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Understanding GST Model Law - Levy

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This is the third in the series of articles to understand the Revised GST Model Law. The purpose is mainly to create awareness and enable one to look at the unintended impact on his/her sector. It would aid in making representations to make this law tax payer friendly, simple and transparent.

The Revised GST Model Law has been put in public domain on 26th November, 2016. This law requires in the opinion of the paper writers amendments to make it workable. However, as compared to earlier version few things have been considered in the revised law.

Background

The levy of tax can be imposed with authority of law (Article 265) presently under various indirect tax laws. Under Central Excise Act, 1944, excise duty is levied by Central Government on production / manufacture of excisable goods removed for domestic consumption in India. Service tax is levied on services provided by one person for another for a consideration. Under VAT Act, Value Added Tax is levied on sale of goods (transfer of goods from one to another for a consideration)

Under proposed GST law, Central/State Goods and Service tax (CGST/SGST) & IGST shall be levied on all intra-state or inter-state supplies of goods and/or services at specified rate and collected in prescribed manner.

For example, when location of supplier Mr.X is Bangalore in State of Karnataka and he supplies goods or services to Mysore in State of Karnataka, then it is intra-state supply of goods and/or services, liable to applicable CGST + SGST. Same person supplying (wider than providing) goods or services to customer in Delhi will be liable to IGST (sum total of CGST + SGST of receiving State).

In this backdrop, the paper writers have examined the scope of levy under the GST regime, comparison with existing laws and recommendations.

Levy and Collection of Central/State Goods and Services Tax

Section 7 of Revised Model GST law sets out CGST / SGST shall be levied on all intra-state supplies of goods and / or services on the value determined under section 15 and at such rates as may be notified by the Central / State Government in this behalf but not exceeding 14 percent on the recommendation of the Council and collected in such manner as may be prescribed. CGST / SGST shall be paid by every taxable person in accordance with the provisions of the Act. Similar provisions are under the Integrated GST (IGST).

Under the GST laws, a taxable person means a person who is registered or required to be registered under Schedule V of the GST Act. Who is taxable person is analysed in the next article in this series.

The Central or the State Government on the recommendation of the Council may specify by notification categories of supply of goods and / or services on which tax is payable on reverse charge basis. The person receiving such goods and/or services shall be liable for paying the tax in relation to such goods and/or services. The importation of services for furtherance of business would be liable to IGST. Imported goods would be liable for Customs Duty along with IGST (equal to the IGST on similar goods).

Paper writer's Comments:

- "Council" means the Goods and Services Tax Council established under Article 279A of the Constitution; Under the GST regime, GST council is vested with enormous powers.
- Central or State Governments on recommendations of Council would make rules, grant exemption from tax, specify the categories of supplies to be liable under reverse charge etc. The recommendations made by this Council will act as benchmark or guidance to Governments.
- The reverse charge mechanism, has been extended to supplies of goods, unlike the existing regime where the reverse charge extends only to services. Some States have a purchase tax when goods procured from unregistered dealers.(URD)
- In the present taxation system, in respect of certain categories of services, both the service provider individual/firm/association as well as service receiver business entity body corporate is made liable for payment of service tax to the extent notified. No levy under joint charge mechanism under the GST regime.

Comparison with present law:

Composition scheme under the present regime:

The Indian business canvas is mainly in the unorganized sector and there is a legacy of decades of cash business which has been nurtured by the tax administration generally for their personal gain. They are not capable of keeping elaborate records and many may not be educated academically but they are entrepreneurs. They have a fundamental right to do business as guaranteed under the Constitution of India (Article 14 - 19) These small/ unorganized/ not so well educated sector are to be encouraged into the mainstream by some simple, fair mechanism administered in the friendly manner.

Secondly the Central and State government tax the same transaction: works contract, software development, hotels...This is not fair however to do business one has to pay taxes whether fair or not. State wants to protect its revenue and Centers its. Both do not wish to make reasonable laws. They provide for deduction of ad hoc amounts which in sum total come to more than 100%. AMC contracts today under the State regime are normally taxable at 75% and under Service tax at 70%-total 145%!!. However for them also a composition scheme is available.

