

## What you must know about Model GST Act, 2016:

The Model GST Act, 2016 released by Sub-Committee II Report is yet to be authenticated since it is not available and hosted on government's website.

1. The Definition of Business/ Supply is wide - What are the implications?
  - a) Section 2(13) - The term 'Business' shall include, "... any similar activity whether or not it is for a pecuniary benefit". Pecuniary benefit means monetary benefit. Then the definition of business goes on to say, "... whether or not there is volume, frequency, continuity or regularity of such transaction".
  - b) Section 3 - "The Supply of goods and/or services includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal and importation of services\*, made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes a supply specified in
  - c) Schedule I, made or agreed to be made without a consideration"
  - d) Schedule I includes even self-supplies, private supplies etc. as deemed supply without consideration
  - e) Conjoint Reading above clears that the taxman can send notice for wide range of transactions including personal transfers like gift, inheritance, dowry, and so on unless specifically denied in the Act.
2. Securities brought in the ambit of GST
  - a) Section 2(31) - The Definition of goods does not exclude securities unlike in the present Vat / sales tax laws. Hence the supply of securities shall be subject to GST. How will Securities transaction tax and GST exist simultaneously should be worked out.
3. Employer & Employee are related persons
  - a) Section 2(55) - The Definition of related person includes Employer and Employee
4. Services means anything other than Goods
  - a) Section 2(59) - In what has been considered a very broad and unreasonable definition even under Constitutional Amendment Bill (122 of 2015), the definition of service is still kept as "services" mean anything other than goods". This needs a serious relook by law makers as it can be stretched to virtually any sphere.
5. GST on Supply of Goods to operate on Similar to Point of Taxation Model of Service Tax.
  - a) Section 11:- Time of Supply of Goods shall be time at which GST shall be liable to pay. If the present draft is implemented, the GST on goods shall be paid at the earliest of removal, invoice or payment.
  - b) Further, in case of continuous supply of goods the time of supply shall be in accordance with successive statement of accounts / payments
6. Now Occupancy held as status Quo with Completion Certificate in the Declared Services of Construction
  - a) In a welcome step, Section 2(25)(b) defining declared services of construction as "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"

- b) The above phrase i.e. before its first completion has been newly introduced vis-a-vis current definition of declared services under Service Tax.
7. Transaction Value which will be subject to GST has broad Ambit
- a) As per Section 17:- The Value on which GST shall be charged shall be transaction value in case of unrelated transaction where price is the sole consideration. The ambit of Transaction value includes interilic:
    - i. the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable {Hence Free Supply would be Taxable under GST if not included in the Price - Now this would be a dampener to GST)
    - ii. incidental expenses such as commission, packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, provision of the services
    - iii. any discount or incentive that may be allowed after the supply has been effected
8. All Goods covered under Legal Metrology shall be taxed at Retail Sales Price (-) Included GST therein
- a) Section 17(5) is pretty clear that where the supply of goods is made by taxable to non-taxable person and the goods are covered under Legal Metrology Act, 2009 then retail sales price less GST under this Act shall be the value on which tax shall be imposed.
9. Why it will hurt the Industries thriving on the concept of Discounts
- a) Point No. 8 above i.e. Section 17(5) would have a significant dampening effect on e-commerce industry as most of the goods are covered under Legal Metrology, 2009 and the buyers are non taxable individuals, clearly invoking the retail sales price method of valuation and denying the benefits of any incentives, schemes and discounts in valuation for GST Purpose.
10. Discounts on Invoices to be only allowed as deduction
- a) As per section 17(3) of Model GST Act, 2016 - The transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply {Hence all the discounts and supply related incentives shall not be eligible for deduction which are not recorded on Invoice itself)
11. Definition of Tax Payer
- a) Section 9:- The governing section for taxable person specifically excludes any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability
12. Transfer Pricing in Domestic Transactions is a Pandora Box
- a) As per Section 17(4), if the transactions relates to transactions between related parties or non-monetary transactions, there shall be the valuation of transaction value in accordance with Prescribed Rules. This clearly lays the enabling of Transfer Pricing in GST on Domestic Transaction in light of the definition of related persons under Act.

13) Head Office to Branch Office services to attract GST

- a. GST appears to tax internal transactions is demand for tax on services rendered by any head office of any company to its branch offices in other states. This will effectively serve to balkanize the country from one tax paying unit/ geography to many states with virtual borders.

14) Service put to a Private Use shall be Deemed Supply without Consideration

- a. Schedule I - Entry No. 3 clarifies that services put to a private use shall be deemed to be supply without consideration.

