

RESOURCE PAPER - 13



INDO-JAPAN CHAMBER OF COMMERCE & INDUSTRY

Goods & Service Tax - GST

by
Sivakumar Ramjee

PREFACE

This Resource Paper is an earnest effort of IJCCI to present a comprehensive picture on GST to the business community at large. We believe that the information contained in this booklet will help both national and international businessmen understand GST clearly.

The author Mr. Sivakumar Ramjee is a qualified Chartered Accountant and Company Secretary with over 14 years of experience in various industries in areas of Tax Optimised Billing & Transaction Structuring, Indirect Tax Litigation, Diagnostic Review, GST impact analysis, Advice management on key GST decision and action points for industry. He has served in IT, ITES, Automotive, Infrastructure and Manufacturing industries, besides serving in renowned global tax consulting firms.

Mr. Sivakumar Ramjee is currently the Director, Indirect Tax & GST in Grant Thornton India LLP, (a member firm within the Grant Thornton International Ltd.) one of the oldest, the largest and the most prestigious accounting and advisory firms in India with global - ambition raise global capital, expand into global markets, adopt global standards or acquire global businesses. Grant Thornton India LLP's professional contribution also includes the recent Economic Survey Report - Tamilnadu "Indian Industry Expectations from Japanese Companies" along with A.K. Mysamy and Associates LLP for IJCCI.

We hope the readers find the Resource Paper informative and useful.

5th July 2017

Suguna Ramamoorthy
Secretary General

Goods & Service Tax - GST

Introduction

Goods and Services Tax (GST) is a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax would mitigate cascading or double taxation, defoliating a common national market. The simplicity of the tax should lead to easier administration and enforcement. The imminent implementation of Goods & Services Tax (GST) is expected to result in greater transparency, an improved flow of credit, and reduced trade barriers from a tax perspective.

Taxes subsumed under GST

1. Goods and services tax (GST) will subsume various indirect taxes including central excise duty, services tax, additional customs duty, surcharges, state-level value added tax and octroi. Other levies which are currently applicable on inter-state transportation of goods are also likely to be done away with in GST regime.

2. The following taxes will be bound together by the GST:

- Central Exercise Duty
- Value Added Tax (VAT)
- Central Sales Tax (CST)
- Entertainment Tax
- Entry Tax
- Purchase Tax
- Luxury Tax
- Advertisement taxes

GST is levied on all transactions such as sale, transfer, barter, lease, or import of goods and/or services. India will adopt a dual GST model, meaning that taxation is administered by both the Union and State Governments. Transactions made within a single state will be levied with Central GST (CGST) by the Central Government and State GST (SGST) by the government of that state. For inter-state transactions and imported goods or services, an Integrated GST (IGST) is levied by the Central Government. GST is a consumption based tax, therefore, taxes are paid to the state in which the goods or services are consumed not in the state in which they were produced. IGST complicates tax collection for State Governments by disabling them to collect the tax owed to them directly from the Central Government. Under the previous system, a state would have to only deal with a single government in order to collect tax revenue.

<p>Central Taxes</p>	<p>Excise Duty Excise Duty leviead under the Medicinal & Toiletries Preparation Act Additional duties of Excise Surcharges & Cesses Sertice Tax Countervailing Duty Special Additional Duty of Customers Central Sales Tax (CST)</p>	<p>GST</p>
<p>State Taxes</p>	<p>VAT Entry Tax and Octroi Purchase Tax Luxury Tax Entertainment Tax Taxes on Advertisement Taxed on lottery, betting & gambling State cesses & surcharges</p>	

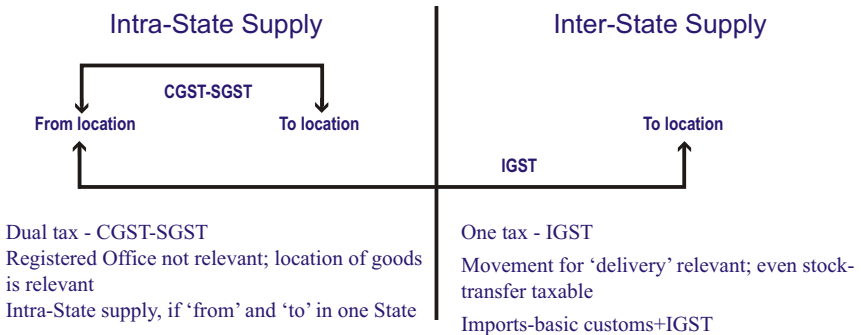
The following taxes shall not be subsumed in GST

- Alcoholic Liquor for Human Consumption - the same shall be exclusively taxed by States.
- Tax on Petroleum Crude/High Speed Diesel/ Motor Spirit / Natural Gas / Aviation Turbine.
- Tax on Electricity.

Goods

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 the contract of supply.

GST on Goods



Following shall be deemed to be treated as supply of goods :

1. Transfer of title in goods
2. An agreement in which transfer of title in property in goods will pass at a future date upon payment of full consideration.
3. Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business not for a consideration, such transfer or disposal.
4. Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to

be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless —

- a) The business is transferred as a going concern to another person; or
- b) The business is carried on by a personal representative who is deemed to be a taxable person;
- c) Any unincorporated association or body of persons supplies goods to a member for cash, deferred payment or other valuable.

Basic time of supply: In the case of goods, a registered supplier is obliged to issue an invoice when the goods are removed for supply to the recipient or, if the goods are not to be removed, when the goods are delivered to the recipient [*CGST Act, s. 31(1)*]. The time of supply of those goods is governed by section 12(2) of that Act. The time of supply is the date of issue of the invoice, or the date that the payment is received for the supply, whichever is earlier [*CGST Act s.12 (2)*].

