

Time & Place of Supply and Input Tax Credit under Revised Model GST Law



Revised Model Goods and Services Tax (“GST”) Law [“MGL”], put on public domain on November 26, 2016, which reflects seeming efforts put in by the Government to look into the voluminous suggestions submitted by various stakeholders, on First Model GST Law (put on public domain on June 14, 2016), is indeed laudable.

This Article deciphers the provisions of ‘Time of Supply’, ‘Place of Supply’ and ‘Input Tax Credit (“ITC”)’ under Revised MGL, in a lucid manner for easy understanding.



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Principles of Time of supply for goods and/ or services [Section 12 to 14 of the Model CGST/SGST Act, 2016]

The taxable event under the GST regime shall be ‘supply’ of goods and/or services. However, the time of supply when the liability to pay CGST/SGST (Intra-state) or IGST (inter-state) on goods and/or

services arises, shall be determined in the following manner:

I General provision

The time of supply of goods and services shall be the earlier of the following:

- (a) Date of **issue of invoice** by the supplier or the **last date on which he is required, to issue the invoice** (under section 28) with respect to the supply
- (b) Date on which the supplier **receives the payment** with respect to the supply.

Provisions for raising invoice as per section 28:

Supply of goods	Supply of services
Before or at the time of,- (a) removal of goods for supply to the recipient, where the supply involves movement of goods, or (b) delivery of goods or making available thereof to the recipient, in any other case	Before or after the provision of service but within a period prescribed [i.e. 30 days in all cases/ 45 days in case of banking and financial institution from the date of supply of services]

Where amount upto ₹1,000/- is received in excess of amount indicated in an invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice.

II Supply under reverse charge mechanism ("RCM")

Time of supply for goods	Time of supply for services
Earliest of the following: (a) Date of receipt of goods, or (b) Date on which payment is made, or (c) Date immediately following 30 days from the date of issue of invoice by the supplier	Earliest of the following: (a) Date on which payment is made, or (b) Date immediately following 60 days from the date of issue of invoice by the supplier

Time of supply for goods	Time of supply for services
Where it is not possible to determine the time of supply under the above clauses, the time of supply shall be the date of entry in the books of account of the recipient of supply	
	In case of associated enterprise: Where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient or the date of payment, whichever is earlier.

III Supply of vouchers

In case of supply of vouchers, by whatever name called, by a supplier, the time of supply for goods and services shall be:

- (a) Date of **issue of voucher,** if the supply is identifiable at that point; or
- (b) Date of **redemption of voucher,** in all other cases.

IV Residuary provision

Where it is not possible to determine time of supply under the above provisions, time of supply for goods and services shall be:

- (a) In a case where a periodical return has to be filed - Date on which such return is to be filed
- (b) In any other case - Date on which the CGST/SGST or IGST is paid



V Change in the rate of tax in respect of supply of goods or services

Here, the provisions provided under the GST Law are drawn on similar line as existing Rule 4 of the Point of Taxation Rules, 2011 (“POTR”). In other words, determination of rate of tax depends upon three important events viz.:

- Date of supply of goods or services,
- Date of invoice; and
- Date of receipt of payment.

Thus, the rate of tax would be the one prevailing when two out of three events occur either prior to or after the date of change in rate of tax.

Manifestly, it seems that most provisions are borrowed from the present POTR under the Service tax laws, with some modifications. In the Revised MGL, number of parameters as provided in the First MGL has been pruned down and events such as date of receipt of supply in the books of account of recipient *etc.*, have been removed.

Thus, determination of the time of supply provisions under forward charge has been mainly limited to the following two parameters:

- Date of issue of invoice or the last date on which the invoice is required to be issued
- Date of receipt of payment

In First MGL, provisions in respect of change in rate of tax was restricted for supply of services only, which now has been extended for supply of goods as well.

However, still no provision is provided in the Revised MGL to determine the time of supply where goods or services becomes taxable for the first time under GST regime as provided under section 67A of the Finance Act, 1994 read with rule 5 of the POTR.

