

# Procedural Aspects Including Migration Process under Revised Model GST Law



*Being compliance and self-monitoring tax law based on processes, the GST expected to be rolled out with effect from 1<sup>st</sup> April 2017, would subsume various Indirect Tax laws levied presently and enhance the tax base. Government has endeavored to encourage large number of existing assesseees to get themselves enrolled at GST portal so that effectiveness of the system can be tested well in time. Compliances under the GST law are IT-driven. Being the most important device, GST portal will act as a bridge of communication between taxable person and tax administrator. In this article, the author argues that schedule of enrollment dates is not to be construed as watertight deadline for completing the GST enrollment, and he focuses on the procedural compliances that deal with the registration including migration under the revised model GST law. Read on...*

## Introduction

GST, expected to be rolled out with effect from 1<sup>st</sup> April 2017 would subsume various Indirect Tax laws levied presently. It would enhance the tax base and would be compliance and self-monitoring tax law based on processes. The statutory compliances contained in the statute include, obtaining registration under the GST law by the existing assesseees as well as new assesseees, periodic payments of taxes and furnishing various statements/returns by all the registered

taxable persons. This statements/returns are broadly divided into following categories:

- Statement of outward supply
- Statement of inward supply
- Statutory return
- TDS return
- TCS return
- Return by input service distributors
- Annual return

Except for Annual Return, all other returns are to be filed on periodic basis. There are also provisions for the maintenance of accounts and records, issue of invoices and other documents evidencing supply of goods or services or as the case may be, receipt of payments, and for conduct of statutory audit and filing of annual reconciliation statement in case the turnover during financial year exceeds the prescribed limit. The provisions contained in revised model



**CA. Mandar Telang**

(The author is a member of the Institute who may be contacted at mandar75@gmail.com.)

**Definition of *person* is given in Section 2(73) of the Act which includes an individual, HUF, company, firm, LLP, AOP or BOI whether incorporated or not, corporation or Government company, body corporate incorporated outside India, cooperative society, local authority, government, societies, trusts, and every artificial juridical persons.**

GST law consisting of various procedural aspects are:

Sr. No.	Topic	Section No.
1	Registration	23 to 27 & Schedule V
2	Tax Invoice, Credit & Debit Notes	43 to 45
3	Returns	32 to 43
4	Payment of Tax	44 to 46
5	Accounts & Records	53 & 54.

Let us know the procedural compliances dealing with the registration including migration process under the revised model GST law.

### Registration

Schedule V of the Revised Model GST Law provides cases, where persons are required to obtain registration for the purpose of this Act. Definition of *person* is given in Section 2(73) of the Act which includes an individual, HUF, company, firm, LLP, AOP or BOI whether incorporated or not, corporation or Government company, body corporate incorporated outside India, cooperative society, local authority, government, societies, trusts, and every artificial juridical persons. The definition of *person* is therefore enough to cover every legal form of person. The levy is however on a *taxable person*. As per Section 10, *taxable person* means a person who is registered or is liable to be registered under Schedule V of the Act.

Schedule V is divided into 4 broad categories:

- I. General Category, i.e. persons who are liable to obtain registration if their aggregate turnover in a financial year exceeds a prescribed limit;
- II. Exempted Category, i.e. persons who are not liable to obtain registration;
- III. Mandatory Category, i.e. persons who are mandatorily required to obtain the registration irrespective of threshold limit; and
- IV. Transitional Category.

### General Category

Following are the elements of provisions dealing with this category:

- a) Registration shall be obtained by every supplier.
- b) Registration shall be obtained in a State from where such supplier makes a taxable supply of goods and/or services.
- c) Registration shall be obtained by a person only if she/he is making a taxable supply.
- d) Her/His aggregate turnover in a financial year exceeds a prescribed limit. This limit is:
  - ₹10 lakh- Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh & Uttarakhand and J & K.
  - ₹20 lakh- Other States.

