



An Insight on GST Bills as passed by Parliament

CONTENTS

PREFACE	5
NITYA COMMENTS	6
KEY DEFINITIONS.....	8
LEVY	9
Territorial jurisdiction of GST	10
Taxable Event	10
Levy and collection of GST	13
Composition levy	16
Exemption from levy of GST	16
PLACE AND TIME OF SUPPLY	18
Place of supply of goods and services.....	18
Time of supply.....	22
VALUATION.....	24
Value of taxable service	24
Valuation rules	25
SPECIAL TRANSACTIONS.....	26
Job work.....	26
E-commerce	26
INPUT TAX CREDIT	28
Input tax credit.....	28
Transfer of input tax credit on account of sale, merger etc.....	30
Input Service Distributor	30
REFUND.....	32
Refund.....	32
COMPLIANCES	34
Registration	34
Invoices, credit and debit notes.....	35
Returns.....	35
Payment of tax	36
Tax deducted at source	36
Accounts and Records.....	37

ASSESSMENT, AUDIT, DEMAND AND RECOVERY	38
Assessment and audit	38
Demand and recovery	38
Recovery of tax	39
Liability in specified cases.....	40
INTEREST, PENALTY AND PROSECUTION	42
Interest	42
Offences and Penalties	42
Prosecution.....	43
APPEALS, ADVANCE RULING AND SETTLEMENT OF CASES.....	44
Appeals	44
Authority of Advance Ruling.....	45
TRANSITIONAL PROVISIONS	46
Migration of Existing taxpayers	46
Input tax credit.....	46
MISCELLANEOUS PROVISIONS.....	49
Anti-Profiteering	49
Deemed exports:	49
Common portal:	49
UNION TERRITORY GST	50
CORRESPONDING AMENDMENTS IN TAXATION LAWS.....	51

PREFACE

Dear Reader,

Till now, draft model laws on GST (which underwent revision once) was in public domain and served useful guide to industry to plan migration to the Goods & Services Tax (GST) regime.

On March 29, 2017, the process of GST implementation in India witnessed a major turning point with the passage of four key legislations by the Lower House of the Parliament, namely the central tax, union territory tax, integrated tax and compensation cess bills. The Upper House of the Parliament gave its nod to these legislations on April 6, 2017.

Besides this, draft rules on valuation, credit, transition and composition levy were released on April 1, 2017 along-with revised version of compliance related rules (namely payment of tax, registration, payment of tax, invoicing and refund rules) which were released in September 2016.

Moreover, the Parliament has approved the amendments in other related legislations such as Customs and Central Excise laws and Tariff Acts.

With these developments, the Government has made a major head-way on completing legislative framework of the GST laws.

The GST Bills and draft rules contains detailed provisions with respect to levy, taxable event, input tax credit, valuation, payment mechanism, refund etc. These regulations lay down a roadmap on the structure of GST regime in India.

This booklet contains an insight on these regulations. It is important for businesses to analyse and reflect upon the provisions of GST Bills and draft rules and understand the ramifications on their business.

Trust you will find it an interesting read.

We would be happy to have your thoughts / comments on the booklet at info@nityatax.com



NITYA COMMENTS

Positives

- Fairly **detailed Rules to determine time and place of supply**. Rules for determining place of supply aligned with the present Place of Supply Rules in Service Tax law
- Parting with **MRP based taxation** is a welcome step
- **Widening of input tax credit** availability to taxpayers
- Refund of input tax credit balance in case of **inverted tax structure** is favorable
- Continuation of output stage rebate for export goods and reinstatement of **output stage rebate for export services** will promote exports
- Treating **supplies to SEZ developers and SEZ units at par with exports** allows SEZ scheme to retain its sanctity
- Simplification of valuation mechanism of **related party** and **intra-entity supplies**
- Clear guidelines on transitional provisions for migrating to GST regime
- Setting up of 1 bench of Tribunal in each State, will **expedite the disposal of litigations**
- Setting up of 1 bench of Authority of Advance Ruling in each State, introduction of appellate authority and widening of scope to cover current transactions, will **facilitate alternate dispute resolution process** in a big way

Negatives

- **Wide definition of supply** including barter, exchange, import of services without consideration and for non-business purposes, use of assets and services for non-business / personal purposes to pose disputes
- **Inclusion of non-monetary considerations** (like free of cost supplies) in the assessable value of goods will make determination of value complex and contentious
- **Inclusion of subsidies linked to price (excluding subsidies provided by Central / State Government)** in the assessable value likely to have wide ramifications
- Meagre threshold for small taxpayers likely to **significantly increase tax as well as compliance burden** of such businesses
- Exclusion of certain goods and services from the purview of input tax credit, will create **cascading effect** for taxpayers

- Requirement of payment of tax by supplier as a **pre-condition of claiming input tax credit**, likely to increase compliance burden of taxpayers
- Grand-fathering of area based **excise duty exemptions and VAT concessions absent**
- **Multiplicity of assessments, scrutiny and audits** will make taxpayers vulnerable to tax authorities
- **Larger period of limitation** for issuing show cause notices will keep assessments of taxpayers always open to be questioned or disputed by tax department
- **Requirement of deducting tax (TDS as well as TCS)** along with payment of tax on reverse charge basis on purchases from unregistered dealers will significantly add to the compliance burden of the taxpayers
- Higher amount of **mandatory pre-deposit for filing SGST appeals** will lead to financial strain of taxpayers
- Wide enabling provisions to levy **compensation cess** on goods and services will lead to uncertainty around rate of applicable tax rates
- Unclear **anti-profiteering** provisions prone to misuse by the enforcement agencies
- Lack of enabling provision in the Bills to notify specific sectors eligible for **centralized registration**, disappointing to the industry

Overall comments:

GST Bills as passed by Parliament have significantly improved as compared to earlier drafts which fortifies the Government's intent to move implement GST in a collaborative and 'business friendly' manner. At the same point of time, the Bills still suffer from timid approach as input tax credit is restricted on certain goods and services and overarching powers have been given to the authorities for administering the law. Besides this, stricter penal and prosecution provisions are uncalled for.