Reverse charge goods acquired: If the supply of goods must be accounted for on a reverse charge basis, then the time of supply is the earliest of the following dates :

- the date of receipt of the goods
- the date that payment is entered into the books of account
- the date the payment is debited to the bank account
- 31 days after the issue of the invoice or similar document by the supplier.

Goods taken on approval : Sale or Return

1. When goods are taken on approval, there is no certainty that a sale will subsequently occur, so the removal of the goods is not treated as a supply at that time.
2. Section 31(7) provides for the timing of issue of an invoice, being before or at the time of supply, or six months from the date of removal, if that is earlier.
3. In this case, the time of supply is either when the sale is approved by the purchaser, and an invoice is issued at that time, or payment is made, or both.

4. In the event that the sale is not completed by acceptance, or the goods are simply not returned, then a supply is deemed to occur after six months in respect of the goods retained and not returned to the vendor [CGST Act s.31(7)].

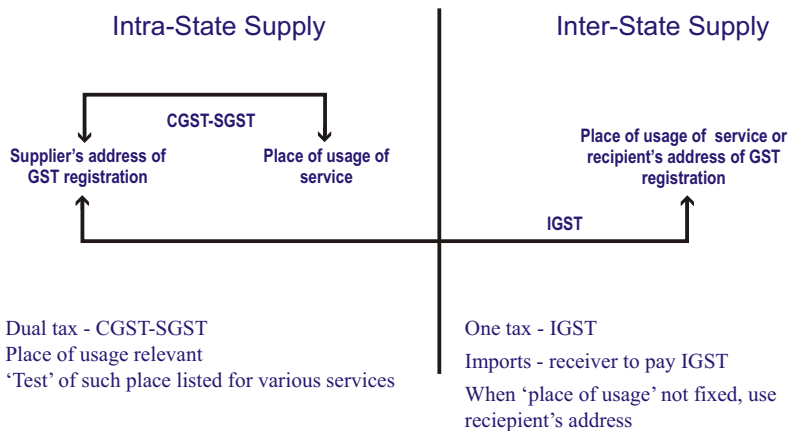
Goods received in instalments

- a) As noted above, the general time of supply rule governing the supply of goods is that the time of supply occurs at the earlier of the date of invoice or the date of payment. If goods are received in instalments against a single invoice, credit can be taken upon receipt of last instalment of goods.
- b) In that case, a timing mismatch occurs, in that the purchaser is denied an input tax credit until the date of receipt of the last instalment [Section 16(2)(d)].

Services

Services means anything other than goods, money and securities but includes activities relating to use of money or conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which separate consideration is charged.

GST on Services



Deemed Services

Following shall be deemed to be treated as supply of services:

- 1) Transfer of right in goods or of undivided share in goods without transfer of title thereof.
- 2) Lease, tenancy, easement, license to occupy land.
- 3) Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly.
- 4) Treatment or process being applied to another person's goods.
- 5) Where, by or under the direction of a person carrying on a business, goods held made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods.
- 6) Renting of immovable property.
- 7) 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 before its first occupation, whichever is earlier.
- 8) Temporary transfer or permitting the use or enjoyment of any intellectual property right.
- 9) Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software.
- 10) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.
- 11) Works contract (Works Contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property) wherein transfer of property in goods (whether as goods or in some other form is involved in execution of such contract)

- 12) 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.
- 13) 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.

Exempt Supply

‘Exempt supply’ means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt and includes non-taxable supply.

“The value of exempt supply” shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and sale of building (other than that regarded as supply).

The value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty and the value of security shall be taken as one per cent of the sale value of such security

Composite Supply

Composite supply means 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 principal supply.

Example: Where goods are packed, and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply. Insurance, transport cannot be done separately if there are no goods to supply. Thus, the supply of goods is the principal supply – section 2(30) of CGST Act.

Principal Supply

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.

Mixed Supply

Mixed supply Means two or more individual supplies of goods 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 drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately - section 2(74) of CGST Act.

Differences between Composite & Mixed Supply

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not 'aim in itself' of recipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods & the other supply is services	Yes	Yes

Outward Supply & Inward Supply

Outward supply means 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.

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.

Basic time of supply for services: For a registered supplier making supplies of services, the time of supply is described in section 13 of the CGST Act. In general, the time of supply of services is the earliest of:

- (i) If the invoice is issued within 30 days (45 days for a bank or insurance company), then the date of the invoice, or the date of receipt of payment if earlier [*Tax Invoice Rule 2; CGST Act s.13(2)*].
- (ii) If the invoice is not issued within 30 days (or 45, as above), then the date of provision of the service, or the date of receipt of the payment, if payment has been received in advance;
- (iii) In the unlikely event that the supplier neither issues an invoice nor receives the payment, then, the date that the recipient records in his books the receipt of the service will fix the time of supply [*S. 13(2)(c) and Explanation (ii)*].

Note that services can be delivered over a period of time. Services are deemed to have been supplied, and accordingly the time of supply arises, to the extent that they are covered by an invoice or a payment.

Reverse charge services acquired: If the supply of services must be accounted for on a reverse charge basis then the time of supply is the earlier of the following dates:

- The date that payment is entered into the books of account, or the date the payment is debited to the bank account [*S.13(3)(a)*];
- 61 days after the date of issue of the invoice or similar document by the supplier [*S.13(3)(b)*];
- In the event that it is not possible to determine the time of supply as above, then the date that the recipient enters receipt of the supply into his books of account shall fix the time of supply [*S. 13(3) first provision*].

Services supplied by associated enterprise outside India: In the case where a person in India acquires services from an associated person outside India, and the business is obliged to account for India GST on a reverse charge basis, then the time of supply will be the date that the recipient records the receipt of the services in their books of account or, if payment precedes the accounting, then the date of payment to the associated person [*Section 13(3) second provision*].

Advances

Explanations in subsection (2) of sections 12 and 13 note that a “supply” is deemed to have been made to the extent it is covered by an invoice or a payment.

