

GST – Supply, Levy, Composition Levy, Electronic Commerce, Reverse Charge, TDS Concepts



Goods and Service Tax (GST) is considered to be one of the biggest Indirect Tax Reforms in India. The New Model law is aimed to subsume various Indirect Taxes like the Excise Duty, Service Tax, VAT, CST, Luxury Tax, Entry Tax etc. The Central Government, after considering the suggestions given from Trade and Industry has recently issued the Revised Model GST Law. The Revised Model GST Law provides insights on the detailed provisions regarding Supply, Levy and collection etc. This article tries to collate the relevant provisions as explained in the Revised Model GST Law.



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Supply

In the entire gamut of provisions under GST, one of the key elements is “Supply” which is defined in Section 3, sub-section 1(a) of Revised GST Law. This is an inclusive definition which includes Sale, Transfer, Barter, Exchange, License, Rental, Lease or Disposal made, **with consideration** and it completely

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overrules the earlier provisions or concepts like “Manufacture”, “Sale”, “Provision of Services” etc.

Section 3, Clause 1(b), covers Importation of Service, for a consideration, whether or not in the course of business. Clause 1(c) aims to cover transactions covered in Schedule I as a part of Supply definition, though the same is made without consideration.

Schedule I talks about related party transactions or between distinct persons as defined under Section 10, transactions between principal and agent in relation to supply of goods and permanent disposal of business assets (where input credit has been availed on such assets). Therefore, looking at the definition of supply read with Schedule I, even stock transfers across states would be considered as transactions between distinct persons and will be termed as Supply.

Schedule I has been revamped and some of the items from the definition has been moved to the Schedule I. The principal and agent transactions under the Revised Model GST law has removed services category, thereby restricting the taxability to supply of goods alone.

Section 3, Clause 2, covers Schedule II, which lists out the various transactions which could be treated as supply of Goods or Services. The Schedule also attempts to give clarity on the aspects to be treated as supply of Goods or Services separately. This is being brought in to avoid any confusion at a later date.

However, exclusions to definition of supply have been indicated in Clause 3, which is separately listed in Schedule III and IV.

Schedule III has been newly added, when compared to the earlier version of GST, which attempts to clarify the transactions which would neither be covered as Supply of Goods nor Supply of Services. For example, Services rendered by Employee to Employer, Court or Tribunal

established under Law, Members of Parliament, State Legislature, Panchayats, Municipalities, services of funeral, burial or mortuary including transportation of deceased.

Schedule IV attempts to list out the transactions undertaken by Central Government, State Government or Local Authority, not to be considered as Supply of Goods or Services.

Concept of Composite Supply and Mixed Supply has been newly introduced. While the Composite supply was there in the earlier version of GST, Mixed Supply has been recently added.

The Term Composite Supply means supply made by a taxable person of one or more goods or Services or a combination thereof, which are naturally bundled, one of which is a principal supply. For example, when an Air conditioner is bought from a showroom, the installation, Insurance, Maintenance services are taken care by the Showroom owner. This becomes a composite supply, wherein the activity of purchase of Air Conditioner becomes the principal supply.

The Term Mixed Supply means two or more Individual supplies or combination thereof, made by a taxable person, for a single price, where such supply does not constitute a composite supply. If the supply of such individual services/Goods are capable of being sold independently and it is combined for a single price, then it takes the nature of a Mixed Supply. For eg: during Diwali season, Sweet Vendor organises Gift boxes, wherein the Rasagulas, Gulab Jamuns, savouries of a branded item is packed together as a kit and sold for a single price, it becomes a Mixed supply as each one of the items have a price tag and can be sold separately and there is no concept of Principal supply here.

With the above two concepts defined separately, Section 3(5) lists out the tax liability under Composite and Mixed Supply.

S. No.	Nature of Supply	Tax Liability
1	Composite Supply	Supply of Principal Supply
2	Mixed Supply	Supply of that particular supply, which attracts the highest rate of tax

Levy and Collection of CGST/SGST/LGST

When we look back under the provisions of Excise, it was a levy on Manufacture and in Value Added Tax, the concept of Intra and Inter State Sale was

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the focus. Similar such provision exists under the imposition of service Tax, where the provision of service is the key.