KEY DEFINITIONS

- **Business** is given a wide inclusive definition to include:
 - Any trade, commerce, manufacture, profession, vocation etc. whether or not for pecuniary benefit including connected or incidental transactions irrespective of frequency, volume, continuity & regularity of transactions
 - Supply or acquisition of goods and services in connection with commencement or closure of business
 - Provision by a club, association etc. to its members
 - Admission to any premises
 - Provision of service by person as holder of office, accepted by him in course of trade, profession or vocation
 - Services provided by a race club by way of totalisator
 - Any activity undertaken by government in which they are engaged as public authorities
- **Capital goods** means goods whose value is capitalized in the books of accounts and which are used or intended to be used in the course or furtherance of business
- **Consideration** includes monetary and non-monetary consideration and receipt of goods or services or payment by any other person. Consideration excludes deposit that is not treated by supplier as consideration for supply
- **Goods** means every kind of movable property
 - The definition specifically includes:
 - Actionable claims
 - Growing crops
 - Grass and things attached to earth and agreed to be severed before supply
 - The definition specifically excludes money and securities

The Bills do not provide for any specific exclusion towards electricity from the definition of goods / supply. Thus, nil rate will need to be specified for electricity in the rates schedule or specific exemption notification will be needed to exclude electricity from the ambit of GST

- **Services** means anything other than goods, money and securities but includes activities relating to use of money or its conversion for consideration

- **Works contract** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property involving transfer of property in goods

Works contract covers specific activities undertaken on immovable property. This is a significant departure from the definition of works contract in VAT and service tax laws.

Taxation of works on moveable property (eg annual maintenance contracts) likely to continue to be an area of complexity under GST regime

LEVY

Territorial jurisdiction of GST

- Central tax and Integrated tax to apply to **whole of India except the State of Jammu and Kashmir**
- Union territory tax (in the form of 'UGST') to apply in specified territories
- GST Compensation Bill to apply in **whole of India, including the State of Jammu and Kashmir**

The CGST and IGST Bills are currently not applicable in the State of Jammu and Kashmir ('J&K') though the Compensation Bill extends to whole of India. For GST to apply to J&K, CGST and IGST laws need to be adopted or special legislations need to be passed by J&K state legislature. Till that time, the applicability of GST and credit availability on transactions with J&K is unclear

- India** defined to include territorial waters, seabed and subsoil underlying such waters, continental shelf, Exclusive Economic Zone (EEZ) and air space above territory and territorial waters
- Integrated tax** is applicable on inter-state supplies and supplies beyond territorial waters but within continental shelf and EEZ

Subject to the nature of supply, States authorized to levy GST on supplies in the territorial waters. Thus, the present controversy on the jurisdiction of States to levy sales tax on supplies in the territorial waters will not continue in GST regime

Taxable Event

- Supply** shall be the taxable event. 'Supply' defined to include:
 - Supply of goods or services for a consideration in the course or furtherance of business (such as sale, transfer, barter, exchange, license, rental, lease or disposal)
 - Import of service for consideration whether in the course or furtherance of business or not
 - Following supplies without consideration:
 - Permanent transfer / disposal of business assets (where input tax credit has been availed)
 - Supply of goods or services between related persons
 - Supply of goods or services to distinct persons

- Import of services from related parties or overseas establishment of taxpayer
- Supply of goods by principal to agent (for onward supply on behalf of principal) or vice versa (for procurement on behalf of principal)

Employer and employee qualify as related persons. Thus, supplies made by an employer to employee without consideration (except gifts made by an employer to employee up to Rs.50,000/- in a financial year) are taxable

- Following activities will neither constitute supply of goods nor service:
 - Services by an employee to the employer in the course of employment
 - Services by any Court or Tribunal
 - Functions performed by members of Parliament, State legislature, Municipalities, Panchayats and other local authorities
 - Duties performed by a person holding any post under Constitution
 - Duties performed by any person as chairperson, director or member in body established by Government or local authority and not deemed to be employee
 - Services of funeral, burial, crematorium including transportation of deceased
 - Sale of land and building (excluding construction of complex, building etc. intended for sale to buyer where whole or part consideration is received before the issuance of completion certificate or its first occupation)
 - Actionable claims, other than lottery, betting and gambling
 - Notified activities undertaken by Government or Local authority in which it is engaged as public authority and notified by Central Government
- Schedule II deems certain activities as either goods or services:

Goods	Services
Sale of goods (including sale of goods at future date)	Transfer of goods (without effective control and possession) Transfer of undivided share in goods
Supply of goods by unincorporated association or body of persons to its member	Lease, tenancy, letting out, easement, license to occupy land Lease or letting out building (commercial, industrial or residential) either wholly or partly for business or commerce
Transfer or disposal of business assets (with or without consideration) by person carrying on business or its authorised person or	Personal use of business assets by person carrying on the business or any other person for non-business purpose (with or without consideration)

any other person to recover his debt	
	Treatment or process applied to goods of another person
	Renting of immovable property
	Construction of complex, building, civil structure or part thereof or addition, alteration, replacement or remodelling of existing civil structure
	Construction of complex or building intended for sale to buyer, wholly or partly where part of consideration received before issuance of completion certificate by competent authority (where required) or its first occupation whichever is earlier
	Transfer or permitting use or enjoyment of intellectual property right
	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software
	Agreeing to obligation to: <ul style="list-style-type: none"> – refrain from an act – tolerate an act or a situation – do an act
	Transfer of right to use goods (with effective control and possession)
	Supply of food or any other article of human consumption or any drink (other than alcoholic liquor for human consumption) as part of any service or in any other manner
	Transfer of right to use goods (with effective control and possession)

- Schedule II deems also deems following activities as **composite supplies**:
 - Works contract including transfer of property in goods therein
 - Supply of food or any other article of human consumption or any drink (other than alcoholic liquor for human consumption) as part of any service or in any other manner

The fundamental terms like supply and business have not been defined but given an inclusive definition. Barter and free of cost supplies specifically included in the definition of supply may invite disputes

- Concept of **composite supply** and **mixed supply** introduced to levy tax on transactions consisting of two or more supplies.
- **Composite supplies** means two or more supplies of two or more goods / services which are naturally bundled one of which is a principal supply. Composite supplies to be taxed as per rates and principles applicable to **principal supply**
- **Principal supply** means supply which constitutes predominant element of composite supply and to which other supply forming part of composite supply is ancillary
- **Mixed supply** means two or more individual supplies of goods / services made in conjunction with each other for a single price where such supply does not constitute a composite supply. Mixed supply to be taxed basis the component of supply which attracts highest rate of tax