Accordingly, if an advance is received by the vendor before the issuing of the invoice, and there has been a supply, and the advance is applied as consideration for the supply, then GST is applicable on such advances received.

If the advance is received in a month earlier than the month of invoice, and the advance is applied immediately, then GST in the advance amount should be accounted for separately from the subsequent accounting for the balance of the invoice.

Neither Supply of Goods nor Services

- Services by an employee to the employer in the course of or in relation to his employment.
- Services by any Court or Tribunal established under any law for the time being in force.
- The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.
- The duties performed by any person as a Chairperson or a Member or a Director in a body established by the CG / SG / local authority and who is not deemed as an employee.
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- Actionable claims, other than lottery, betting and gambling.
- Sale of land and building: (Building subject to construction of complex, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by competent authority or after first occupation whichever is earlier).

- Activities or transactions undertaken by Central Government, a State Government or any local authority in which they are engaged as public authorities as may be notified on recommendations of Council.

Composition Levy

The Composition Scheme for small businesses has been provided to help them with maintaining minimal compliance. The Composition Scheme will make compliance with tax laws hassle-free for eligible businesses opting for the scheme. The Composition Scheme is available as an option subject to certain conditions in respect of registered taxable person whose aggregate turnover during preceding FY does not exceed Rs. 75 Lakhs.

- Manufacturers - not exceeding 2% of turnover in State / Union Territory
- Composite supply of Works Contract Services/Restaurants - not exceeding 5% of turnover in State / Union Territory
- Other Supplies - not exceeding 1% of turnover in State / Union Territory

The Composition Scheme is subject to certain conditions. The scheme is not applicable to taxable person who is engaged in the following supplies:

- he is not engaged in the supply of services other than supplies referred to in para 6(b) of Schedule II of CGST Act [Works contract service/restaurant service]
- he is not engaged in making any supply of goods which are not leviable to tax under this Act
- he is not engaged in making any inter-State outward supplies of goods [Thus he can make inter-state purchases but not inter-state supplies]
- he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 of CGST Act and
- he is not manufacturer of such goods as may be notified on the recommendation of the Council

- Composition Scheme is once opted, said scheme will be applicable to all registered person holding same PAN
- The option availed by registered person in respect of Composition Scheme shall lapse with effect from the date his aggregate turnover during the FY exceeds Rs.75 lakhs.
- A taxable person who opts for the said scheme shall not collect any tax from the recipient supplies made by him nor shall he be entitled to any ITC.

A registered person paying tax under the Composition Scheme shall issue a bill of supply with prescribed particulars instead of a tax invoice and shall be liable to file quarterly returns. The GST law also provides for specific provisions in case of switch over from normal scheme to composition scheme and vice-a-versa.

Minimum Threshold and Registration Requirement

General Provisions and Threshold limit

- Every supplier shall be liable to be registered under each State GST Act or UTGST Act for the State or Union Territory, other than special category states, from where he makes a taxable supply, if his aggregate turnover in a FY exceeds Rs. 20 lakhs.
- With respect to the special category States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand, the supplier shall be liable to be registered if his aggregate turnover in a FY exceeds Rs.10 lakhs.
- The grant for registration under SGST Act or UTGST Act shall be deemed to be grant of registration under CGST Act.
- Supply of goods after completion of job work shall be treated as supply by principal and not of job work.
- Any person though not liable for registration, has an option for obtaining voluntary registration.
- In case where a person liable to obtain registration, fails to obtain registration, the proper officer may proceed to register such person in a prescribed manner.

- Person having multiple business verticals in a State has an option for obtaining separate registration for each business vertical. ‘Business vertical’ means a distinguishable component of an enterprise that is engaged in supply of individual goods or service or a group of related goods or services and that is subject to risks and returns that are different from those of other business verticals.
- In case a person is making supply from territorial waters of India (i.e. 12 nautical miles from the baseline of coastal line), he shall be required to obtain registration in the coastal States or Union territory where the nearest point of the appropriate base line is located.
- A person without GST registration can neither collect GST from recipient nor claim any ITC.
- PAN based registration having 15-digit alphanumeric structure will be allotted to every assessee. For non-resident taxable person, registration may be granted based on a prescribed document other than PAN.
- Registration certificate and GSTIN has to be displayed at the principal/every additional place of registered person.
- Physical Verification of business premises in certain cases shall be done after the grant of registration of the place of business. The proper officer is required to get such verification done and upload the verification report along with other documents including photographs on the next day of such verification.
- All applications including reply to the notices, returns, appeals or any other document required to be submitted electronically at the common portal shall be digitally signed or e-signed.

Aggregate Turnover

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.

The phrase “aggregate turnover” is widely used under the GST laws. Aggregate Turnover is an all-encompassing term covering all the supplies effected by a person having the same PAN. It specifically excludes:

- Inward supplies effected by a person which are liable to tax under reverse charge mechanism. However, it is not to be understood that the value of such inward supplies is to be reduced from the value of outward supplies to arrive at aggregate turnover; and
- Various taxes under the GST law, Compensation cess
- There is a certain amount of ambiguity as to whether the value of inward supplies would form part of ‘aggregate turnover’ since the definition covers all taxable supplies and excludes only inward supplies to the extent liable to tax under reverse charge mechanism

The different kinds of supplies covered are:

(a) Taxable supplies

(b) Exempt Supplies:

1. supplies that have a ‘NIL’ rate of tax;
 2. supplies that are wholly exempted from UTGST, CGST or IGST; and
 3. supplies that are not taxable under the Act (alcoholic liquor for human consumption);
- Export of goods or services or both, including zero-rated supplies.

