

SEMINAR ON GST

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VENUE: ICAI, BKC

SUBJECT: BASIC CONCEPT OF GST, CONCEPT OF
DESTINATION BASE TAX, TAXES SUBSUMED,
IMPORTANT DEFINITION (SUCH AS GOODS,
SERVICE, BUSINESS, TAXABLE PERSON), LEVY
& COMPOSITION

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A. Basic Concept of GST

The incidence of excise duty, Service Tax and VAT is on manufacture, provision of services and transfer of movable property respectively but in case of GST the incidence of tax will be on supply of goods or services.

The definition of GST as per Article 366(12A) of constitution of India is as follows:

“any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption”

Major consequences of this would be as follows:

- a) There is no need to determine whether the process amounts to the process of manufacture. Therefore, all traders who are registered as importer, first stage dealer, second stage dealer or non-registered trader will be required to pay GST.
- b) In many cases if the goods are cleared to depots, excise registration is not taken if the credit is not required to be passed on. Such depots will have to obtain registration as supply of goods will be made from such depot.
- c) There will be no need to bifurcate the value of goods and services when in a transaction both goods and services are supplied like works contract, outdoor catering, tax will be levied on entire value.
- d) Credit on IGST will be available. Presently, there is no credit available for Central Sales Tax which is levied on inter-state sale of goods.

The levy of GST will be operationalise by enacting following Acts:

- A. CGST Act and IGST Act by Central Government.
- B. Each state government will pass SGST Act.(in all 29 Acts)

Thus they will be 31 Acts for levy and collection of taxes.

CGST and SGST will be levied for where location of supplier of goods or services and place of supply is in same state. IGST will be levied when location of supplier and place of supply is in different state. Currently CST is levied when goods moves inter-state in pursuance of contract.

B. Concept of Destination Based Tax

Services constitute heterogeneous spectrum of economic activities. Today services cover wide range of activities such as management, banking, insurance, hospitality, consultancy, communication, administration, entertainment, research and development activities forming part of retailing sector.

Service sector is today occupying the center stage of the Indian economy. It has become an Industry by itself. In the contemporary world, development of service sector has become synonymous with the advancement of the economy.

In late seventies, Government of India initiated an exercise to explore alternative revenue sources due to resource constraints. The primary sources of revenue are direct and indirect taxes.

Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. The word goods have to be understood in contradistinction to the word services. Customs and excise duty constitute two major sources of indirect taxes in India.

Both are consumption specific in the sense that they do not constitute a charge on the business but on the client.

Value Added Tax (VAT) is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.

GST in which Excise Duty, Service Tax and VAT is subsumed is also destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable on supply of goods and/or services provided within the country.

C. Taxes Subsumed

Currently, Central & State Governments levies different type of taxes/duties like Excise duty, Service Tax, Additional duty, Central surcharge, VAT, Entertainment tax, Octroi duty, Luxury tax etc. Following different type of taxes/duties will subsume into GST.

Central Indirect Taxes

Central Excise duty under Central Excise Act, 1994

Additional Excise duty

Excise duty levied under Medicinal and Toilet Preparations (Excise Duty) Act, 1955

Service Tax under Finance Act, 1994

CVD (Additional Customs Duty)

Special Additional Duty of Customs

Central Surcharge

Central Cesses

State Indirect Taxes

State Value Added Tax/Sales Tax

Entertainment tax (other than tax levied by local bodies)

Central Sales Tax (levied by Centre and collected by State)

Octroi duty

Entry Tax

Purchase tax. State Surcharges, State Cesses

Luxury Tax

Lottery tax, Betting and Gambling tax

Power to impose such taxes

Schedule VII of Constitution of India consists of 3 list. Central and State Governments are empowered to make laws for imposition of duty or taxes in respect of subject enumerated in List I and List II respectively. List III is concurrent list where both Central and State Governments can make rule. Following table indicate the power of Central and State Governments to levy major tax/duty.