Given the thin line of distinction between definition of mixed and composite supplies, categorization of transactions with multiple supplies under a single contract will continue to pose a challenge and disputes under GST regime

Levy and collection of GST

- **Inter-state supply** mean where the location of supplier and place of supply are in:
 - Two different States
 - Two different Union Territories
 - A State and a Union Territory
 - Supplier is in taxable territory and place of supply is outside India
- Following **supplies** are specifically excluded from the ambit of **intra-state supply**:
 - Supply of goods to or by SEZ developer or unit
 - Goods imported into the territory of India till they cross customs frontiers

- Supplies made to foreign tourist
- **Inter-state supplies** to include the following:
 - Where the location of supplier and place of supply are in:
 - Two different States
 - Two different Union Territories
 - A State and a Union Territory
 - Where supplier is located in India and place of supply is outside India
 - Supplies made to or by SEZ developer or unit
 - Supplies in taxable territory not being intra-state supply
 - Goods imported into India till they cross customs frontiers

The levy of IGST on imports is specified under IGST law as well as customs. This leads to anomaly of triggering taxable event of levy of IGST twice on imports, once under IGST law and second under Customs law. The law makers will need to notify exemption under one of the laws

Further, the concept of high seas sale is likely to lose significance. High seas sale will be liable GST unless specifically exempted. The characterization of high sea sales as inter-state or intra-state supplies and applicability of tax as single or multiple supplies is unclear

- While **Central tax** and **State tax** will be levied on all intra-state supplies, **Central tax** and **Union territory tax** will be levied on all intra union territory supplies. **Integrated tax** will be levied on all inter-state supplies of goods and services
- Taxable person will be liable to pay above taxes
- Rate of tax capped at **20 percent under Central Tax, State Tax** and **Union territory tax** and **40 percent under Integrated tax**
- **Alcoholic liquor for human consumption** specifically excluded from ambit of GST
- Following items will be eligible to GST from notified date:
 - Petroleum crude
 - High speed diesel
 - Motor spirit
 - Natural gas
 - Aviation turbine fuel

- **Agriculturist not liable to be registered** to the extent of supply of produce out of cultivation of land. Agriculturist defined as individual or hindu undivided family ('HUF') undertaking cultivation of land in any of the following manner:
 - By own labour
 - By labour of family
 - By servants on wages or by hired labour under personal supervision of agriculturist or any family member

Mere exemption from registration would not exempt agriculturist from levy of GST (it will be liable to reverse charge taxation unless specifically exempted). Also, given the restrictive definition of agriculturist, persons other than individuals and HUFs, e.g. cooperative societies, corporates etc. undertaking agricultural activities will be subject to GST

- **Compensation Cess** to be levied on following goods at specified rates:
 - Pan masala
 - Tobacco and manufactured tobacco substitutes including tobacco products
 - Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether agglomerated or not, excluding jet, peat (including peat litter), whether agglomerated or not
 - Aerated waters
 - Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for transport of ten or more persons including the driver), including station wagons and racing cars
 - Any other supplies

While currently only specific goods are subject to Cess, the charging provision enables levy of Cess on services as well. Further, more goods can be brought within the purview of Cess

- Compensation Cess not to apply on supplies by dealers opting for composition scheme
- Following supplies to be chargeable under GST on **reverse charge** basis:
 - Supply of notified goods and services
 - Supplies made by an unregistered person to a registered person

Taxability of supplies from an unregistered person to a registered person on reverse charge basis is regressive. The provision is applicable in respect of all goods and services without restriction. This has wide ramifications on purchases made by organized businesses from small vendors

Composition levy

- **Composition** levy provides option to small taxpayers to pay GST at concessional rate subject to the fulfilment of specified conditions. Scheme **not available** to following taxpayers:
 - Person making inter-state supplies
 - Person engaged in supply of services other than supply of food, drink, or any other article for human consumption as a part of supply of service (excluding alcoholic liquor)
 - Person engaged in non-taxable supplies
 - Person engaged in making supplies through e-commerce operators
 - Manufacturer of notified goods
- Scheme available to **registered** taxable person whose **aggregate turnover does not exceed ₹ 50 Lakhs** in the preceding financial year. Central Government empowered to increase the limit of turnover to **₹ 1 Crore** based on the recommendations of GST Council
- Aggregate turnover to include all supplies of goods and services (taxable, non-taxable, exempt and export) in India
- Following rates of composition levy stipulated for different categories of suppliers:

Name of Supplier	Available Rate
Manufacturer of goods other than notified goods	1 percent of turnover
Where the supplier is engaged in supply of food, drink, or any other article for human consumption as a part of supply of service (excluding alcoholic liquor)	2.5 percent of turnover
Other suppliers, not being supplier of service	0.5 percent of turnover

[Note: The above rates are applicable for CGST law. The effective rates would double as similar provision will be inserted in SGST laws]

- Taxpayer opting for scheme has to **opt for all of its registered units** across India
- Taxpayer opting for scheme, **not allowed** to:
 - Collect any tax from recipient; and
 - Claim input tax credit on purchase of goods and services

Exemption from levy of GST

- The Central Government **empowered to grant exemption** to any goods or service from whole or part of GST based on recommendations of GST Council. The exemption can be absolute or conditional

- It is **mandatory for taxpayer to claim exemption** which is absolute

The mandatory recommendation of GST Council for grant of exemption, will ensure consistency in rates of tax on goods and services across India

PLACE AND TIME OF SUPPLY

Place of supply of goods and services

- IGST Bill categories place of supply of services into two parts
 - Where service provider and service receiver are located inside India
 - Where service provider and service receiver are located outside India
- In general, place of supply of 'goods' is location where goods are **delivered** and for 'services', **location of recipient**
- Separate provisions** to determine place of supply for goods and services

Rules

- Place of supply of goods (other than import and export):**

Situation	Place of supply
Supply involving movement of goods	Location where movement of goods terminates for delivery to recipient
Supply where goods delivered to recipient on direction of third person (<i>like bill-to ship-to arrangements</i>)	Principal place of business of third person
Supply not involving movement of goods	Location of goods at the time of delivery
Goods assembled or installed at site	Place of installation or assembly
Goods supplied on board a conveyance (vessel, aircraft, train or motor vehicle)	Location where goods taken on board
In other cases	Prescribed location