Under the revised Model GST Act, *supplier* shall mean the person supplying the goods and/or services. It shall also include an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied. The registration shall be obtained in a State "*from where supplier makes a taxable supply*". In case of taxable supply of goods or services, it is therefore necessary to identify a place from where such supply is made. It is generally a place from where a supply commences. In case of supply of goods, it is relatively easy to identify the place of commencement of supply as movement of goods is visible. However, in case of services, it is not easy to identify the place of commencement of service. Hence, it is strongly felt that, the term '*place from where supply is made*' should be incorporated in the statute by way of a legal fiction. The registration requirement under the general category is linked to making of 'taxable supply', i.e. a supply which is *chargeable* to tax under the GST Act. It includes supply of all goods and services which are covered under the GST Act, whether taxable or exempt. However, Category II deals with exemption from registration in certain cases, which is explained later. For the purpose of determining the prescribed limit for the purposes of registration, *aggregate turnover* includes the aggregate value of taxable supply (i.e. supplies which are taxable and not exempt) as well as exempt supply. It also includes export of goods and services and inter-state supplies of a person having the same PAN. For the purpose of determining 'aggregate turnover', these supplies need to be computed on *all-India basis*. It therefore means that, for the purpose of determining prescribed limit ₹20 lakh in the State of Maharashtra, supplies made by

**While agriculture is defined to include raising of crops, grass or garden produce and grazing and also floriculture, horticulture, sericulture; the definition of agriculturist is very narrow and includes only a person who cultivates the land personally for the purpose of agriculture.**

the same person outside the State of Maharashtra shall also be considered. Taxes namely CGST, SGST or IGST shall however be excluded while computing the turnover.

There is no clarity as to whether supplier needs to check the 'threshold limit' of ₹10 lakh or as the case may be ₹20 lakh for every financial year or this limit is applicable only for the first year in which taxable person applies for registration for the first time. This clarity is more required for small assessee whose annual aggregate turnover is at or around the threshold limit.

#### *Exempted Category*

In the following cases, there shall be no requirement of obtaining the registration:

- (a) Any person engaged exclusively in the business of supplying goods and/or services not liable to tax or are wholly exempt from tax under the Act.
- (b) An agriculturist, for the purpose of agriculture.

Definitions of *agriculture* and *agriculturist* are given in Sections 2(7) and 2(8) of the Model GST Act. While *agriculture* is defined to include raising of crops, grass or garden produce and grazing and also floriculture, horticulture, sericulture; the definition of *agriculturist* is very narrow and includes only a person who cultivates the land personally for the purpose of agriculture. Activities such as dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising or man-made forest or rearing of seedlings or plants are not regarded as agriculture under the revised model GST law.

#### *Mandatory Category*

Following categories of persons shall be liable to be registered under the revised Model GST Act irrespective of the threshold limit of aggregate turnover:

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons and non-resident taxable persons;

- (iii) persons who are required to pay tax under reverse charge;
- (iv) persons who are required to deduct tax under Section 46, whether or not separately registered under this Act;
- (v) every electronic commerce operator;
- (vi) persons who are required to collect tax under Section 56, whether or not separately registered under the Act (This will also include e-commerce operator.);
- (vii) persons who are required to pay tax under sub-Section (4) of Section 8 (i.e. e-commerce operator in case of certain notified services);
- (viii) persons who supply goods and/or services, other than supplies specified under sub-Section (4) of Section 8, through such electronic commerce operator who is required to collect tax at source under Section 56;
- (ix) persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise;
- (x) input service distributor, whether or not separately registered under the Act;
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and
- (xii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council

#### *Transitional Category*

Every person who, on the day immediately preceding the appointed day, is registered or hold license under any earlier law, shall be liable to be registered under the Act from the appointed day, provided elements of general category of registration explained above are fulfilled.

#### **Number of Registrations per State**

Section 23 of the Revised Model GST law provides for State-wise registration. Hence, a person having more than one place of business in one state shall take single registration in respect of all its business places in the same State. In such a case, one of the places shall be treated by the assessee as his principal place of business for the purpose of registration. There is option given to assessee to obtain separate registration for each business vertical, subject to

such conditions as may be prescribed. Section 23(3) also contains a provision of mandatory registration.

### Taxable Persons for Purposes of Registration and Supply

Section 10 defining *taxable person* further provides that person who has obtained or is *required to obtain* more than one registration, whether in one State or more than one State, shall *in respect of each such registration*, be treated as distinct persons for the purposes of this Act. Therefore, if a person has different registrations, each registration number will be regarded as distinct taxable person. For example, Mr. A having 4 places of business (M1, M2, M3 and M4) in Maharashtra and 2 places of business (G1, G2) in Gujarat. In such a case, Mr. A can take one registration covering all 4 offices in the State of Maharashtra and another registration covering remaining 2 offices in the State of Gujarat. Mr. A's registration number in Maharashtra and his registration number in Gujarat shall be regarded as distinct taxable persons.