Whereas under the GST regime, there is a paradigm shift from an **Origin Based Tax to a Destination based Tax**. All the above aspects like Manufacture, Sale, Provision of Service become irrelevant and the term Supply linked to destination is the key.

Moving on to **Section 8** of the Revised Model GST Law, which talks about **Levy and Collection of Central/State Goods and Services Tax**, synopsis of which is given below:

- A Tax called Central/State Goods and Services Tax (CGST/SGST)
- On all **Intra state supplies** of goods and/ or services
- On **Value** determined under Section 15
- Not exceeding **Fourteen Percent**, on recommendation of council.

Intra-state supplies of the goods and/or services are liable to CGST and SGST. The term intra-State supply and inter-State supply have not been defined in CGST/SGST Act and has been defined at Section 3 and Section 4 of IGST Act. As per Section 4 of the IGST Act intra-State trade or commerce is defined to mean any supply where the '**location of the supplier**' and the '**place of supply**' are in the same state.

Thus, to determine whether particular supply is intra-State or inter-State will be determined on the basis of location of the supplier and place of supply as per IGST Act.

It is also provided that the intra-State supply of goods shall not include:

- Supply of goods to or by a **SEZ developer or to or by an SEZ unit**;
- Supply of goods brought into India **in the course of import** till they cross the customs frontiers of India.

Similar such provisions exist for Intra state supply of Services, as defined under section 4(2) of the IGST Act. It is also provided that the intra-State supply of services shall not include supply of services to or by a **SEZ developer or to or by an SEZ unit**.

Under the provisions of Section 5 of the IGST Act, **IGST shall be levied on**

- All supplies of goods and/or services made in the course of inter-State trade or commerce
- On the value determined under Section 15 of CGST Act
- At such rates **not exceeding twenty eight percent** as may be notified by the Central Government.

Further, IGST on the goods imported into India shall be levied and collected in accordance with the provisions of the Section 3 of the Custom Tariff Act, 1975 at the time when duties of the custom are levied.

Reverse Charge

Later part of **Section 8(3)** talks about **reverse charge applicability** for specified categories of services, wherein the recipient of goods or services would be liable to for paying tax in relation to supply of goods and or services.

"Reverse charge" means the **liability to pay tax by the recipient of supply of goods or services** instead of the supplier of such goods or services in respect of such categories of supplies as notified under sub-section (3) of Section 8.

The concept of Reverse Charge existed earlier under the Service Tax provisions for services like Works Contract, Manpower, Goods transport Agencies, Legal services etc., However, under the GST, **Reverse charge mechanism has been introduced both for Goods and Services.**

Section 12(3) talks about **Time of supply of Goods**, wherein for **Reverse Charge cases**, the time of supply would be the earliest of the following dates,

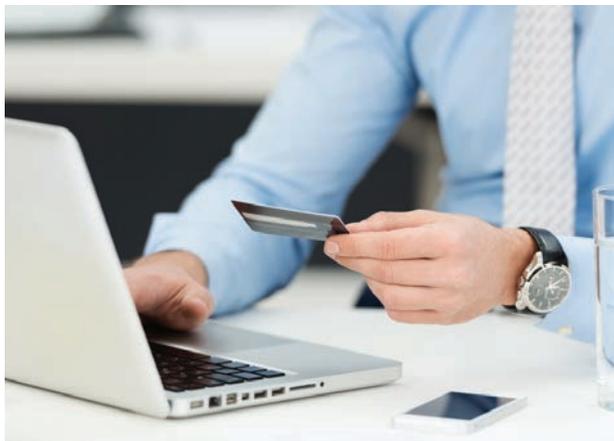
- (a) The date of the **receipt of goods**, or
- (b) The date on which the **payment** is made, or
- (c) The date immediately following **thirty days** from the date of **issue of invoice** by the supplier:

While the above said concept is already prevalent under the Service Tax regulations, the concept is altogether new under the Excise and especially VAT, where predominantly the point of determinants were removal from factory and sale.