- Place of supply of goods (import and export):**

Situation	Place of supply
Import of goods	Location of importer
Export of goods	Location outside India

- **Place of supply of services:**

Situation	Location of Supplier and Recipient is in India		Location of Supplier or Recipient is outside India	
	Registered Service Recipient	Unregistered Service Recipient		
General Rule	Location of service recipient	Location of service recipient on records of supplier. Else, location of supplier	Location of service recipient	Location of supplier if location of service recipient is not available in course of business
Training and performance appraisal	Location of service recipient	Location where services are performed	No specific rule	
Organization of event, conference etc. and ancillary services	Location of service recipient	Location where event is held (if in multiple States or UT, then each such State or UT) If event held outside India, location of service recipient	Location where event is held	Location in taxable territory (if held in more than one location including in taxable territory)
Transportation of goods	*including mail or courier		*other than by mail or courier	
	Location of service recipient	Location where goods are handed over for transportation	Destination of such goods	
Transportation of passengers	Location of service recipient	Location where the passenger embarks on conveyance for continuous journey	Location where the passenger embarks on conveyance for continuous journey	

Situation	Location of Supplier and Recipient is in India		Location of Supplier or Recipient is outside India
	Registered Service Recipient	Unregistered Service Recipient	
Insurance	Location of service recipient	Location of recipient as per records of supplier	No specific rule
Services in relation to immovable property, house boat, vessel including grant of rights to use such property, accommodation etc. and ancillary services	Location of immovable property or boat or vessel		Location of immovable property or boat or vessel Location in taxable territory (if held in more than one location including in taxable territory)
Restaurant / catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location where services are performed		Location where services are actually performed
Admission to event, amusement park etc. and ancillary services	Location of event or park		No specific rule
Services provided on board a conveyance	Location of first scheduled point of departure of conveyance		Location of first scheduled point of departure of conveyance
Telecommunication services <ul style="list-style-type: none"> - Fixed telecommunication line, leased / internet leased circuits, cable or dish antenna - Mobile connection on post-paid basis 	Location where line, circuit or antenna is installed Location of billing address of recipient on records of supplier		No specific rule

Situation	Location of Supplier and Recipient is in India		Location of Supplier or Recipient is outside India
	Registered Service Recipient	Unregistered Service Recipient	
<ul style="list-style-type: none"> - Mobile connection towards telecommunication, internet and DTH services on pre-paid or voucher basis, • by Company to any distributor, selling agent etc. • by any distributor, selling agent etc. to final subscriber 	<p>Location of distributor, selling agent etc. as per records of supplier</p> <p>Location where pre-payment is received or vouchers are sold</p>		
- electronic payment	Location of recipient on records of supplier		
Banking and other financial services including stock broking services	Location of recipient on records of supplier or location of supplier of service where receiver's location not available on records	<ul style="list-style-type: none"> - To account holder: Location of supplier of service - To non-account holder: As per general rule 	
Advertisement services to government, statutory body or local authority meant for identifiable States	Location of each State for which services are received	No specific rule	
Services in respect of goods which are required to be made available by the recipient of services or physical presence of recipient is required	No specific rule	Location where services are performed	
Intermediary services	No specific rule	Location of supplier of service	

Situation	Location of Supplier and Recipient is in India		Location of Supplier or Recipient is outside India
	Registered Service Recipient	Unregistered Service Recipient	
Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels up to a period of one month	No specific rule		Location of supplier of service
Online information and database access or retrieval services ('OIDAR Service')	No specific rule		<p>Location of recipient of service</p> <p><i>Service recipient considered to be in India if its billing address, IP address, fixed land line through which service is received etc. is in India</i></p> <p><i>Foreign supplier / intermediary of OIDAR service liable to pay GST on supply of services where such services rendered to non-taxable recipient</i></p> <p><i>Supplier to seek single registration under the Simplified Registration Scheme to be notified by the Government</i></p>

Time of supply

- **Liability to pay GST** to arise at the time of supply

Time of supply in case of goods

- Time of supply for **goods** to be earliest of the following dates:
 - Date of issuance of invoice
 - Last date of issuance of invoice (where invoice not issued in time)
 - Date of receipt of consideration

- Time of supply of **goods** taxable on **reverse charge basis** to be earliest of the following:
 - Date of receipt of goods
 - 30 days from date of invoice for supply of goods
 - Date of payment of consideration

With the inclusion of date of payment of consideration as point of taxation, receipt of advance towards supply of goods will trigger liability to pay GST. This is a significant departure from the current Excise and VAT laws and will pose compliance burden for the taxpayers

Time of supply in case of service

- Time of supply for services (similar to the POT Rules) to be earliest of the following dates:
 - Date of issuance of invoice
 - Date of provision of service (where invoice not issued in time)
 - Date of receipt of consideration
- In **reverse charge** cases, time of supply to be earliest of the following dates:
 - Date of payment of consideration
 - 60 days from date of invoice for supply of services
- In case of import of service from **foreign associated enterprises**, time of supply to be earliest of the following dates:
 - Date of entry in books of service receiver
 - Date of payment of consideration
- Time of supply of goods in case of supply of **vouchers** shall be:
 - Date of issuance of voucher (if supply is identifiable)
 - Date of redemption of voucher (in other cases)

Others

- If time of supply is **not determinable**, then time of supply shall be:
 - Due date of filing of return where periodical return needs to be filed
 - In other cases, date on which tax is paid
- Time of supply of additional consideration (relatable to supply) by way of interest, late fee or penalty in cases of delayed payment to be the date of receipt of additional consideration

VALUATION

Value of taxable service

- **Assessable value** to be the transaction value if:
 - Supplier and recipient are not related
 - Price is the sole consideration
- **Transaction value** is price paid or payable and **include** following amounts:
 - Amount liable to be paid by supplier in relation to supply but incurred by recipient and not included in the price
 - Incidental expenses charged by supplier for activities done by supplier before delivery of goods or supply of services
 - Taxes, duties, fees and charges levied under other laws, except Central tax, State tax, Union territory tax and Compensation Cess
 - Subsidies linked to price excluding subsidies received from government
 - Interest, late fee and penalty for delayed payment of consideration