Further, an establishment of a person who has obtained or *is required to obtain* registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act. Therefore, M1 and G1 shall be regarded as establishments of different persons for the purpose of this Act. However, M1, M2, M3 and M4 shall not be regarded as different persons, unless these are different business verticals and have opted for separate registration under the Act. Therefore, it appears that inter-unit supplies between M1, M2, M3 and M4 will not be regarded as *supply* under Section 3 of the Revised GST Act, as a person cannot make supply to himself.

### Requirements under Registration

Every person shall have a *permanent account number* (PAN) in order to be eligible for a grant of *registration* (GSTIN). A person who is required to deduct tax at source under Section 46 shall have a

**Section 166 of the Revised Model GST Act deals with transitional provisions relating to migration of existing taxpayers to GST. On appointed date, every person registered under any of the earlier laws and having valid PAN shall be issued a certificate of registration on provisional basis in Form GST REG- 21, incorporating therein GSTIN.**

*tax deduction and collection account number* (TAN) in lieu of PAN. Further, non-resident taxable persons may also be granted registration based on any other prescribed document in *lieu* of PAN. Specialised agencies like United Nations Organisations or multilateral financial institutions and organisations notified under UN (P&I) Act, 1947, Consulates and Embassy of foreign countries, or any other notified persons shall be required to obtain a *unique identity number* (UIN) in *lieu* of GSTIN for the purposes notified.

### Grant of Registration

GSTIN or UIN shall be granted or as the case may be rejected after due verification in the manner and within three common working days from the date of application. If no deficiency is communicated to the applicant within that period, registration shall be deemed to have been granted. Any rejection of application under either of the laws (i.e. CGST or SGST Acts) shall be deemed to be rejection of application under other law. Similarly, grant of registration under either of the laws shall be deemed to be grant of registration under the other law, unless the registration is rejected under the other law within the aforesaid period.

### Transitional Provisions for Migration of Existing Taxpayers to GST

Section 166 of the Revised Model GST Act deals with transitional provisions relating to migration of existing taxpayers to GST. On appointed date, every person registered under any of the earlier laws and having valid PAN shall be issued a certificate of registration on provisional basis in Form GST REG-21, incorporating therein GSTIN. This certificate shall be valid for a period of six months from the date of issue or such further period as may be notified in this regard. Every person to whom such provisional registration certificate is issued shall furnish the prescribed information, within such period. Such application shall be submitted electronically in Form GSTR REG-20, duly signed, along with information and documents specified in the said application, on the common portal. The provisional certificate of registration may be cancelled, if the applicant failed to submit the prescribed documents within the aforesaid period or if documents furnished are found to be incorrect or incomplete. Such cancellation shall be made in Form GST REG-22 and after providing to the applicant a show cause notice

to that effect in Form GST-23 and after affording him reasonable opportunity of being heard. If the information and particulars furnished by the applicant are found, by proper officer to be correct and complete, a final certificate in Form REG-06 shall be made available to the applicant. If a person is not liable to be registered under the GST, she/ he has option to file electronically, application in Form GST-REG 24 at Common Portal for cancellation of provisional registration and the proper officer shall after conducting such inquiry as he deem fit cancel the registration. In such a case, provisional registration certificate shall be deemed to have been not issued. A person to whom provisional certificate has been issued and who is eligible to pay tax under Section 9, may opt to do so within such period as may be prescribed.

All applications, including any reply, to the notices, required to be submitted for the purpose of registration shall be filed electronically at the common portal with digital signature certificate or through e-signatures or through any other mode of signature as may be specified in this regard. The documents shall be signed by the following:

Person	Signing Authority
Individual	Individual himself or some other person duly authorised by him
Individual is mentally incapacitated from attending his affairs	His guardian or by any other person competent to act on his behalf
HUF	<i>Karta</i>
HUF – where <i>Karta</i> is absent from India or Mentally incapacitated from attending his affairs	Any other adult member of HUF or authorised signatory of <i>Karta</i>
Company	Authorised Signatory
Government or Government Agency or local authority	Officer authorised in this behalf
Firm	Partner of firm not being minor or authorised signatory
AOP	Any member of the association or authorised signatory
Trust	Trustee or authorised signatory
Any other person	Some person competent to act on his behalf

### Enrollment on GST Portal

As per business process on Registration, in case of existing taxpayers under Excise and VAT, source of data for issuing provisional GSTIN shall be VAT data, as in most cases excise assessee are also registered under VAT. For taxpayers under service tax, source data shall be service tax. However, the State information will be collected before generating GSTIN mostly through their existing login.