The following aspects among others need to be noted:

- Aggregate turnover is relevant to a person to determine:
 1. Threshold limit to opt for composition scheme: Rs. 75 Lakhs in a financial year
 2. Threshold limit to obtain registration under the Act: Rs. 20 Lakhs (or Rs. 10 Lakhs in case of supplies effected from Special Category States, as explained in our analysis on Section 22) in a financial year
- Inter-State supplies between units of a person with the same PAN will also form part of aggregate turnover

- For an agent, the supplies made by him on behalf of all his principals would have to be considered while analysing the threshold limits
- For a job-worker, the following supplies effected on completion of job work would not be included in his ‘aggregate turnover’
 - Goods returned to the principal
 - Goods sent to another job worker on the instruction of the principal
 - Goods directly supplied from the job worker’s premises (by the principal): It would be included in the ‘aggregate turnover’ of the principal

Registration of SEZ Units

Special Economic Zone unit (SEZ) or developer shall make a separate application for registration as a business vertical distinct from its other units located outside the SEZ.

Time Limit for Registration

- Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under respective GST Acts with effect from the appointed day.
- Every supplier shall apply for registration in every such State or Union Territory in which he is so liable within 30 days from the date on which he becomes liable to registration.

Not Liable for Registration

The following persons shall not be liable to be registered:

- Any person engaged exclusively in the business of supplying goods / services that are not liable to tax or are wholly exempt from tax under this act.
- An agriculturist, to the extent of supply of produce out of cultivation of land.

Registration for Casual Taxable Person (‘CTP’) or Non-Resident Taxable Person (‘NRTP’)

“Casual taxable person” means 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.

“Non-resident taxable person” means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

A CTP or a NRTP shall apply for registration at least 5 days prior to the commencement of business. CTP or NRTP can make taxable supplies only after issuance of registration certificate. Registration certificate to CTP or NRTP shall be valid for a period specified in application for registration or 90 days from effective date of registration, whichever is earlier.

The period of 90 days can be extended by a further period not exceeding 90 days. CTP or NRTP along with registration application requires to make an advance deposit of tax in an amount equivalent to estimated tax liability. The said advance shall be credited to electronic cash ledger and can be utilized in a prescribed manner.

Mandatory Registration

The Central Government has notified following category of persons to obtain mandatory registration:

- Person making any inter-state taxable supply
- Casual Taxable persons making taxable supply
- Person liable under Reverse Charge Mechanism
- Categories of services the tax on which shall be paid by the e-commerce operator
- Input service distributor

Cancellation of Registration

The registration granted to a person is liable to be cancelled if the said person:

- does not conduct any business from the declared place of business; or
- issues invoices or bill without supply of goods or services in violation of the provisions of this Act / Rules
- The proper officer, either on own motion or on application filed, cancel the registration where:
 - a. the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
 - b. there is any change in the constitution of the business; or
 - c. the taxable person is no longer liable to be registered under section 22 or section 24
- The officer may cancel the registration from any retrospective date after giving the person an opportunity of being heard in case registered person has:
 - a. contravened any provisions of the Act; or
 - b. liable under composition scheme has not furnished returns for 3 consecutive period; or
 - c. has not furnished returns for a continuous period of 6 months; or
 - d. obtained voluntary registration and has not commenced business within 6 months from the date of registration

Revocation of Cancellation

A registered person can apply for revocation of registration within 30 days from date of service of cancellation order.

Place of Supply

Import of goods / services

Import of Goods means bringing goods into India from a place outside India. Import of Services means the supply of any service, where:

- the supplier of service is located outside India,
- the recipient of service is located in India, and

- the place of supply of service is in India.

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

Export of goods / services

Export of Goods means taking goods out of India to a place outside India. Export of Services means supply of any service when:

- the supplier of service is located in India,
- the recipient of service is located outside India,
- the place of supply of service is outside India,
- the payment for such service has been received by the supplier of service in convertible foreign exchange, and
- the supplier of service and recipient of service are not merely establishments of a distinct person.

Location of Supplier & Receiver

Nature of Transaction	Place of Supply
Supply involving movement of goods (whether by supplier or recipient)	Location where movement for delivery to the recipient
Goods supplied by a supplier to a recipient / any other person on direction of a 3rd person	Location of person on whose direction goods were supplied, i.e. 3rd person
Supply not involving movement of goods	Location where goods are located at time of delivery to recipient
Goods assembled / installed at site	Place of assembly / installation
Goods imported into India	Location of importer
Goods exported out of India	Location outside India

Input Tax Credit

Availability of Input Tax Credit (ITC)

- Every registered person shall be entitled to take credit of input tax admissible on any supplies which are used or intended to be used in the course or furtherance of his business and said amount shall be credited to the electronic credit ledger of such person.
- The inward supplies shall be classified either as Input, Capital Goods or Input Service which are defined as under:

Input	Capital Goods	Input Service
Means any goods other than capital goods used or intended to be used by supplier in course or furtherance of business.	Means goods, the value of which is capitalized in the books of accounts of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business.	Means any service used or intended to be used by a supplier in the course or furtherance of business.

Non admissible Credits

The ITC shall not be available in respect of the following inward supplies:

- Motor vehicles and other conveyances except motor vehicles and other conveyances except when they are used
 - (a) For making the following taxable supplies:
 - o Further supply of such vehicles or conveyances; or
 - o Transportation of passengers; or
 - o Imparting training on driving, flying, navigating such vehicles or conveyances
- Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of a particular category is used by a registered person for making an outward taxable supply of the same category or as an element of taxable composite or mixed supply
- Membership of a club, health and fitness Centre