Inclusion of free of cost or concessional rate supplies made by recipient, likely to pose valuation issues. Correction may be expected in the final rules

- **Related Persons** mean following persons:
 - Such persons are officers or directors of one another's businesses
 - Such persons are legally recognised as partners in business
 - Such persons are employer and employee
 - Any other person directly or indirectly owns, controls or holds 25 percent or more of outstanding voting stock or shares of both
 - One of them directly or indirectly controls the other
 - Both are directly or indirectly controlled by third person
 - Together they directly or indirectly control a third person
 - They are members of same family
 - Where one is sole distributor, sole agent or sole concessionaire of the other
- **Deduction of discount** from transaction value to be allowed in following cases:
 - Discount before or at the time of supply allowed where discount is recorded on invoice
 - Discount after supply is allowed subject to the following conditions:
 - Where discount is established in terms of the agreement entered into before or at the time of supply and specifically linked to relevant invoices
 - Input tax credit attributable to discount has been reversed by the recipient

Valuation rules

- Where **consideration not wholly in money**, assessable value will be determined in the following manner (in sequential order):
 - Open-market value** of such supply [Open market value means full value in money excluding GST (and compensation cess payable for a supply at the same time to an unrelated person where price is the sole consideration)]
 - Sum-total of consideration in money and money equivalent of non-monetary consideration if such amount can be ascertained at the time of supply
 - Value of goods or services of **like kind and quality**
 - One hundred and ten percent** of cost of production, manufacture, acquisition of such goods or provision of service
 - Value determined by **other reasonable method** consistent with CGST Act and the Valuation rules

No mechanism prescribed for determining the cost of provision of service. Hence determination of cost of provision of service will invite difficulties and disputes

- In case of **supply between two related or distinct persons, other than through an agent**, value of supply will be invoice value where recipient is eligible to full input tax credit. In other cases, value shall be determined in the prescribed manner
- In case of **supply between principal and agent**, assessable value will be determined in any of the following manner:
 - Open market value of goods supplied
 - 90 percent of price charged for supply of goods of like kind and quality by agent to its customer. This method will be available at the option of supplier subject to satisfaction of following conditions:
 - The customer is not related to agent
 - The goods are intended for further supply by agent

SPECIAL TRANSACTIONS

Job work

- The taxpayer **allowed to take ITC** on inputs and capital goods sent to job worker (either from its premises or directly from supplier's premises)
- The principal can **send inputs and intermediate goods or capital goods** to job worker for a period of 1 year and 3 years respectively under intimation to department. There is no time limit for sending tools, dies, moulds, jigs and fixtures to job worker
- In case where inputs or capital goods are **not received** within prescribed period, it shall be deemed that such goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out
- The goods can also be cleared from job worker's premises domestically (on payment of tax) or exported, subject to following conditions:
 - The job worker is registered under GST
 - The job worker's premises is added as additional place of business
 - Permission is taken from jurisdictional Commissioner

The provision allowing removal of goods to job worker without payment of GST seems to be of limited relevance as sending goods to job worker without consideration does not qualify as supply at first place

E-commerce

- Specific provisions provided to tax electronic commerce ('e-commerce')
- '**E-commerce operator**' ('Operator') defined to include person who owns, operates or manages an electronic platform through which goods or services are supplied by seller to buyer
- Operator required to remit GST in respect of notified services
- Operator required to appoint a representative where it does not have physical presence
- In case of services other than those notified (as above), Operator **liable to collect tax at source** ('TCS') at notified rate (not exceeding 1 percent of value of taxable supplies) on amount remitted to supplier
- Operator required to deposit TCS with government by **10th day of succeeding month**
- **TCS** can be adjusted by supplier against its output GST liability

- Operator to furnish information asked by tax officers within **15 days** from date of service of notice

There is lack of clarity whether GST will apply on the services of Operator for notified services on which such operator is liable to pay GST as deemed supplier. Further, it is also not clear that if GST is applicable, whether the Operator will be entitled to avail input tax credit of GST so paid against GST payable by them on such notified services

INPUT TAX CREDIT

Input tax credit

- A registered taxable person can claim credit of input tax which will be credited to **electronic credit ledger** of such person
- '**Input tax**' includes tax paid on reverse charge basis and defined to mean:
 - Integrated tax, Union territory tax, Central tax and State tax charged on supply of goods and services; but does not include compensation cess
 - Used or intended to be used in the course or furtherance of business
- ITC available on fulfilment of following **conditions**:
 - Availability of tax invoice (including invoice issued by recipient for payment of GST under reverse charge), debit note, supplementary invoice, ISD invoice or bill of entry
 - Receipt of goods and services by the recipient
 - Supplier has paid tax to the appropriate government
 - Recipient has filed its return
 - For goods received in lots, ITC available upon receipt of last lot or instalment
- Credit to be reversed and interest needs to be paid if recipient fails to pay value of goods and services within 180 days from date of issue of invoice. In case of subsequent payment, re-credit is allowed

Reversal of credit in case of non-payment of value of goods is neither present in the current regime nor found mention in Model GST laws. Further, reversal of credit with interest in case of payment being made after 180 days will be unfair where non-payment is for genuine reasons

- ITC to be claimed before September 30 following the end of Financial Year or **filing of relevant annual return**, whichever is earlier
- Input Tax Credit ('ITC') **not available** on:
 - Motor vehicles (except when supplied in course of business or used for transportation of goods or services or imparting training on motor driving skills)
 - Goods and services provided in relation to food, outdoor catering, beauty treatment, health services etc. except when used for making outward supply of same category
 - Rent-a-cab, life insurance and health insurance, except where it is a statutory requirement or when used for making outward supply of same category
 - Goods and services used in the execution of works contract resulting in construction of immovable property (except plant and machinery) except when for further supply of works contract service

- Goods and services used for construction of immovable property (except plant and machinery) on own account even if used in course of or furtherance of business
- Goods and services on which composition levy paid by supplier
- Goods and services used for personal consumption
- Supplies received by non-resident taxable person except on the goods imported by it
- Tax paid on account of fraud, suppression, etc.
- Gifts, free samples, goods lost, stolen, destroyed or written off
- Plant and machinery defined to include apparatus, equipment and machinery fixed to earth used for making outward supply
- 'Telecommunication towers' and 'pipelines laid outside the factory premises' excluded from plant and machinery