Enrolment process has already been started for the existing VAT dealers and is scheduled for various States:

States	Start Date	End Date
Puducherry, Sikkim	08/11/2016	23/11/2016
Maharashtra, Goa, Daman and Diu, Dadra and Nagar Haveli, Chhattisgarh	14/11/2016	30/11/2016
Gujarat	15/11/2016	30/11/2016
Odisha, Jharkhand, Bihar, West Bengal, Madhya Pradesh, Assam, Tripura, Meghalaya, Nagaland, Arunachal Pradesh, Manipur, Mizoram	30/11/2016	15/12/2016
Uttar Pradesh, Jammu and Kashmir, Delhi, Chandigarh, Haryana, Punjab, Uttarakhand, Himachal Pradesh, Rajasthan	16/12/2016	31/12/2016
Kerala, Tamil Nadu, Karnataka, Telangana, Andhra Pradesh	01/01/2017	15/01/2017
Enrolment of Taxpayers who are registered under Central Excise Act/ Service Tax Act but not registered under State VAT	01/01/2017	31/01/2017
All Registrants (All Groups)	01/02/2017	20/03/2017

- a) For the purpose of enrolment on GST portal, the existing assesseees will be provided provisional ID from VAT departments. This provisional id will be generated in case of all VAT TINs where PAN has been validated and shall be generally made available to applicants through their existing

logins with respective State's VAT department website or ACES (in case of Service Tax assessee). For Service Tax assessees, after getting the State information as mentioned above, Service Tax portal will check from GST portal whether GSTIN has been generated for combination of State and PAN of the taxpayer. If not generated, the assessee may be able to generate the same through GST portal.

GSTIN (whether provisional or final) is a 15 digit Number, of which first two digit shall be State Code, next 10 digit shall be PAN, 13<sup>th</sup> digit shall be entity code (in case of more than one registration in single state), 14<sup>th</sup> digit shall be kept blank for future use and 15<sup>th</sup> digit shall be a check digit.

- b) On obtaining the provisional registration ID and temporary password, existing assessee can access the GST portal ([www.gst.gov.in](http://www.gst.gov.in)) and can create her/his new user ID. For creating a new user ID at the GST portal, the applicant needs to enter a provisional ID and password as provided by the tax authorities. This will enable the user to update his email ID and mobile number in the system.
- c) Next step is the verification of email ID and mobile number, under which the *one-time password* (OTP) will be sent to applicant on the stated email ID and mobile number.
- d) After OTP verification, the applicant can create new login ID (username) and password for accessing the GST portal in future. To complete the process, the applicant will also be required to complete additional information to create his credentials which can be used for regaining the account access in case of loss of password.
- e) After the account is created, the applicant will be required to fill various details, i.e. business details, details of partner/promoters, details of authorised signatory, principal place of business and additional place of business, goods and services, bank account, verification of details, etc. The requisite information along with documents will be required to be uploaded and signed electronically by the authorised person using digital signature/e-signature, as the case may be, prescribed for the said purpose. On successful submission, unique *application reference number* (ARN) will be generated and the same will be intimated on registered email ID and mobile number.

**For the purpose of enrollment on GST portal, the existing assesseees will be provided provisional ID from VAT departments. This provisional id will be generated in case of all VAT TINs where PAN has been validated and shall be generally made available to applicants through their existing logins with respective State's VAT department website or ACES (in case of Service Tax assessee).**



It appears that, existing assesseees registered with VAT departments in various States will be required to complete the process of migrations by using provisional ID made available to them through every State VAT Department.

### Conclusion

The schedule of enrolment dates should not be construed as watertight deadlines for completing GST enrolment. The Government has endeavoured to encourage large number of existing assesseees to get themselves enrolled at GST portal so that effectiveness of the system can be tested well in time. The compliances under the GST law are IT-driven, i.e. the success of GST is dependent largely upon the effectiveness of the IT system. GST portal is the most important device which will act as a means of communication between taxable person and tax administrator. Therefore, by completing the GST enrollment process as per the schedule given by the Government, business community and professionals can certainly join hands with the Government in their efforts of development of a good and dependable IT system. This would create the edifice or the backbone of the entire compliance procedure. ■