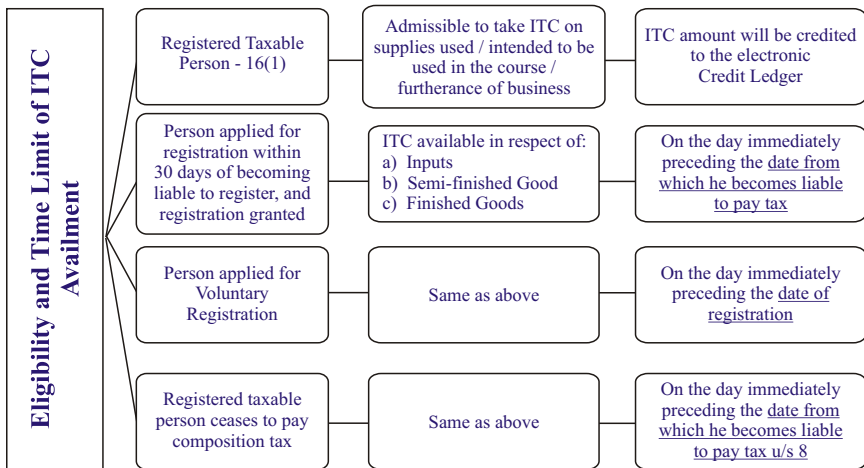
- Rent-a-cab, life insurance, health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or such inward supply of a particular category is used by a registered person for making an outward taxable supply of the same category or as an element of taxable composite or mixed supply.
- Travel benefits extended to employees on vacation such as leave or home travel concession.
- Works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.
- Supply received by a taxable person for construction of an immovable property, other than plant and machinery, on his own account including when used in course or furtherance of business. The word “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

[‘Plant and Machinery’ means apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes

- land, building or any other civil structures;
- telecommunication towers; &
- Pipelines laid outside the factory premises.]
- Supply on which tax has been paid under composition scheme.
- Supply received by non-resident taxable person except on goods imported.
- Supply used for personal consumption.
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- Any tax paid in accordance with:

- Determination of tax not paid / short paid / erroneous refunded / ITC wrongly availed or utilized by reason of fraud / any willful misstatements / suppression of facts.
- Detention, seizure & release of goods & conveyances in transit.
- Confiscation of goods or conveyances and levy of penalty.

Conditions for availing ITC



ITC in respect of inward supply shall be eligible only if:

- If the person is in possession of tax invoice, debit note or such other tax paying document;
- The goods / services are received; (in respect of goods received in lots or installments, person is entitled to ITC upon receipt of last lot or installment)
- The tax charged in respect of such supply been paid to the credit of appropriate government either by cash or utilization of ITC (except in case of ITC availed on provisional basis);
- Person should be mandatorily filed the return

Tax paying document for claiming ITC

ITC can be availed on following documents:

- A Tax invoice issued by the supplier, containing all the details as are required in tax invoice
- A Debit Note issued by the supplier, containing all the details as are required in debit note
- A Bill of Entry
- An invoice raised by recipient where supplies are received from unregistered person
- Document issued by Input Service Distributor

Conditions for making payment to inward supplier

Where a recipient fails to pay to the supplier within a period of 180 days from the date of issue of invoice towards value of supply along with tax payable thereon, other than the supplies on which tax is payable on RCM, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest for the period starting from date of availing ITC till the date when the amount is added to the output tax liability.

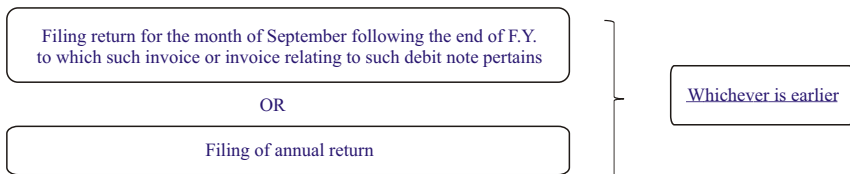
The credit on such inward supplies shall be eligible on making payment to inward supplier along with tax payable thereon.

Depreciation and ITC cannot be availed together

No ITC shall be allowed of tax component on the cost of capital goods and plant & machinery of which registered person has claimed depreciation under the Income-tax Act, 1961.

Time limit for availing ITC

No ITC in respect of any invoice / debit note for supply after following period:



Reversals of ITC

The reversal of Input, Input Service & Capital Goods is required to be made in case of:

- Partial use of inputs for non-business
The goods / services used by registered person partly for business and partly for other purposes the credit amount shall be restricted to input tax attributable to purposes of business
- Proportionate Reversal
Goods / services used by registered person partly for effecting taxable supplies including zero-rated supplies and partly for:
 - Effecting exempted supplies; or
 - Outward supplies where recipient is liable to pay tax;
 - Transactions in securities, sale of land & sale of building except under construction sale of flat;
 - The credit shall be restricted to such amount of ITC as attributable to taxable supplies including zero-rated supplies.

The reversal of ITC on Capital Goods ('CG') shall be in the following manner:

- ITC in respect of CG used or intended to be used exclusively for exempted supplies or non- business purpose shall be indicated in the return and not to credit in electronic credit ledger.
- ITC in respect of CG used exclusively for taxable supplies including zero rated shall be indicated in the return and be credited in electronic credit ledger.
- ITC in respect of CG which are used commonly for taxable supplies, exempted supplies & non business purpose shall be reversed on applying tax period turnover ratio of taxable and exempted supplies.
- The amount of ITC shall be computed per month for the purpose of reversal based on taking 5 years as useful life of CG.