Let us understand which are the schemes in force today:

VAT: Current VAT regime allows for dealers to obtain registration under Composition /Compounding scheme wherein they would be exempted from maintaining books of accounts. The turnover limit and the tax rate (1% to 4%) vary from State to State. Typical businesses covered under the composition scheme in VAT are small retailers, Hotels / Restaurant / Caterers / Bakery, Canteens / Clubs, Works contractors, Stone crushing units.

Features: (existing scheme): Main Restrictions Normally

- Cannot collect tax from customers.
- Cannot claim input tax deduction on purchases.
- Cannot do interstate procurement of goods.

All three conditions were/ are unnecessary and trample on doing business freely. First two conditions find a place in the GST Model law. However, relaxation is provided for interstate procurements.

Central excise and Service tax: There is no separate scheme nomenclated as composition scheme of tax under the present Central excise and Service tax laws. In 2007 a composition scheme was introduced for works contract. The Valuation rules subsumed them and included an option where one who does not wish to maintain accounts can pay based on a %age. For original works it is to pay on 40% and for other on 70%. This is a bit more progressive law. It provides:

Can avail the credit on input services and capital goods

Can collect the service tax from the customer.

Can avail services from anywhere.

Composition levy under Revised Model GST law

A registered taxable person, whose aggregate turnover in a financial year does not exceed Rs. 50 lakhs, may be permitted by the proper officer of Central/State Government on the recommendation of the Council to pay in lieu of the tax payable by him an amount calculated at such prescribed rate, but not less than 2.5% in case of a manufacturer and 1% in any other case, of the turnover in a State during the year. The permission would be given subject to prescribed conditions and restrictions.

Permission to pay composition levy shall not be granted to a taxable person,

- Who is engaged in supply of services
- Who makes any supply of goods which are not leviable to tax under this Act
- Who effects any inter-state outward supplies of goods: *unnecessary restriction. Further, no restriction stated in case of interstate procurement/purchases of goods*
- who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56
- who is a manufacturer of such goods as may be notified on the recommendation of the Council
- Unless all the registered taxable persons, having the same PAN as held by the taxable person, also opt to pay tax under the provisions of this sub-section: *Freedom to do business infringed.*

Other relevant provisions:

- The permission granted to a registered taxable person shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds Rs. 50 lakh.
- A taxable person who pays tax under composition levy shall not collect any tax from the recipient on supplies made by him.
- Also he shall not be entitled to any credit of input tax.
- Further conditions may be imposed!!

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- If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under the composition scheme, such person shall, be liable to tax payable under other
 - provisions of this Act.
- In addition would also be liable to a penalty equivalent to the amount of tax payable and the
 - provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.
- The registered taxable person liable to pay composition levy, is also to pay tax on receipt of goods and / or services on which tax is payable by him on reverse charge basis.
- The input tax credit of composition tax paid is not available.

Paper writer comments:

There is no clarity on following aspects

1. *Whether one time permission/yearly permission is required for registered taxable person to pay composition levy subject to satisfaction of conditions and restrictions prescribed including monetary limits?*
2. *Whether permission of proper officer is required to exit from composition levy scheme?*
3. *Whether composition to be opted by all taxable persons having same PAN within State or all over India?*

Recommendations

The paper writer recommends that a tax payer friendly approach is preferable. Action / amendments in law which are required:

1. Awareness campaign for tax payers, officers and tax preparers be started immediately.
2. Attitude change workshops for all officers especially the State government officers to build in trust on the tax payer and an approach of tax payers being the “ännadatta”.
3. Tax payer is the customer and he needs to be served inculcated.
4. Communication lines be available and manned by polite knowledgeable service providers rather than the officers.
5. Strict interpretation not to be adopted by proper officer. Opportunity to correct unintended breaches could be given as encouragement in the first 2 years.
6. No penalties for bona fide errors at all in first 2 years.
7. GST being indirect tax which is supposed to be collected- only nominal penalties to be imposed not equal to tax.

In composition scheme

1. Allowing normal scheme option at full rate.
2. Allow credit from other composition dealers purchase to avoid cascading.
3. Allow credit to the receiver/ buyer- to ensure composition dealer not disadvantaged and prevent cascading.
4. Further artificial restrictions not put on them.

Conclusion:

In the article the paper writers have examined basic concept of levy and composition levy under GST law. The model law could be referred for further details. The old law under service tax and VAT could provide some deeper understanding.

For further feedback and suggestion to improve the law - kindly mail to madhukar@hiregange.com or roopa@hiregange.com.

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