Credit on telecommunication towers was a big relief granted under Model GST law to telecommunication industry, which has now been taken away. Further, disallowance of credit on pipelines laid outside the factory is arbitrary and will lead to cascading effect of taxes

- Where goods and services used for both business and **non-business purposes** or **taxable and non-taxable supplies (including exempt supplies)**, ITC attributable to taxable supplies available. 5% of common credit to be deemed as credit for non-business purposes
- **Mandatory reversal of 5 percent common credit for non-business purpose likely to raise disputes around categorization of input and input services as common input and input services**
- Credit reversal on common inputs and input services attributable to exempt supplies to be done as per following formula:
 - Compute total input credit
 - Deduct credit exclusively attributable to taxable, non-taxable, exempt and zero rated supplies from total input credit to compute common credit
 - Common credit attributable to exempt supplies to be computed by applying ratio of turnover of exempt supplies to total turnover (Turnover of transactions not covered under the purview of GST (e.g. petroleum products) not to be considered in exempt or total turnover for applying the formula)
- Common credit attributable to exempt supplies is reversible by adding to output tax liability of taxpayer
- This computation needs to be done on basis of turnover of last tax period (last month). The amount of reversal for a financial year to be finalised before September of succeeding financial year. Interest payable from April of succeeding financial year till date of reversal

- In respect of **capital goods**, credit to be reversed if used for **taxable and non-taxable supplies (including exempt supplies)** as per following methodology:
 - Compute amount of reversal based on turnover of non-taxable on monthly basis
 - Reverse credit computed on monthly basis along with interest
- The life of capital goods is considered to be 5 years and credit of 5% per quarter shall be considered for allowing / dis-allowing in credit in specific cases (like cessation of exemption)
- ITC can be **utilised** for payment of tax in the following manner:

Sl. No.	Nature of ITC	First to be utilized against	Second to be utilized against
1.	Integrated tax	Integrated tax	Central tax State tax Union territory tax (in above order)
2.	Central tax	Central tax	Integrated tax
3.	State tax	State tax	Integrated tax
4.	Union territory tax	Union territory tax	Integrated tax

- Credit of Central tax **cannot** be utilized against State tax or Union tax and vice-versa
- The balance in electronic credit ledger can be claimed as **refund** in situation of exports or where rate of tax on inputs is higher than rate of tax on output

Transfer of input tax credit on account of sale, merger etc.

- Transfer of unutilised input tax credit allowed in case of sale, merger, demerger, amalgamation, lease or transfer of business
- Credit to be transferred only in case where there is a specific provision for **transfer of liabilities**. A **certificate of chartered accountant** evidencing the same is required
- In case of **demerger**, input tax credit to be **apportioned** in the ratio of value of assets

Input Service Distributor

- Input Service Distributor ('ISD') can **distribute credit** on **input services** in the following manner:

Situation	Credit available with ISD	Credit to be distributed as
Where ISD and recipient located in different States / Union Territory	Integrated tax / Central tax / Union Territory tax	Integrated tax
Where ISD and recipient (being business vertical) located in same Union Territory	Integrated tax / Central tax	Central tax
Where ISD and recipient (being business vertical) located in same Union Territory	Integrated tax / Union territory tax	Union territory tax

- Credit distribution needs to be done in the ratio of the turnover of recipient to total turnover of all recipients of concerned input service
- Input tax credit available for distribution in a **particular month** shall be **distributed in the same month** and details thereof needs to be furnished in Form GSTR-6
- A **separate invoice** needs to be raised by an ISD to distribute **eligible input tax** credit and **ineligible input tax credit**

Requirement to distribute ineligible input tax credit by issuance of separate invoice will increase compliance burden on taxpayers. Also, additional ISD registration and compliance requirements will arise in respect of input services the place of supply of which qualifies to be in a state other than the state(s) where the unit(s) receiving such service is / are located

REFUND

Refund

- Limitation period of **2 years** from the relevant date prescribed for filing refund claim. Limitation period will not apply where tax and interest paid under protest
- **Unjust enrichment** will be a pre-condition for grant of refund (except for refund in case of zero rated supply)
- A registered person may avail refund of unutilised input tax credit in following cases:
 - Zero rated supplies made without payment of tax
 - Inverted duty structure (except where specifically disallowed by Central Government by notification)
- The refund of input tax credit shall not be admissible in following circumstances:
 - Where goods exported are subjected to export duty
 - Where the supplier avails drawback or claims refund on its supplies
- **Exports and supplies to SEZ unit or developer** will be zero rated in GST regime. The facility of making zero rated supplies on payment of tax under claim of **rebate** also available
- **No documentary evidence** required to be adduced for refund of amount less than **₹ 2 Lakhs**. A self-declaration shall suffice in such cases
- In case of zero rated supplies, refund of 90 percent to be granted **provisionally** within 7 days of filing acknowledgement subject to satisfaction of following conditions:
 - The person claiming refund has not been prosecuted for any offence under CGST Bill during preceding 5 years
 - Person holds GST compliance rating of 5 or above on a scale of 10
 - No stay has been granted in respect of the order from which refund flows
- Refund to be processed within **60 days** of receipt of application with complete details
- Refund to be **withheld** till all past tax dues are cleared else dues to be deducted from refund
- Proper officer given discretion to **withhold refund** if it is of the opinion that grant of refund will adversely affect the revenue's interests

- Refund of Central tax and State tax / Union territory tax can be filed if deposited on an inter-state supply transaction which is subject to Integrated tax

Availability of output stage rebate to service exporters will be a big boost for exporter of services

Provision of adjustment of past dues and discretion to withhold refund is susceptible to misuse

Interest on refund

- Interest to be granted **if refund not granted within 60 days** from the date of receipt of application
- Rate of interest on delayed refund capped at **6 percent**
- In respect of refund arising from an order of an adjudicating / appellate authority which has attained finality, rate of interest capped at **9 percent**
- Interest also payable in case of refund of **pre-deposit** made during appellate proceedings