Sr. No.	Nature of tax	Levied by	Levied on	List No.	Entry No.
1	Excise duty	Central Government	Manufacture	I	84
2	Service tax	Central Government	Rendering of service	I	97
3	Sales tax	State Governments	Sale of goods	II	52

The powers are provided in Schedule VII for levy of other taxes also. The Central Government do not have power to levy tax on sale of goods and the State Governments do not have power to levy excise duty on manufacture of goods except goods containing alcohol.

In order to provide powers to both Central and State Governments, amendment in the constitution is essential. Therefore, Constitution amendment bill has been proposed in the parliament. After the amendment in the constitution as proposed is passed, both the Central and State Governments will have power to levy tax on manufacture, sale and on rendering of service.

D. Definition under GST Act

(i) Consideration – Consideration is defined in section 2(28) as follows:

(28) “**consideration**” in relation to the supply of goods and/or services to any person, includes -

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person;
- (b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

(ii) Aggregate Turnover – Aggregate Turnover is defined in section 2(6) is as follows:

(6) “**aggregate turnover**” means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation.- Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.

(iii) Goods – Goods is defined in section 2(48) is as follows.

(48) “**goods**” means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

Explanation.– For the purpose of this clause, the term ‘moveable property’ shall not include any intangible property.

(iv) Services – Services is defined in section 2(88) is as follows:

(88) “**services**” means anything other than goods;

Explanation.– Services include intangible property and actionable claim but does not include money.

(iv) Business – Business is defined in section 2(17) as follows:

(17) “**business**” includes –

- (a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any transaction in connection with or incidental or ancillary to (a) above;
- (c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
- (f) admission, for a consideration, of persons to any premises; and
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(v) Agriculture – Agriculture is defined in section 2(7) as follows.

(7) “**agriculture**” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

Explanation.— For the purpose of this clause, the expression ‘forest’ means the forest to which the Indian Forest Act, 1927 applies.

(vi) Export of Service - Export of Service is defined in section 2(44) as follows:

(44) the supply of any service shall be treated as “**export of service**” when

(a) the supplier of service is located in India,

(b) the recipient of service is located outside India,

(c) the place of supply of service is outside India,

(d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and

(e) the supplier of service and recipient of service are not merely establishments of a distinct person;

(vi) **Import of Service** - Import of Service is defined in section 2(52) as follows:

(52) the supply of any service shall be treated as an “**import of service**” if,

(a) the supplier of service is located outside India,

(b) the recipient of service is located in India,

(c) the place of supply of service is in India, and

(d) the supplier of service and the recipient of service are not merely establishments of a distinct person;

Explanation 1.- An establishment of a person in India and any of his other establishment outside India shall be treated as establishments of distinct persons.

Explanation 2.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

E. Levy and collection of tax

(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

(3) Notwithstanding anything contained in sub-section (2), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person

F. Taxable Person

Section 9 of Model GST Law defines 'taxable person' as follows.

(1) Taxable Person means a person who carries on any business at any place in India /State of _____ and who is registered or required to be registered under Schedule III of this Act:

Provided that an agriculturist shall not be considered as a taxable person.

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds [Rs ten lakh]

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds [Rs five lakh]

This threshold of 5 lacs will apply only if a taxable person conducts his business in any of the NE States including Sikkim.]

(2) The Central Government, a State Government or any local

(3) The following persons shall not be considered as taxable persons for the purposes of this Act –

(a) 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;

(b) any person engaged in the business of exclusively supplying goods and/or services that are not liable to tax under this Act;

(c) any person, liable to pay tax under sub-section (3) of section 7, receiving services of value not exceeding _____ rupees in a year for personal use, other than for use in the course or furtherance of his business.

G. Composition Scheme

(1) Notwithstanding anything to the contrary contained in the Act but subject to subsection (3) of section 7, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in a financial year does not exceed [fifty lakh of rupees], to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than one percent of the turnover during the year:

Provided that no such permission shall be granted to a taxable person who effects any inter-State supplies of goods and/or services.

Provided further that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

(2) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(3) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty equivalent to the amount of tax payable as aforesaid; Provided that no penalty shall be imposed without giving a notice to show cause and without affording a reasonable opportunity of being heard to the person proceeded against.

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PRESENTED BY

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