- b) the central sales tax 'CST' levied under the Central Sales Tax Act, 1956;]
- c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile entry 52 of List-II (State List) of the Seventh Schedule to the Constitution;
- d) Luxuries tax, entertainments tax, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the constitution;
- e) Advertisement tax or any other tax levied by the concerned State under the erstwhile entry 55 of List-II (State List) of the Seventh Schedule to the Constitution;
- f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution;
- g) any cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution by the State Government under any Act notified under sub-section (4), prior to the commencement of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016:

Provided that the following sum shall not be included in the revenue collected during the base year in a State, net of refunds, in the calculation of the base year revenue for that State, such as:

- a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-I (State List) of the Seventh Schedule to the Constitution, prior to the coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor

spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

- b) tax levied under the Central Sales Tax Act, 1956, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
- c) any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and
- d) the entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

*Note:*

1. The base year revenue shall include the amount of tax collected on sale of services by the said State Government during the base year in respect of the State of Jammu and Kashmir.
2. In respect of the States mentioned in sub-clause (g) of clause (4) of article 279A of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub-section (1), shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

The base year revenue shall be calculated as mentioned above and on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor-General of India.

In respect of any State, if any part of revenues mentioned above are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

### **GST Compensation**

The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India. However, in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner:

- a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated as per section 6;
- b) the actual revenue collected by a State in any financial year during the transition period shall be:
  - i. the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act;
  - ii. the integrated goods and services tax apportioned to that State; and
  - iii. any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes, as certified by the Comptroller and Auditor-General of India;
- c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b).

The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner:

- 1) The projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6.

**Illustration:** *If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be  $100 \times (10/12) = \text{Rs.}83.33$ ;*

- 2) The actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be:
  - i. the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act;
  - ii. the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Excise and Customs; and
  - iii. any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes;
- 3) the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance point (1) and the actual

revenue collected by a State in the said period as referred to in point (2), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period.

- 4) In case of any difference between the final compensation amount payable to a State calculated in accordance with the provisions of sub-section (3) upon receipt of the audited revenue figures from the Comptroller and Auditor-General of India, and the total provisional compensation amount released to a State in the said financial year in accordance with the provisions of sub-section (4), the same shall be adjusted against release of compensation to the State in the subsequent financial year.
- 5) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed.

### **Compensation Cess**

There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council.

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify;

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both.

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Every taxable person, making a taxable supply of goods or services or both, shall:

- a) pay the amount of cess as payable under this Act in such manner;
- b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

c) apply for refunds of such cess paid in such form, as may be prescribed.

For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act “CGST Act” and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

The proceeds of the cess and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section. All amounts payable to the States under section 7 shall be paid out of the Fund. 50% of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance 50% shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

The accounts relating to Fund shall be audited by the Comptroller and Auditor-General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

The provisions of the Central Goods and Services Tax Act “CGST Act” and Integrated Goods and Services Tax Act “IGST Act”, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax and integrated tax on such intra-State supplies under the said Act or the rules made thereunder.

Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- a) the conditions which were included in the total base year revenue of the States, referred to in sub-clause (g) of clause (4) of article 279A of the Constitution, under sub-section (3) of section 5;
- b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State, under sub-section (6) of section 5;

- c) the manner of refund of compensation by the States to the Central Government under sub-section (6) of section 7;
- d) the manner of levy and collection of cess and the period of its imposition under sub-section (1) of section 8;
- e) the manner and forms for payment of cess, furnishing of returns and refund of cess under sub-section (1) of section 9; and
- f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

## THE SCHEDULE

[See section 8 (2)]

1. In this Schedule, reference to a “tariff item”, “heading”, “sub-heading” and “Chapter”, wherever they occur, shall mean respectively a tariff item, heading, sub-heading and Chapter in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
2. The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this Schedule.

S. No.	Description of supply of goods or services	Tariff item, heading, sub-heading, Chapter, or supply of goods or services, as the case may be	The maximum rate at which goods and services tax compensation cess may be collected
1.	Pan Masala	2106 90 20	One hundred and thirty-five per cent. ad valorem.
2.	Tobacco and manufactured tobacco substitutes, including tobacco products.	24	Four thousand one hundred and seventy rupees per thousand sticks or two hundred and ninety per cent. ad valorem or a combination thereof, but not exceeding four thousand one hundred and seventy rupees per thousand sticks plus two hundred and ninety per cent. ad valorem.
3.	Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated.	2701, 2702 or 2703	Four hundred rupees per tonne.
4.	Aerated waters.	2202 10 10	Fifteen per cent. ad valorem.
5.	Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for the transport of ten or more persons, including the driver), including station wagons and racing cars.	8703	Fifteen per cent. ad valorem.
6.	Any other supplies.		Fifteen per cent. ad valorem.

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