COMPLIANCES

Registration

- Registration to be **PAN based** and to be obtained in **each State or Union Territory** from where person makes taxable supply
- Taxpayers already registered, other than ISD, not required to seek fresh registration. Procedure prescribed for **migration of existing registered taxpayers**
- Option to take **separate registration for each business vertical** in a State or Union Territory available subject to prescribed conditions
- Every person required to obtain registration whose aggregate turnover exceeds **₹ 20 Lakhs in a financial year** (threshold is **₹ 10 Lakhs** if business conducted in North Eastern States including **Sikkim, Himachal Pradesh and Uttarakhand**)
- **Compulsory registration** irrespective of threshold prescribed for:
 - Person making inter-state taxable supplies
 - Person liable to pay tax under reverse charge mechanism
 - Persons supplying goods on behalf of others (as an agent or otherwise)
 - Deductor of TDS
 - Input Service Distributor
 - Person supplying goods and services through e-commerce operator where such e-commerce operator liable to TCS compliance
 - Person making taxable supplies on behalf of other taxable persons
 - Electronic commerce operator
 - Person supplying online information and data base access or retrieval services from place outside India to a person in India
 - Other notified persons
- **No registration** requirement if person engaged in exempt supplies or exempted from registration
- Authorities empowered to **suo-moto register** a person who failed to obtain registration
- Special provisions relating to registration and payment of tax by **casual taxable persons** and **non-resident taxable persons** prescribed

Much against industry's expectations, there is no provision to take single centralized registration. Thus, the service providers need to take registration in each State and this will multiply compliance burden for taxpayers

Invoices, credit and debit notes

- Tax Invoice
 - **Tax invoice** to be issued **before or at the time of supply** by **supplier of goods** containing description, quantity, value, tax charged and other prescribed **particulars** (Format of tax invoice prescribed under Law)
 - **Tax invoice** to be issued **within prescribed time** by **supplier of service** containing description, tax charged and other prescribed **particulars**
 - A supplier of **non-taxable goods / services** or supplier paying **composition levy**, to issue **bill of supply** containing prescribed **particulars**
- Receipt Voucher, Refund Voucher & Payment Voucher
 - A person receiving advance required to issue **receipt voucher on receipt of advance** (Mandatory contents of a receipt voucher prescribed under the invoicing **rules**)
 - **Refund voucher** to be issued by supplier where no supply of goods **or** services is made against the advance (Mandatory contents of refund voucher yet to be prescribed)
 - Person liable to pay tax under reverse charge on goods and services **received** from non-registered person to issue an **invoice** on receipt of goods and services and **payment voucher** at the time of making payment to supplier (Mandatory contents of payment voucher yet to be prescribed)
- Credit and Debit Notes
 - Supplier to issue credit / debit note prescribed in case of **excess or shortfall in taxable value or tax charged** on tax invoice (Mandatory contents of credit and debit notes prescribed under the invoicing rules)
 - Credit note also to be issued in case of sales return and **deficiency** in supply
- **Adjustment permissible** only if credit / debit note issued on or before September 30 of succeeding financial year in which supply was made or date of filing annual return, whichever is earlier

Returns

- Every registered person required to furnish **following returns**:

Particulars	Form	Timeline
Return of outward supplies	GSTR-1	10 th of next month
TDS return	GSTR-7	10 th of next month
Return of inward supplies	GSTR-2	15 th of next month
Monthly / quarterly return	GSTR-3 (Normal)	20 th of next month

Particulars	Form	Timeline
	GSTR-4 (Composition)	18 th of month succeeding end of quarter
ISD return	GSTR-6	13 th of next month
Annual return	GSTR-9	31 st December succeeding end of financial year

- Annual return to be accompanied with **reconciliation statement** (reconciling the return with financial statements)
- **Annual return** to be filed by all taxable persons other than ISD, TDS deductor, casual or non-resident taxable persons
- **Rectification of return** allowed in the return for the month in which error is noticed and before due date of return for the month of September of the succeeding financial year or actual date of filing annual return, whichever is earlier

There is no provision for revision of return. Rectification of return introduced to correct errors / omissions in the return

Payment of tax

- Payment of tax, interest, penalty or other amount permitted by way of **internet banking, credit / debit cards, NEFT, RTGS** or other prescribed mode
- Such payment to be recorded in **electronic cash ledger** and to be used for making payment of tax, interest, penalty, fees or other amounts
- Refund available of amount lying balance in electronic cash ledger
- Any tax payment to be **appropriated** in following order:
 - Towards tax and other dues relating to previous tax periods
 - Towards tax and other dues relating to current tax period
 - Any other amount payable

Tax deducted at source

- Government, local authority, government agencies and notified persons to deduct tax at the rate of **one percent** from the payments made to suppliers of notified goods / services where total value of such supply under a **contract exceeds ₹ 2.5 Lakhs**
- Taxpayer need to deposit TDS before **10th of succeeding month**

- Taxpayer deducting tax, to issue certificate to deductee within **5 days** from the date of crediting amount to the account of government. The deductee can claim credit of amount of TDS in its electronic cash ledger

Unlike the current state VAT laws, CGST law does not provide for obtaining 'No / Lower TDS' certificate from the government

Accounts and Records

- Every taxpayer to keep and maintain following records at the **principal place of business**:
 - Records for production and manufacture of goods
 - Inward / outward supply of goods or services
 - Stock of goods
 - Input tax credit availed
 - Output tax payable / paid
 - Other prescribed documents
- In case of more than one place of business, above records to be kept at **all places of business**
- Option to maintain records in **electronic form** in prescribed manner
- **Mandatory requirement of audit of accounts** prescribed for persons whose turnover exceeds specified amount. Audit to be conducted by chartered accountant or cost accountant. **Audit report** (along with reconciliation statement) to be filed along-with annual return
- Accounts and records to be retained for **6 years** from the date of filing of annual return for a financial year. In case of pending litigations, accounts and records to be retained for **1 year** from the date of final disposal of litigation or **6 years** from the date of filing of annual return for a financial year, whichever is later

ASSESSMENT, AUDIT, DEMAND AND RECOVERY

Assessment and audit

- Facility of **self-assessment continued**
- Option of **provisional assessment** where taxpayer unable to determine value of goods / services or rate of tax applicable thereto. Provisional assessment order to be passed within **90 days** of application
- Following **assessment / verification / audit proceedings** prescribed:

Particulars	Coverage
Best judgment assessment	<ul style="list-style-type: none"> - In case of failure to furnish return even after serving of notice to file return - In case of failure to obtain registration
Summary assessment	Where proper officer believes that delay in assessment, will cause loss to revenue
Scrutiny of returns	To verify correctness of returns
Audit	To audit business transactions
Special audit	To be conducted by chartered accountant or cost accountant and can be prescribed at any stage of scrutiny, inquiry or investigation proceedings

Multiplicity of verification proceedings (either by way of assessment, scrutiny or audit) provides plenty of headroom to authorities and will increase the compliance burden of taxpayers

- Any authority who has passed an order may rectify any error which is apparent on the face of record on his own motion or when brought to notice within 3 months from order issue date.

