

Time of Supply of Goods & Services

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The liability to pay CGST / SGST or IGST on the goods or service shall arise at the time of supply as determined in terms of the GST Act. The point of time of supply refers to the point of time when an activity attracts the levy of GST in terms of the provisions of section 12 & 13 for goods and services respectively.

In the absence of specific provisions to determine time of supply, there could be a lot of ambiguity in determining the exact time of supply as the event of supply could contain many sub-events. For example, in case of sale of goods, supply could be understood as transfer of title or transfer of possession and control or time of final settlement etc. The amount of chaos is even more in case of provision of services.

Time of Supply of Goods:

Present Law: In case of excise duty, it is a levy on manufacture and collection is on removal. In State VAT laws, there is legal fiction which provides that sale of goods is completed when ownership of goods is transferred or possession of goods is handed over to the buyer. The other indirect taxes like Octroi/ entry tax/ local body tax/ amusement park are on the entry into the area/ State/ others.

Under the GST regime, transfer of ownership or possession of goods is not relevant.

The time of supply of goods shall be the earliest of the following dates, namely:

- (a) The date of issue of invoice by supplier or the last date on which such supplier is required to issue invoice in terms of section 31 (Provisions on tax invoice): The supply is deemed to be made to extent it is covered by supplier invoice.
- (b) The date on which the supplier receives the payment- The supply is deemed to be made to extent it is covered by payment.

The date when supplier receives payment is earliest of date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account.

Section 31 provides that a registered taxable person supplying goods shall issue a tax invoice before or at the time of removal of goods (where supply involves movement of goods) or delivery of goods or making available to the recipient (in other cases).

Presently neither excise duty nor sales tax is to be paid on advance received for supply of goods. Only in case of service tax, liability arises on receipt of advance for service to be provided. However, in GST, even when advance is received from customer for goods to be supplied, GST liability would arise.

Example:

- ✓ When manufactured taxable goods are removed from factory for sale (supply) to customer on 15th July 2017

- ✓ Invoice issued on 30th July 2017
- ✓ Payment received on 15th August 2017
- ✓ Date when receiver shows receipt in books of account 20th July 2017

Time of supply is 15th July 2017 - removal

To continue with above example. - When No movement of goods involved;

When a machinery is coming into existence and installed at site, handed over to buyer on 5th July 2017 and all other dates of earlier example remain same.

5th July 2017 on which the goods are made available to the buyer is time of supply.

In case of continuous supply of goods, where successive statements of accounts or successive payments are involved invoice shall be issued before or at the time each such statement issued or each such payment is received as may be the case. The criteria to determine time of supply would remain same even in case of continuous supply of goods.

“Continuous supply of goods” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis. In addition, the Central or a State Government may, on the recommendation of the GST Council, specify, by notification, the supply of goods that shall be treated as continuous supply of goods.

For example, when the continuous supply of goods is made through a conduit/pipes, the billing would be done based on quantity of goods supplied for a particular period. At the end of the billing period, an invoice will be issued for the quantity of goods supplied and then the earlier of date of invoice or the last date of the billing period would be the time of supply unless supplier has received any amount in advance.

Example for continuous supply of goods: Contract for supply of cement at site from July 2017 to December 2017.

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

- The date of receipt of goods,
- Date on which payment is made,
- The date immediately following thirty days from the date of issue of invoice by the supplier.
- When it is not possible to determine the time of supply under any of the above clauses, the time of supply shall be the date of entry in the books of account of recipient.

Example could be as under:

- Date of receipt of goods - 15th August 2017
- Date of payment – 15th October 2017

- Date of issue of invoice – 01st July 2017
- Date of debit in books 10th September 2017

Time of supply of goods would be 1st August 2017 (31st day from the date of issue of invoice).

At present, there is no excise duty/VAT payable under reverse charge mechanism. But under GST, notified supply of goods would be liable for payment of GST under RCM. This would be an additional burden to the industries on its working capital and compliance cost.

If the goods are sent or taken on approval, sale or return or similar terms, the invoice shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier. Thus, if the goods are sent on approval basis, the sale has to be completed within 6 months from its removal, otherwise, it shall be deemed to be a supply and levy would attract.

In case of supply of vouchers, the date of issue of the voucher would be the time of supply when such supply is identifiable at that point. In all other cases, the date of redemption of voucher would be the time of supply.

Time of Supply of Services:

Presently, provisions of the Point of Taxation Rules 2011 are applied to determine the point at which services are subject to payment of service tax. Time of supply of services set out in proposed GST Act is more or less similar to that of existing Point of Taxation Rules.

The time of supply of Services shall be the earliest of the following dates, namely –

- The date of issue of invoice by supplier or the last date on which such supplier is required to issue invoice in terms of section 31 (Provisions on tax invoice).
- The date on which the supplier receives the payment.

The date on which the recipient shows the receipt of services in his books of account would be the time of supply, in a case where the above said provisions of clause do not apply. This could lead to high ambiguity as practically its difficult for the supplier to find out when the recipient has shown the receipt of services in his books.

Section 31 provides that a registered taxable person supplying taxable services shall issue a tax invoice before or after the provision of service but within the prescribed period of 30 days in normal cases and 45 days in case of banking and financial institutions.

Time of supply of service could be better understood by following example:

Situation	Date of completion of service	Date of invoice	Date of payment	Time of supply of service
Invoice issued within prescribed period (Say 30 days) of completion of service	15.7.2017	19.7.2017	29.07.2017	19.07.2017
Invoice issued after the Prescribed period (Say 30 days) of completion of service	26.7.2017	26.12.2017	18.08.2017	18.08.2017
Invoice issued after the Prescribed period (say 30 days) of completion of service	05.8.2017	05.10.2017	30.09.2017	05.09.2017

It is further provided that, the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. This seems to go against spirit of levy which is attracted on provision or supply of services. The date of receipt of payment shall be the date on which the payment is entered in the supplier's books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

Where amount upto Rs. 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.