15) Cenvat / Input Tax Credit still seems to restricted largely - must be liberated to make GST a Success

- a. Cenvat Clauses in the Present GST can disappoint the trade if not further liberated.
- b. Most of Present restrictions in the Cenvat Credit Rules, 2004 have not been done away in the present Model GST Act, 2016 also. This can lead to significant cost burden and defeat the very purpose of GST.

16) Tax Paid by Supplier shall decide whether the GST shall be available to Recipient of Supply

- a. As per Section 18(10) (b):- The Input tax credit shall only be available where the tax has been paid by supplier to the Government. This is bound to create undue hardship to genuine cases of recipients who pay the taxes but the tax so collected is not deposited by the supplier.

17) Limitation period for serving of show cause notice under GST in non-extended cases shall be Three Years vis-a-vis present 18 Months

- a. Section 20(1) increases the Limitation period to serve show cause notices in routine cases i.e. without extended period of limitation scenario to 3 Years from the relevant date. For extended period of limitation, the limitation would continue to remain at 5 Years.

18) Refund Limitation Period to be relaxed to 2 Years from the relevant Date

- a. In what is a welcome step, section 22 of Act increases the limitation period to file refund cases to 2 Years from the relevant date.

19) Separate Registration Required for Each Business Vertical in the State

- a. Section 26(2) suggests, A person having multiple business verticals in a State may (whether this is at the behest of assessee or not needs to be seen) obtain a separate registration for each business vertical in the State, subject to such conditions as may be prescribed.

20) Enabling Provision for Introduction on TDS on GST (Irrespective of the Nature being Works Contract) i.e. all cases of supply of goods / services exceeding Rs 10 Lacs for payments made by notified entities. All Compliance similar to Income Tax Act needs to be complied under GST as well in accordance with section 48 of the Act.

21) Prosecution invoked within Limits of Rs 25 Lacs Tax Evasion and for period exceeding 3 Months in accordance with Section 63 of the Act.

22) Power to Arrest u/s 68 for Offence of Tax Evasion of Rs 50 Lacs for period exceeding 3 Months

23) Section 73:- GST Compliance Rating Concept Introduced

- a. To be Shared by the Department on Public Domain

24) Inspection of Goods in Movement is kept in tact under GST as well

- a. Vide Section 74; the GST has kept in tact the check on Goods in Transit. It is important that this provision do not convey directly on the account of check post barriers etc except that the carrier to carry all prescribed documents.

25) Department can Test Purchase any goods / services under GST to ensure compliance

- a. Section 80 prescribes that duly authorised officer may cause purchase ('Test Purchase') of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount paid towards the goods after cancelling any tax invoice or bill of supply issued.

26) Higher Mandatory Pre-deposit can be applied by Department in cases of amount exceeding Rs 25 Crores demand and CCGST is of the view the department's case is strong. 10 % Mandatory in all cases

- a. As per Part XV of the Act, the Mandatory Pre- deposit shall be 10% of the amount in dispute to file an appeal
- b. In serious cases (i.e. Where the demand exceeds 25 Crore Rupees and department is strong in view), the department can apply for ordering of higher pre-deposit.

27) Cap on Adjournments in First Appeal to Three Times

- a. Proviso to sub-section 8 of Section 82 stipulates that first appellate authority shall grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing but that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

28) Settlement Provision under GST Act remains undecided

- a. Part XVII that shall be operating legislation of Settlement of cases under GST have not been kept under Model GST Act, 2016. To be revisited later.
- b. "In the full Committee Meeting held on 22nd& 23rd July 2015 at New Delhi, majority of the States were of the view that in the GST regime, settlement provision may not be there as it creates discrimination. Presently, very few States have such provisions (Odisha, UP, Kerala). In the Centre, there is a robust Settlement Commission mechanism.
- c. After discussion, it was decided in that meeting that for the purpose of drafting the model law, we may not keep the settlement provision. The issue can be revisited later.

29) Enabling of Sending of Notice, summons and orders to the Registered Email, Mobile No. Or even the Dashboard of Login Portal

- a. Section 122 enables service of notices, orders and summons vide Email on Registered Email Ids, Mobile No.'s and even on Dashboard of Registered Portal of Assessee.

30) The Tax Credit on the Opening Balances shall be carried forward under GST in manner as may be prescribed {Section 130}

- a. Section 130 :- The taxable person may carry forward the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT Act / rules) lying with him on the date of his switching over to GST in such manner as may be prescribed.

31) Self Supply of Goods / Services to be treated as supply without consideration under Schedule I

- a. As discussed above, the Schedule I includes self-supply of goods / services as deemed supply without consideration and shall be subject to GST. This can cause to Increase the GST burden on the supply chain specifically more so in the manufacturing process.