Availing ITC on Inputs/ Capital Goods held in stock

The tax paid on Inputs held in stock or contained in semi-finished or finished goods ('Inputs in Stock') or on

Capital Goods are eligible as ITC in the following circumstances:

Scenario	Input in stock	Capital Goods	Conditions
New registration obtained within 30 days from the date when person becomes liable to register	which he becomes liable to register	Not admissible	A taxable person shall not be entitled to take ITC in respect of any supply after expiry of 1 year from date of issue of tax such supply
Voluntary Registration	As on date of grant of registration	Not admissible	Electronic Declaration to be filed within 30 days from the date of his becoming eligible. Certificate from parcticing CA/CWA if credit claims exceeds Rs. 2 lakhs
Ceases out of composition scheme	As on date on which person liable to pay tax at normal rate	As on date on which person liable to pay tax normal rate. After reducing 5% per quarter of a year or part thereof from the date of invoice bill the date person ceases out of composition scheme	
Exempt supply becomes taxable supply	ITC on inputs relating to exempt supplies Day immediately preceding the date from which supply becomes taxable	ITC on capital goods exclusively used for exempt supplies Day immediately preceding the date from which supply becomes taxable After reducing 5% per quarter of a year or part thereof from the date of invoice till the date of supply becomes taxable	

Transfer of ITC in case of change in constitution

In case of change in constitution of registered person on account of sale, merger, demerger, amalgamation, lease or transfer of business with specific provision for transfer of liabilities, registered person shall be allowed to transfer ITC remaining unutilized in its books of accounts to such sold, merged, demerged, amalgamated, leased or transferred business as per following:

- a. In case of demerger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger.
- b. Certificate from practicing CA/CWA certifying that the transfer of business been done with the specific provision for transfer of liabilities.
- c. The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Lapse of ITC in case of opting for Composition Scheme or supply becomes exempted

Registered person who has availed ITC switches over as a taxable person for paying tax under composition scheme or where supplies by him become absolutely exempt, he shall pay an amount by debit in electronic credit or cash ledger, equivalent to ITC in respect of Inputs in Stock and on capital goods, on day immediately preceding the date of such switch over, or the date of exemption reduced as per following:

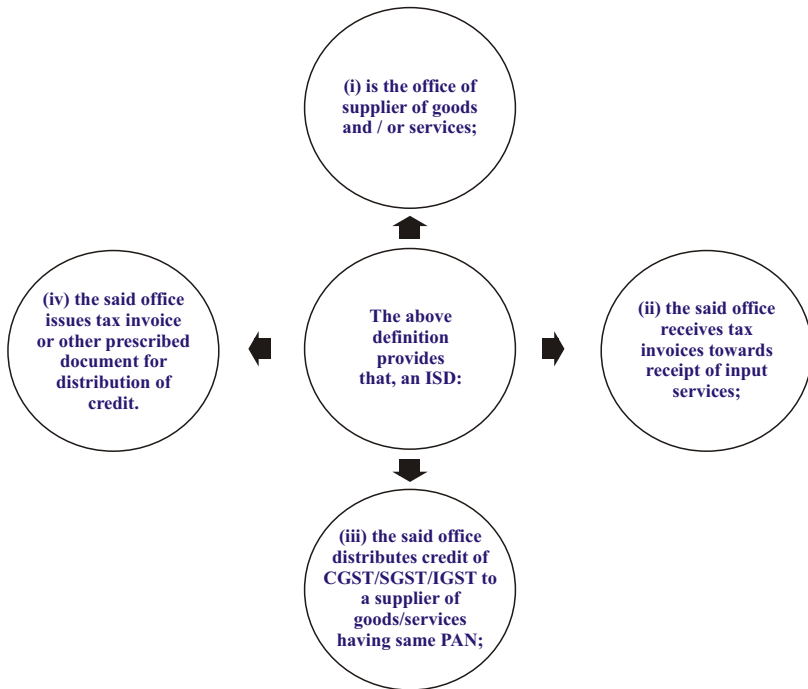
- For ITC on Inputs in Stock, reversal on proportionate basis of corresponding invoices on which credit had been availed. If invoices are not available, estimated prevailing market price of inputs to be applied.
- For ITC on capital goods lying in stock, the remaining residual life in months shall be computed on pro-rata basis, taking the residual life as 5 years.
- Illustration: Capital goods have been in use for 4 years, 6 month and 15 days.

Reversal of ITC on account of removal of capital goods or plant & machinery

In case of supply of capital goods or plant and machinery, on which ITC is taken, the registered person shall pay an amount equal to ITC taken on the said capital goods or plant and machinery as reduced by such % as specified or tax on transaction value of such capital goods or plant & machinery, whichever is higher. However, refractory, bricks, moulds and dies, jigs and fixtures are supplied as scrap, the registered person may pay tax on the transaction value of such goods.

Input Service Distributor

‘Input Service Distributor’ means an office of the supplier which receives tax invoices issued 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 having the same PAN as that of the said office.



Conditions for distribution of ITC by ISD:

- ITC can be distributed to recipients against a document
- ITC distributed shall not exceed the amount of credit available for distribution
- The credit of tax paid on input services attributable to a recipient:
- ITC attributable to more than 1 recipient shall be distributed amongst such recipients to whom the input service is attributable

on pro-rata basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the relevant period

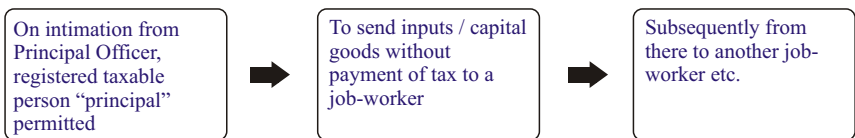
- ITC attributable to all recipients shall be distributed amongst such recipients to whom the input service is attributable on pro-rata basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the relevant period
- The “relevant period” shall be:
 - If the recipients of credit have turnover in their States or Union Territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
 - If some or all recipients of the credit do not have any turnover in their States or Union Territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed
- ISD shall separately distribute amount of ITC as eligible and ineligible.
- ITC on account of central tax and state tax shall be distributed as follows:
 - Recipient located in same state in which ISD is located, ITC shall be distributed as Central Tax and State Tax respectively.
 - Recipient is located in different state other than that of ISD, ITC shall be distributed as Integrated Tax
 - Any ITC required to be reduced on issuance of credit note shall be apportioned to each recipient in the same ratio in which ITC was distributed and the amount so distributed shall be reduced from the amount to be distributed in the month in which credit note is included in the return and shall be added to the output tax liability, if the amount of credit available is negative.