Place of supply of goods and/or services [Section 7 to 10 of the Model IGST Act, 2016]

Principles for determining place of supply of goods and/or services are required for the following reasons:

- **Taxpayer:** To determine the nature of sale i.e. intra-state/ inter-state/ import/ export.
- **Government:** To determine the state where state component of GST would accrue.

Principles for determination of supplies of goods and/or services in the course of intra-state or inter-state trade or commerce are prescribed in Section 3 and 4 of the Model IGST Act, 2016.

Broadly, **intra-state supply of goods/services** means any supply of goods/services where the location of the supplier and the place of supply are in the same state. **Inter-state supply of goods/services** means any supply of goods/services where the location of the supplier and the place of supply are in different states.

Section 7: Place of supply of goods other than supply of goods imported into, or exported from India

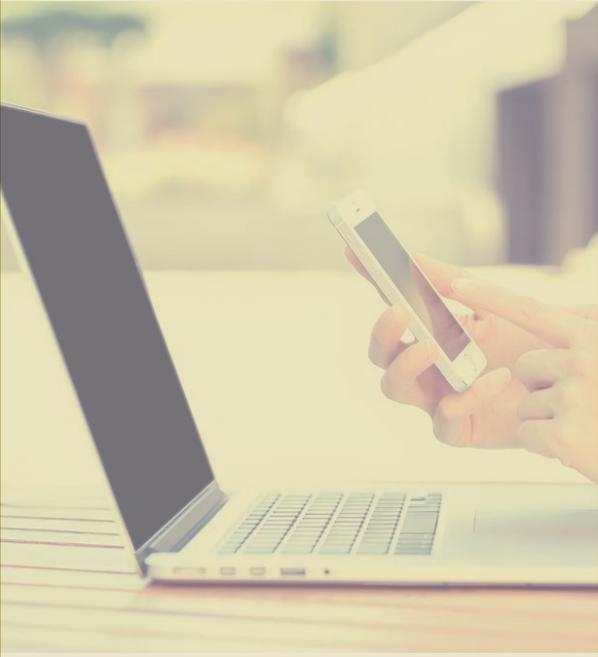
Scenario	Place of supply
When movement of goods is involved	Location of goods where movement terminates for delivery
When goods are supplied by transfer of documents during movement of goods (Bill to Ship to Model or EI-EII model)	Principal place of business of third person on whose direction goods were supplied to another person
When movement of goods is not involved	Location of goods at the time of delivery
When goods are assembled or installed at site	Place of such installation or assembly
When goods are supplied on board a conveyance (like food supplied by Indian Railways on journey)	Location at which such goods are taken on board
Where the place of supply of goods cannot be determined as per above principles	Manner to be prescribed by the Central Government on recommendation of GST Council.

Section 8: Place of supply of goods imported into, or exported from India

Scenario	Place of supply
When goods are imported into India	Location of the importer
When goods are exported from India	Location outside India

Section 9: Place of supply of services where location of supplier of service and location of the recipient of service is in India