In case of continuous supply of services, say annual maintenance contract services, criteria to determine the time of supply shall remain same whereas, -

- Where the due date of payment is ascertainable from the contract, the invoice shall be issued before or the payment is liable to be made by the service receiver, whether or not any payment has been received by the supplier of service;
- Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or after each time when the supplier of service receives the payment, or a period prescribed in this behalf, whichever is earlier;
- Where the payment is linked to the completion of an event, the invoice shall be issued before or after the time of completion of that event subject to period prescribed in this behalf;

'Continuous supply of service' is defined in model GST law which means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations. Further Central/State Government may specify certain services to be deemed as continuous supply of services.

Example: a) Where the due date of monthly payment towards renting of factory building is fixed to be 5th of each month in agreement: The date on which the payment is liable to be made by the service receiver i.e 5th of succeeding month is treated as due date for issue of invoice and Time of supply shall be determined accordingly.

b) Where the due date of payment is not mentioned in renting agreement: For July 2017, the payment received on 15th August 2017. Due date to issue invoice would be 15th August and Time of supply of shall be determined accordingly.

c) When payment linked to completion of each floor of the commercial building in case of construction services, the due date to issue invoice would be the date of completion of first floor and time of supply shall be construed accordingly.

In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when such supply ceases, to the extent of supply effected before such cessation.

In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely-

- The date on which payment is made,
- The date immediately following 60 days from the date of issue of invoice by the supplier.

Where it is not possible to determine time of supply as above, the date of entry in the books of account of the recipient of supply would be the time of supply.

Example: In case of taxable supply of services taxable under reverse charge in hands of A Ltd:

- Date of provision of service 10th July 2017
- Date on which payment made 15th August 2017
- Date of issue of invoice 20th July 2017
- Date of debit in books 25th July 2017

Time of supply of service-earliest of payment and 60 days from invoice - 15th August 2017

In case of supply by associated enterprises, 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 of supply or the date of payment, whichever is earlier.

Date on which payment is made shall be earliest of: 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

If the time of supply of goods / service cannot be determined during the normal course of business then time of supply will be determined as follows:

- a) in a case where a periodical return has to be filed, be the date on which such returns to be filed; or
- b) in any other case, be the date on which the CGST/SGST is paid.

The above stated residual provision is not practical as to determine either of the above criteria one shall first identify the time of supply based on earlier provisions.

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Sec 14 provides for mechanism to arrive time of supply in cases where there is a change in the effective rate of tax in respect of services. These provisions are taken from the existing point of taxation rules.

In simple terms the rate applicable in respect of supply of service would be the rate which is prevalent when two out of the following three events has taken place:

- a. Date of invoice or
- b. Date of provision of service or
- c. Date of receipt of payment.

Example:

Tax rate was 18% till August 2017 and increased to 24% w.e.f September 2017.

Taxable Supply of service provided and invoice issued in July 2017.

Payment received in September 2017.

In the instant case, Old tax rate of 18% applicable as two of three events have taken place when rate was 18%.

Discussion on Revenue Recognition Principle:

Accounting Standard on revenue recognition (AS-9) provides fair idea on when to recognize the revenue in the books of accounts. Though the revenue recognition is more relevant from accounting and income tax aspects, we could relate the same to time of supply.

AS- 9 provides for recognition of revenue on sale of goods when the seller transfers the property (Significant risk and reward) to the buyer. Even under GST, revenue recognition principle would hold good to certain extent. Though there are multiple events prescribed to determine the time of supply of goods, transfer of property in goods is interlinked such events such as removal of goods, raising of invoice, receipt of payment etc.

Similarly, in case of services, AS- 9 provides for recognition of revenue on rendering of services in either of the two methods namely proportionate completion method and completed service method. Even under GST, revenue recognition principle would hold good to certain extent. Though there are multiple events prescribed to determine the time of supply of services, date of completion of service and date of various milestones prescribed under a contract would certainly influence the time of supply.

The understanding of the difference between AS-9 and Time of supply would help the assessee in maintaining reconciliation between books and statutory returns.

Points for representation:

- For determining the time of supply of goods and / or services only the date of receipt of payment (final consideration) would be taken into account and not the date of receipt of advance payment.
- It must be clarified as to whether the input tax credit of tax paid on such advances received by the supplier, is available to the recipient.
- In order to avoid possible litigation, it must be suitably clarified regarding time of supply in case of change in rate of tax w.r.t deemed services like works contract, leases etc.
- The time of supply in cases where service has been provided before change in rate of tax the time of supply is determined on the basis on date of payment or invoice. This contradicts with charging section 9 where levy is on supply. This is diametrically opposite to the law laid down by the Hon'ble Supreme Court in the case of Vazir Sultan Tobacco.

Conclusion

The provisions provided in Section 12 & 13 of the Act to determine the time of supply of goods and services are with the objective of collecting the revenue as early as possible. The practical difficulties in implementing the rules have not thought of. Considering too many events to identify the time of supply not only increases the administrative hurdle

for the assessee but it also creates opportunity for the bureaucrats to harass the assessee for noncompliance.

We value your feedback which may be send to

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Note: Further the readers may kindly refer the book on Goods and Service Tax – A Primer by MadhukarHiregange and K.S.Naveen Kumar published by Walters Kluwer – CCH for better understanding.