Section 13 (3) talks about **Time of Supply of Services**, wherein for **Reverse Charge cases**, the time of supply would be the earliest of the following dates

- (a) The date on which the **payment is made**, or
- (b) The date immediately following **sixty days from the date of issue of invoice** by the supplier

In case, it is not possible to determine the time of supply of services under the above said options, the **time of supply shall be the date of entry in the books of account** of the recipient of supply.



Specific provisions have been introduced under the GST Law for E-commerce operators. The term 'Electronic commerce' has been defined under the GST Act as "means supply of goods and/or services including digital products over digital or electronic network. Further, the term "Electronic commerce operator' has been defined to include any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

It has been further explained that for the purpose of clause (a), **"the date on which the payment is made"** shall be the date on which the **payment is entered in the books of accounts** of the recipient or the date on which the payment is **debited in his bank account, whichever is earlier.**

In case of **"associated enterprises"** transactions of service nature attracting Reverse Charge, the time of supply shall be the **date of entry in the books of account** of the recipient of supply or the **date of payment**, whichever is earlier. For the purpose of GST Act, **"associated enterprise"** shall have the meaning assigned to it in Section 92A of the Income-tax Act, 1961.

A person who is required to pay tax under Reverse Charge is required to obtain **registration under the GST Law**, irrespective of **the threshold limit.**

As per the proposed Goods and services Tax (Compensation to the States for Loss of Revenue) Bill, 2016, GST compensation cess at a prescribed rate on the value determined under the CGST Act, would be leviable on supplies of goods and services, including supplies on which reverse charge is payable under Section 7(3) of the CGST Act.

E-Commerce Operator & Tax Collection at Source

Specific provisions have been introduced under the GST Law for E-commerce operators. The term **'Electronic commerce'** has been defined under the GST Act as **"means supply of goods and/or services including digital products over digital or electronic network. Further, the term "Electronic commerce operator'** has been defined to include any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Section 56 deals with **Tax Collection at Source provisions (TCS) for e-commerce operators.** It provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at the **rate of one percent** of the **net value of taxable supplies** made through it where the consideration with respect to such supplies is to be collected by the operator. The TCS so collected shall **be deposited** in the appropriate account of the Government **within 10 days from end of the month** in which collection is made.

Explanation to the Section states that for the purposes of this sub-section, the expression **"net value of taxable supplies"** shall mean the aggregate

Drawing references from the earlier legislations, the concept of Composition has been introduced. Section 9 talks about Composition Levy, wherein Upon Council recommendation, a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may be permitted to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than two and a half percent in case of a manufacturer and one per cent in any other case, of the turnover in a State during the year.

value of taxable supplies of goods or services, **other than services notified under sub-section (4) of Section 8**, 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 8(4) talks about **specific category of Services**, the tax on which would be paid by the **E commerce Operator**, as if the services are supplied through it and he is the person liable for paying the tax in relation to the supply of such services.

The Model GST law provides for a **specific set of services** (to be notified later), where the mechanism of **Tax collection at source may not be attracted** and instead the **E commerce Operator** becomes the **taxable person towards** the supply of such services, as if it was supplied by him.

If the **E Commerce Operator does not have a Physical presence in the Taxable Territory**, any **Person representing such E commerce Operator** for any purpose in the taxable Territory is **liable to pay Tax**. In case they do not have such person or a representative in the taxable territory, he shall appoint one for the purpose of paying Tax.

Further, a **statement of all tax collected** should also be submitted within 10 days after the end of such calendar month. This provision will certainly increase compliance burden on electronic commerce operators, as many of them have a large number of vendors.

This provision may even hamper the growth of electronic commerce operator.

Composition Levy

Drawing references from the earlier legislations, the concept of Composition has been introduced. Section 9 talks about Composition Levy, wherein

Upon Council recommendation, a registered taxable person,

- ✓ whose **aggregate turnover** in the **preceding financial year** did not exceed **fifty lakh rupees**,
- ✓ may be permitted to pay, **in lieu of the tax payable** by him,
- ✓ **an amount calculated** at such rate as may be prescribed,
- ✓ **but not less than two and a half percent** in case of a **manufacturer**
- ✓ **and one percent** in any other case, of the **turnover in a State during the year**.