- Where the amount of credit to be reversed is short reversed, then such short amount shall be added to the output tax liability for a month not later than the month of September following the end of the FY to which it belongs and the person shall be liable to pay interest for the period starting from 1st day of April of the succeeding FY till the date of payment.

Job Work

‘Job Work’ means undertaking any treatment or process by a person on goods belonging to another registered person. The Inputs / Capital Goods can be sent to the place of the job worker with following conditions:

- Even if goods are sent directly to job worker premises, principal can take ITC on goods. Time limit in case of goods sent directly to job worker premises will be counted from the date of receipt of goods by job worker.
- Intermediate goods arising from any treatment or process carried out on inputs shall also be treated as to be inputs. The responsibility for proper accounts for inputs / capital goods shall lie with the principal.
- Waste and scrap generated during job work can be supplied from the



Principal, after completion of job-work or otherwise can:

- Bring back inputs/ capital goods (other than moulds and dies, jigs and fixtures, or tools) to any place of business without payment of tax for further supply **within one year/ three years of their being sent out**
- Directly supply inputs/ capital goods (other than moulds and dies, jigs and fixtures, or tools) from job-worker premises on payment of tax within India or without payment of tax for export **within one year/ three years of their being sent out**
- Direct supply from job-worker premises not permitted unless such premises is declared as an additional place of business of the ‘principal’

- Direct Supply is permitted if:
 - Job-worker is registered under the GST laws
 - Principal is engaged in supply of certain goods (to be notified)
 - ‘Principal’ is responsible for payment of tax and accountability of the goods
 - If inputs / capital goods (other than moulds and dies, jigs and fixtures, or tools) are not received back by the principal within one or 3 years of their being sent out
 - Deemed that such inputs / capital goods had been supplied by principal to job-worker on the day when they were sent out
 - Any waste / scrap generated during job-work may be supplied by job-worker directly from his place of business on payment of tax by job-worker if he is registered. If jobworker is unregistered, Principal will have to pay tax

Transitional provisions

One of the biggest challenges in implementing GST Act would be the technicalities that will affect the business during the phase of shifting from ‘existing law’ (to be defined in respective GST Act) to GST regime. To mitigate such issues, transitional provisions have been incorporated in the GST Act for effective transition to CGST, SGST, UTGST and IGST.

Migration of existing taxpayers to GST

- Every registered person under existing laws other than a person deducting tax at source (under VAT regime) or an Input Service Distributor shall be issued a provisional registration certificate. On receipt of such provisional registration certificate, person is required to fill details in specified form to obtain certificate of registration.
- The information required to be furnished for obtaining certificate of registration after receipt of provisional registration certificate needs to be submitted within 3 months from the appointed day.
- Person registered under existing laws, who is not liable to be registered under GST law, requires first obtaining the certificate of registration, thereafter submitting an application for cancellation of registration in specified form within 30 days from the appointed day.

Carry forward of CENVAT credit

A registered taxable person, other than a person opting for the composition scheme, shall be entitled to carry forward under the CGST Act, the amount of CENVAT credit shown in the return furnished under the earlier laws for the period ending on the day prior to the appointed day.

The said credit will be allowed to be carried forward to the GST regime, if the following conditions are satisfied:

- (1) The said credit is admissible as input tax credit under the provisions of the CGST Act;
- (2) The registered person has furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.
- (3) Input tax credit does not relate to goods manufactured and cleared under exemption notifications as are notified by the Government.
- (4) Input tax credit carried forward will not be allowed if such credit relates to goods manufactured and cleared under exemption notifications as notified by the government.

The carry forward of such credit under the CGST Act and UTGST Act shall not be eligible if any of the following conditions is satisfied:

- (1) Where the said amount of credit is not admissible under the GST Act; or
- (2) Where the supplier has not furnished all the returns required under the existing laws for a period of 6 months prior to the appointed day; or
- (3) Where the said amount of credit is in respect of goods sold under such exemption notifications as are notified by the Government.

Transfer of credit of taxes paid on goods in stock in certain situations

There will be several situations wherein a person was not required to pay either Central Excise Duty or Service Tax or VAT on its outward supply, however under GST such person or premises of a person has become liable to pay GST.

In these situations it is necessary to make provisions for allowing the person to take credit of taxes that have been paid in respect of inputs lying

in stock and inputs contained in semi-finished or finished goods lying in stock. Migration of such credits has also been contemplated and provided for in the transition provisions, such scenarios can occur in following situations:

- Person manufacturing exempted goods or engaged in provision of exempted services or person selling goods that are exempt under earlier regime but taxable under GST
- Person engaged in manufacture of non-exempted goods and exempted goods or provision of non-exempted service as well as exempted service that have entirely become taxable under GST
- Credit of Excise Duty paid on goods lying in stock with retailers, warehouses, wholesalers
- Persons switching over from composition schemes
- Persons providing services like works contract etc. and following composition/abatement schemes that were subject to condition of non-availment of credit

Treatment of tax credit held in inputs, WIP in stock, inputs contained in final product

Situation	Transition to GST	Condition
Person who was not liable under earlier law	<ul style="list-style-type: none"> • Input tax credit of eligible taxes allowed • Eligible duties and taxes include Central Excise Duty, Additional Duty of Excise (textile and textile articles), Additional Duty of Excise (goods of special importance), NCCD, CVD, SAD and Service Tax. Amongst state taxes these include VAT and Entry Tax. • Eligible taxes does not include ED cess, SHE cess, NCCD, KKC 	<ul style="list-style-type: none"> • Credit should be in respect of inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock on cutoff day (appointed day). • The taxable person is eligible for input tax credit on such inputs under GST law. • Should be in possession of invoice or other documents evidencing payment of duty and the relevant invoices / other documents are not issued earlier than 12 months preceding the appointed day
First stage dealer		
Second stage dealer		
Importer		
WC availing benefit under Notification No.26-2012		
Person who was engaging in business of exempted goods or services		
Person who is switching over from composition scheme		

Transitional Provisions in relation to job work:

- In case of removal of goods for job work before appointed day and which are not returned or after the appointed day:
- Goods sent to job worker, received back within 6 months from appointed day or such further extended period of not exceeding 2 months
- Goods include the following:
 - Inputs removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose
 - Semi-finished goods removed for carrying out certain manufacturing processes.
 - Excisable goods removed without payment of duty for carrying out tests or any other process not amounting to manufacture

Disclosure to be made by the manufacturer and the job worker regarding details of inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in the prescribed FORM GST TRANS -1 within 30 days of the appointed day.