Categories	Place of supply
General Rule – Business to Business (“B2B”) and Business to Consumer (“B2C”)	B2B supplies: location of recipient B2C supplies: location of recipient where address on record exists, If not, then the location of supplier of services
Further, specific provisions for identified situations & different treatment for certain B2B and B2C transactions of specified services has also been provided in respect of the following specified services:	
Services directly related to immovable property	<ul style="list-style-type: none"> Location of immovable property Where property/boat/vessel located in more than one State → proportionate allocation amongst states as per the contract or on reasonable basis <p>Where location of the immovable property/boat/vessel is located or intended to be located outside India → Place of supply shall be the location of the recipient</p>
Specific services such as supply of restaurant and catering services, health service etc.	<ul style="list-style-type: none"> Place of actual performance
Services in relation to training and performance appraisal	B2B supply: location of recipient B2C supply: place of performance
Admission to a cultural, artistic, sporting etc., events, amusement parks etc. and services ancillary thereto	Place where event held or where the park/ other place is located
Organisation of event and services in relation to such event and ancillary services or assigning of sponsorship	B2B supply: location of recipient B2C supply: where event is held Where the event is held in more than one state and a consolidated amount is charged → Proportionate value of services to be considered Where event is held outside India → Place of supply shall be the location of the recipient
Goods transportation services	B2B supply: location of recipient B2C supply: location at which such goods are handed over for their transportation
Passenger transportation services	B2B supply: location of recipient B2C supply: Place where the passenger embarks on the conveyance for a continuous journey
Services on board a conveyance such as vessel, aircraft, train or motor vehicle	Location of the first scheduled point of departure of that conveyance for the journey
Telecommunication services including data transfer, broadcasting, cable and DTH services	Fixed line/ leased circuit, internet based circuit, cable or dish antenna → Place of installation of the fixed line/leased circuit etc. Mobile connection and internet services – Post-paid → Billing address of the recipient on record of the supplier

Categories	Place of supply
	<p>Mobile connection, internet services, DTH – Pre paid (through physical voucher etc.)→</p> <p>→ Through selling agent/re-seller/distributor: address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply</p> <p>→ By any person to the final subscriber: location where such pre-payment is received or such vouchers are sold</p> <p>In any other case → Address of the recipient as per record of the supplier Where address of the recipient as per records of the supplier is not available → Place of supply shall be location of the supplier of service</p> <p>Where pre-paid service is availed or recharge is made through electronic mode → Place of supply shall be location of the recipient as per record of the supplier</p> <p>Where the leased circuit is installed in more than one state and a consolidated amount is charged → proportionate allocation amongst states as per the contract or on reasonable basis</p>
<p>Similarly, separate provisions have been provided for the following:</p> <ul style="list-style-type: none"> • Banking and other financial services • Insurance services • Advertisement services to the central government, a state government, a statutory body or a local authority 	



Section 10: Place of supply of services where the location of supplier or the location of the recipient is outside India

Principles of place of supply of services when the location of supplier or the location of recipient is outside India, has been drawn on similar pattern as existing in the Place of Provision of Services Rules, 2012 (“POPS”) for determining export/import of services from India/into India, with new inclusion of provision in case of ‘online information and database access or retrieval (“OIDAR”) services, wherein place of supply shall be the **location of recipient**.

It is further provided that in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

The place of supply principles have been expanded to provide separate set of principles for import/export transactions. Place of supply provisions for services are drawn on similar line as the existing POPS with certain modifications.

ITC - Manner of availment and utilisation thereof [Section 16 to 22 of the Model CGST/SGST Act, 2016]

ITC is believed to be the backbone of the GST. Tax cascading has been one of the daunting flaws of the current indirect taxation system which increases the cost of goods and services. The GST regime is being envisaged to provide seamless flow of credit on goods and services across the supply chain.

Meaning of Key Terms

- **'Input Tax Credit'** [Section 2(56)] means credit of 'Input tax'.
- **'Input Tax'** [Section 2(55)], in relation to a taxable person, means the IGST, including that on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under section 8(3) [i.e. under Reverse Charge], but does not include the tax paid under Section 9 [i.e. under Composition Levy].
- **'Input'** [Section 2(52)] means any goods, other than capital goods, **used or intended to be used** by a supplier **in the course or furtherance of business**.
- **'Input service'** [Section 2(53)] means any service, **used or intended to be used** by a supplier **in the course or furtherance of business**.
- **'Capital goods'** [Section 2(19)] means goods, the **value of which is capitalised in the books of accounts** of the person claiming the credit and which are used or intended to be **used in the course or furtherance of business**.