The composition scheme does not apply to a taxable person,

- (a) Who is **engaged in the supply of services**; or
- (b) Who makes any supply of goods which are not leviable to tax under this Act; or
- (c) Who makes any **inter-State outward supplies of goods**; or
- (d) Who makes any **supply of goods through an electronic commerce operator** who is required to collect tax at source under Section 56; or
- (e) Who is a manufacturer of such goods as may be notified on the recommendation of the Council:



Section 46 talks about **Tax deduction at Source provisions**. The **Central/State Government upon recommendation from the Council**, may mandate to **Deduct tax at 1% from the payment made or credited to the supplier of goods and or services**, where the **total value of such supply, under a contract exceeds five lakh rupees**, the value of supply shall be considered as the value excluding the tax portion as indicated in the invoice.

Some of the key points to note under the composition scheme are as follows

- ✓ From the above provisions, it is clear that the composition levy is not applicable to taxable person providing **supply of Services, E commerce operators** liable to collect tax at Section 56 and a taxable person engaged in **Inter-state supply of Goods**.
- ✓ All registered taxable persons, **having the same PAN have to unanimously opt** for the composition levy scheme, subject to the provisions contained under Section 9. The benefit of composition would not be given to some or part of the taxable persons having different registrations, under the same PAN.
- ✓ **The day** when the aggregate turnover in the **financial year exceeds Rupees Fifty lakhs**, the permission for composition granted to a taxable person **gets withdrawn**.
- ✓ The taxable person opting for the scheme of composition **shall not collect any tax from the recipient of supplies** nor is **he liable to take any input credit**.

Tax Deduction at Source

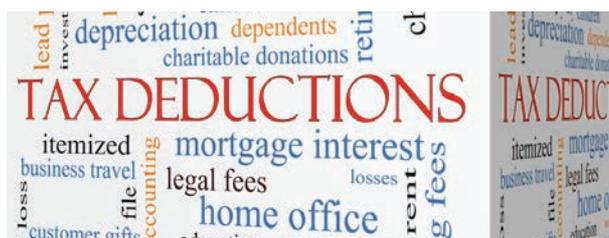
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- ✓ The value of supply shall be considered as the value excluding the tax portion as indicated in the invoice.

The other normal provisions as applicable to a TDS are applicable under the provisions of GST also.

- ✓ The amount so deducted shall be remitted by the deductor within 10 days from the end of the month in which the deduction is made.
- ✓ The deductor shall issue a certificate to the deductee in the manner prescribed
- ✓ If the certificate is not issued to the deductee within 5 days from the date of payment of TDS to the Government authority, the deductor shall be liable to pay a late fee of One Hundred Rupees per day of default beyond the 5 days, up to a maximum of five thousand rupees
- ✓ Non remittance of TDS so collected to the

Proposed GST Model is a massive legislation which will change the entire dimension under which businesses operate in India. The proposed Law is an attempt to make a uniform legislation, considering the multiple compliances affecting the free flow of goods and services. In the days to come, we sincerely hope that the proposed Law attempts to bring in Uniform rate of tax, with simplified compliances and a seamless transition!!



Government authority's account would attract interest and penal provisions

- ✓ Any excess or erroneous deduction and its related refunds would be dealt with **under** Section 48. However once the deducted amount is reflected in the electronic cash ledger of the deductee, no such refunds would be entertained.
- ✓ Where the supplier has made the sale of goods, in respect of which tax was required to be deducted at source under **earlier law and issued invoice before the appointed day**, and the **payment is made to the supplier on or after the appointed day**, TDS provisions under Section 46 will not apply.

Conclusion

This is a humble attempt to give a glimpse of the regulations and we have covered the key provisions under Supply, Levy and collection, Key Composition, Reverse Charge, TDS, TCS, E commerce transactions etc.

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