E-Commerce

Electronic commerce is growing at a fast pace. Amazon, Flipkart, Uber etc. are doing e-commerce business in big scale. In e-commerce, order for supply of goods or services is placed through portal. The e-commerce companies pass on these orders to actual suppliers of goods and services. Supplies of goods or services are done by third party unknown to the person placing order. 'Electronic commerce operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce - section 2(45) of CGST Act.

So far, e-commerce companies were not liable to pay Vat or CST as they were not selling goods. Recently, the services provided through portal were brought under service tax net. Now, e-commerce companies selling goods on portal are being made liable to collect 1% GST at source. This 1% TCS (Tax Collected at Source) seems to be mainly for control purposes, as balance GST will be paid by the actual supplier of goods or services. The actual supplier can take credit of this TCS paid by e-commerce operator.

In case of supply of specified services, the e-commerce operator will be liable to pay entire IGST/CGST/SGST on such services- section 5(5) of IGST Act and section 9(5) of CGST Act.

- *Tax Collection at Source(TCS) by electronic commerce operator-* Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator(hereinafter referred to in this section as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent, as may be notified by Government, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation - For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under section 9(5) of CGST Act, made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month - section 52(1) of CGST Act.

- Supplier can take credit of TCS paid by e-commerce operator - The supplier who has supplied the goods or services or both through the electronic commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under section 52(4), in the manner as may be prescribed - section 52(7) of CGST Act.
- Amount collected by e-commerce operator to be paid to Government - The amount collected by ecommerce operator under section 52(1) shall be paid to the credit of the Government by the operator within ten days after the end of the month in which such collection is made, in the manner prescribed - section 52(3) of CGST Act.
- E-commerce Operator to submit statement to Government every month - Every operator shall, furnish a statement, electronically, of all amounts collected towards outward supplies of goods or services or both effected through it, including supplies of goods or services or both returned to it, and the amount collected under section 52(1) of CGST Act during a calendar month, within ten days after the end of such

calendar month - section 52(4) of CGST Act. The statement can be rectified by e-commerce operator. He is required to pay tax with interest in such case. However, such rectification is not possible after due date of furnishing statement for the month of September following the end of financial year or the actual date of furnishing relevant annual statement, whichever is earlier- section 52(6) of CGST Act.

- Annual Statement by e-commerce operator - The e-commerce operator is required to file Annual Statement before 31st December of following financial year, giving specified details - section 52(5) of CGST Act.
- Matching of statement of e-commerce operator and credit taken by supplier - The details of supplies and the amount collected furnished by e-commerce operator shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under CGST, in prescribed manner -section 52(8) of CGST Act.
- Discrepancy between the details of operator and supplier - Where the details of outward supply, on which the tax has been collected, as declared by the operator do not match with the corresponding details declared by the supplier, the discrepancy shall be communicated to both persons in prescribed manner- section 52(9) of CGST Act.

If the discrepancy is not rectified, it shall be added to the output liability of the said supplier for the calendar month succeeding the calendar month in which the discrepancy is communicated. The concerned supplier shall be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment - section 52(10) of CGST Act.

The concerned supplier shall pay the tax payable with interest on the amount added to his turnover under section 52(10) - section 52(11) of CGST Act. 'Concerned supplier' shall mean the supplier of goods or services or both making supplies through the ecommerce operator - explanation to section 52 of CGST Act.

E-commerce operator to furnish details when called for:

Any authority not below the rank of Deputy Commissioner may, by notice, either before or during the course of any proceeding under this Act, require the operator to furnish such details relating to:

- (a) supplies of goods or services or both effected through such operator during any period, or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers as may be specified in the notice - section 52(12) of CGST Act.

Every operator on whom a notice has been served shall furnish the required information within five working days of the date of service of such notice - section 52(13) of CGST Act.

Penalty for not furnishing information - Any person who fails to furnish the information required by the notice shall, without prejudice to any action that is or may be taken under section 66, be liable to a penalty which may extend to rupees twenty-five thousand - section 52(14) of CGST Act.

Tax on services by electronic commerce operator

The Central Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it. All the provisions of the CGST/IGST 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 - section 5(5) of IGST Act and section 9(5) of CGST Act.

Where entire tax is payable by e-commerce operator, persons who supply goods or services or both, through such electronic commerce operator are not required to register under GST - section 24(ix) of CGST Act.

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 - first *proviso* to section 5(5) of IGST Act and section 9(5) of CGST Act.

Where an electronic commerce operator does not have a physical presence in the taxable territory and also 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 – second *proviso* to section 5(5) of IGST Act and section 9(5) of CGST Act.

Conclusion:

GST is really a noteworthy step in the field of indirect tax reforms. India, being the seventh largest country by area, a reform of this nature - unified taxation, greater transparency in operation, simplification of compliance procedures, reduced compliance cost, rationalisation of tax structure etc. would contribute to greater investment and trade internationally. It would also strengthen the 'Make in India' initiative and would certainly propel greater economic prosperity.