I Eligibility and conditions for taking ITC

- Only the registered taxable person under GST can claim ITC.
- **Application of registration to be made within 30 day:** In order to avail ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock on the day immediately preceding the date from which a person becomes liable to pay GST, application for registration has to be made within 30 days. In the absence of any provisions as to eligibility



to avail ITC when there is delay in applying for registration under GST, it appears that such credit on inputs would be lapsed and would be available only after the date of registration granted under the GST Law.

- Specific provision has been inserted which states that ITC in respect of pipelines and telecommunications tower fixed to earth by foundation or structural support including foundation and structural support is to be obtained 1/3rd on yearly basis.
- The registered taxable person shall avail ITC under GST, subject to the following **essential requirements**:
 - ✓ Must be in possession of tax invoice, debit note or other taxpaying document(s) as may be prescribed.
 - ✓ The goods and/or services must have been received.
 - ✓ Tax charged has been actually paid to the appropriate government.
 - ✓ Return has been furnished.

ITC made dependent upon payment of tax by supplier: 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.

Payment of invoice for supply of services is to be made within 3 months: ITC availed is to be added to output tax liability of recipient along with interest thereon, when value of services and tax is not paid within 3 months from date of issue of invoice by supplier (similar to current

CENVAT provisions). However, the law is silent as to when such credit can be reclaimed again on payment of invoice.

- **Time limit for availment of credit:** ITC shall not be allowed after furnishing of return for September month following the end of financial year or furnishing of relevant annual return (December 31st is the due date for filing annual return), whichever is earlier.
- **Proportionate ITC** to the extent used for business purposes is admissible when goods and/or services are partly used for other than business purposes.
- ITC is **restricted to the extent of taxable supplies including zero-rated supplies**, when goods and/or services are partly used for effecting exempt supplies including supplies under reverse charge basis.
- ITC shall **not be allowed if depreciation is claimed** on tax component of cost of capital goods.
- Registered taxable person is entitled to take **credit upon receipt of last lot or installment**, where goods against an invoice are received in lots or instalments.
- **Negative list of goods and/or services on which ITC shall not be admissible:**
 - ✓ **Motor vehicles** and other conveyances except when used for further supply of such vehicles or conveyances, transportation of passengers and goods, imparting training on driving *etc.*
 - ✓ Goods and/or services like food and beverages, outdoor catering, health services *etc.*, except where inward supply of particular category is used for making outward taxable supply of same category.
 - ✓ Membership of a club, health and fitness centre.
 - ✓ Rent-a-cab, life insurance *etc.*, except where it is obligatory for an employer under any law in force.
It is suggested that ITC, beside on rent-a-cab, life & health insurance, should also be allowed on the services such as outdoor category *etc.*, when it is obligatory for an employer to provide to its employees under any law for the time being in force.
 - ✓ **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.

- ✓ Goods or services received by a taxable person for **construction of an immovable property on his own account**, other than plant and machinery, even when used in course or furtherance of business.
- ✓ Goods and/or services on which tax is paid under **composition scheme**.
- ✓ Goods and/or services used for **personal consumption**.
- ✓ Goods **lost, stolen, destroyed, written off or disposed of** by way of gift or free samples.
- ✓ Any tax paid in terms of Sections 67 (i.e. in fraud cases), 89 (i.e. detention and release of goods and conveyances in transit) or 90 (i.e. confiscation of goods or conveyances and levy of penalty).

II Utilisation of ITC

Utilisation of ITC		
Transaction within the States (Intra- State transactions)		Inter-State transactions
CGST	SGST	IGST
Credit of CGST to be utilised sequentially-	Credit of SGST to be utilised sequentially-	Credit of IGST to be utilised sequentially
1. CGST 2. IGST	1. SGST 2. IGST	1. IGST 2. CGST 3. SGST
Cross utilisation of CGST and SGST is not permissible		

Manifestly, it seems that honest attempt has been made by the Government to eradicate the daunting provisions in the First MGL, which can be very well seen in the above discussed provisions. However, it is required that the lawmaker should address the issues raised by stakeholders which are still left for the smooth transition to GST regime. ■