

**GST update - Key points under the GST bills**

The long awaiting GST bills are now available in the public domain. A summary of the following four bills as tabled before the Lok Sabha is as follows:

The bills can be accessed at <http://www.cbec.gov.in/htdocs-cbec/gst/gst-bills>

- The Central Goods and Services Tax Bill, 2017;
- The Integrated Goods and Services Tax Bill, 2017;
- The Union Territory Goods and Services Tax Bill, 2017; and
- The Goods and Goods and Services Tax (Compensation to States) Bill, 2017.

**SECTION I - CHANGES UNDERTAKEN IN COMPARISON WITH REVISED MODEL GST LAW****1. Procurement of goods and services by SEZ developers or units qualify for upfront exemption**

- The definition of zero-rated supplies as per the revised model GST Law was extended to cover supply of goods/ services to SEZ developer/ unit.
- However, there was ambiguity on whether it would be an upfront exemption or by way of a refund.

We had represented to provide for upfront exemption and not in the form of refund has been considered and the provisions of section 16 of IGST Act are now unambiguously clear that SEZ developers/ units are eligible to procure goods or services without payment of tax. This is a welcome relief for the SEZ units and is a big win for the IT industry, given that significant number of IT companies operate out of SEZs.

**2. Time limit for payment to vendors increased**

- The revised Model GST law contained various restrictions on eligibility of input tax credit including requirement of payment for services within 3 months from the date of issuance of invoice.
- Further, it did not provide for any re-availment upon payment to vendor at subsequent point of time.

The time limit for payment to a supplier of service has now been increased to 6 months and this is a welcome move. Further, the ambit of the said provision has been increased to goods as well, wherein payments to supplier of goods is required to be made within a period of 6 months for the purpose of availing input tax credit.

**3. Scope of supply - (a) extended to cover gifts provided by employer to employee exceeding INR 50,000 in a financial year (b) importation of services without a consideration**

- Serial number 2 of Schedule I already cover supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course of furtherance of business.
- As a further amendment to this clause a proviso has been inserted to provide that gifts exceeding INR 50,000 in value in a financial year by an employer to employee would be treated as supply of goods or services.

This in effect means that where gifts are provided by an employer to an employee and the value of the same in a year exceeds INR 50,000 it would be a deemed supply, taxed, and adds to the burden of already existing concerns over the following scenarios not involving any consideration:

- Intra entity supply/ self-supplies; and
- Import of services from related parties.

## **SECTION II – ISSUES CONTINUE AS IDENTIFIED UNDER REVISED MODEL GST LAW WHICH CONTINUE**

### **1. Ambiguity on taxation of electronic supply of software continues**

- The first version of the model GST Law had categorically excluded “intangibles” from the definition of “goods” and included the same in the definition of “service”. However, this underwent a change in the next version and has been retained in the CGST Bill.
- “Services” as per the CGST Bill therefore no longer contains the inclusion of the word “intangible” and the corresponding exclusion in the definition of “goods” also no longer exists.
- The ask had been to clarify on the nature of supply involving electronic supply of software.

With the removal of intangibles from the definition of “goods” and “services”, ambiguity in treatment of software downloaded electronically qualifying to be goods or services, continues. We will continue our efforts in obtaining a clarification that supply of software electronically would qualify to be “service” to avoid any ambiguity in its taxation. This issue is intended to be brought forth before the GST Working Group for Technology, that has been set up.

### **2. Clarity with respect to place of supply related to IT services**

- There has been no change in the definition of location of recipient of service and supplier of service.  
Further, the rules for domestic services and the specific proxies for place of supply in case of exports/ imports including on intermediary services, performance based services, etc remain the same.
- With no change in the place of supply rules, the ambiguity around slicing and dicing of contracts and invoicing shall continue.

- Further, even the issued being faced under the current laws with respect to intermediary and performance based services would remain.

Therefore, the ongoing debate of contractual recipient *vis-à-vis* actual recipient of service continues. This issue is intended to be brought forth before the GST Working Group for Technology, that has been set up.

### 3. **Valuation for intra entity transactions (self supplies)**

The provisions relating to valuation of goods or services undertaken between related parties (including intra-entity self supplies) are yet to be notified. Adoption of valuation method based on “fair value” method in case of intra-entity supplies which would include non-GST cost elements would lead to enhanced tax costs and in some cases credit accumulation.

We will continue our focus on getting this ask of excluding non-GST costs through before the valuation mechanisms are prescribed.

## **SECTION III - E-COMMERCE SECTOR RELATED ISSUES - Changes undertaken in comparison with revised model GST law**

### 1. **Ambiguity persists in respect of seeking registration for e-commerce operator**

- Schedule V under the revised model GST Law obligated every electronic commerce operator to obtain a registration in each State from where he makes a taxable supply.
- This has been omitted. However, Section 24 of the CGST Bill continues to prescribe the same condition.

e-commerce operators may be obligated to obtain a registration in each State and this would unnecessarily increase compliance and adversely affect ease of doing business policy of the Government. We will seek clarity from the working group.

### 2. **Rate of TCS and annual statement of TCS**

- The enabling provision for mandatory collection of tax at source by e-commerce providers has been the subject matter of debate for a while now.
- It was advocated that it be abolished given that it would result in hardships to online marketplaces and that it would result in unnecessary blockage of working capital for vendors on the marketplace platforms.

While the abolition of TCS has not come through, the reduction in rate of TCS to 1% will lessen the monetary impact on the vendors. However, as an added compliance burden, Section 52(5) now requires that every operator collecting the amount as TCS to furnish an annual statement containing the details of supplies effected through such operator before December 30th following the end of financial year.

### 3. **Term “voucher” defined**

While the earlier version of the Law prescribed specific provisions for time of supply in case of voucher the term “voucher” itself was not defined.

“Voucher” in section 2(111) is defined to mean an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.