Demand and recovery

- Provisions prescribed for determination of tax not paid or short paid or erroneously refunded by reasons of **fraud, wilful misstatement or suppression of facts or otherwise**

Particulars	No fraud or willful misstatement or suppression of facts	Existence of fraud or willful misstatement or suppression of facts
Non-issuance of notice	If before issuance of notice, tax and interest paid	If before issuance of notice, tax, interest and 15% penalty paid
Conclusion of proceedings	- If tax and interest paid within 30 days of issuance of notice - If tax, interest and 10% penalty or ₹ 10,000 , whichever is higher, paid within 30 days of communication of order	- If tax, interest and 25% penalty paid within 30 days of issuance of notice - If tax, interest and 50% penalty paid within 30 days of communication of order
Deemed conclusion of proceedings	If order not issued within three years from the due date for filing of annual return	If order not issued within five years from the due date for filing of annual return

- Limitation of 3 years / 5 years **not applicable** to cases pending before Appellate Forums (including High Courts and Supreme Court). In such cases, the period is counted post the order of appellate authority

This provision is biased towards revenue as it empowers the authorities to demand tax till the issue (against revenue) is settled by the Court

- Show Cause Notice to be issued **at least 3 months before** completion of 3 years (6 months before the completion of 5 years in cases involving fraud etc.)
- Proceedings deemed to be concluded against co-noticee where proceedings concluded against main noticee
- Forfeiture provisions for recovery where **tax collected but not deposited** with the government. No time limit prescribed for issuance of notice for such recovery
- Specific provision introduced to empower tax department to take assistance from an expert during inquiry, investigations or other proceedings at any stage

Recovery of tax

- Various modes of recovery of tax dues incorporated under GST Law and tax authorities can recover tax dues using such modes. Following are **key modes of recovery of taxes**:

- Tax dues may be recovered from **money due** to such person
- By **detaining and selling goods** belonging to such person and which are under control of tax authorities
- By **detaining movable or immovable property** of person and **selling** the same
- By recovering **as arrears of land revenue**

- Power given to **Central Government to recover arrears towards State tax** and vice versa

- Commissioner empowered to **provisionally attach property** belonging to taxable person in case of pendency of proceedings

Wide powers bestowed with the authorities for recovery of tax dues

Liability in specified cases

Transfer of business

- Transfer of business can be in whole or part. Such transfer can be made by sale, gift, lease, hire or any other manner

- The transferor and transferee will be jointly and severally liable for tax, interest or any penalty upto the time of transfer. Post transfer, transferee will solely be liable

Amalgamation / merger of companies

- When companies get amalgamated / merged and amalgamation / merger is effective from a retrospective date, such companies deemed to be 'distinct companies' during interim period

- In case of supply of goods or services between the companies during interim period, such transactions shall be included in supply or receipt of respective companies and taxed accordingly

Liquidation

- In case of liquidation, Liquidator needs to intimate its appointment to the Commissioner within 30 days of appointment. The Commissioner will inform the amount payable by the company to the Liquidator (within 3 months of receipt of intimation)

- When any company is wound up and tax demand cannot be recovered, then every Director of company shall be jointly and severally liable. Director will not be liable if tax demand is not attributable to gross neglect or breach on its part

Other cases

Person on whom tax demand made	Person from whom tax demand to be recovered
Minor or incapacitated person	Guardian, trustee or agent of minor or incapacitated person
Estate	Person appointed by Court
Person who has died	If business continued, person continuing business If business discontinued, legal representative of deceased person (maximum liability to be value of deceased person's estate)
HUF / AOP whose property is distributed amongst members	Members (jointly & severally)
Partnership firm which is dissolved	Every partner up to dissolution (jointly & severally)

INTEREST, PENALTY AND PROSECUTION

Interest

- Rate of interest for delayed payment of tax capped at **18 percent**
- Rate of interest in case of undue or excess availment or utilisation of credit capped at **24 percent**

Offences and Penalties

- **Quantum of penalty** for various offences:

Offence	Quantum
General penalty	Upto ₹ 25,000
For tax evasion, tax collected but not deposited, fraudulent refund, tax not deducted or short deducted	Amount of tax involved or ₹ 10,000 whichever is higher
Supplies without payment of tax	10% of tax short paid (non-fraud cases) / 100% of tax short paid (fraud cases) or ₹ 10,000 whichever is higher
Delay in furnishing of outward / inward supplies / monthly / quarterly / TDS / ISD return	₹ 100 per day upto maximum of ₹ 5,000
Delay in furnishing of annual return	₹ 100 per day upto maximum of 0.25% of aggregate turnover
Failure of deductor to furnish TDS certificate within 5 days of crediting amount	₹ 100 per day upto maximum of ₹ 5,000

- Government empowered to waive penalty in part or full in specified circumstances
- Tax authorities **not to impose** penalties for minor breaches when mistake in documentation is rectifiable and made without fraudulent intent or gross negligence. A breach to be considered as 'minor breach' if:
 - Tax involved is less than **₹ 5,000**
 - Mistake is **apparent on record**

Prosecution

- Specified offences also attract prosecution.
- Imprisonment period:**

Amount of tax evasion	Imprisonment
More than ₹ 500 Lakhs	Upto 5 years with fine
More than ₹ 200 Lakhs but not more than ₹ 500 Lakhs	Upto 3 years with fine
More than ₹ 100 Lakhs but not more than ₹ 200 Lakhs	Upto 1 year with fine
Less than ₹100 Lakhs	Upto 6 months with fine
Second and subsequent offence	Upto 5 years with fine

- Offences involving tax of more than ₹ 500 Lakhs liable for prosecution, **cognizable and non-bailable**

Increase in monetary limit of notified offences from ₹ 250 Lakhs to ₹ 500 Lakhs for prosecution, cognizable and non-bailable is a welcome change

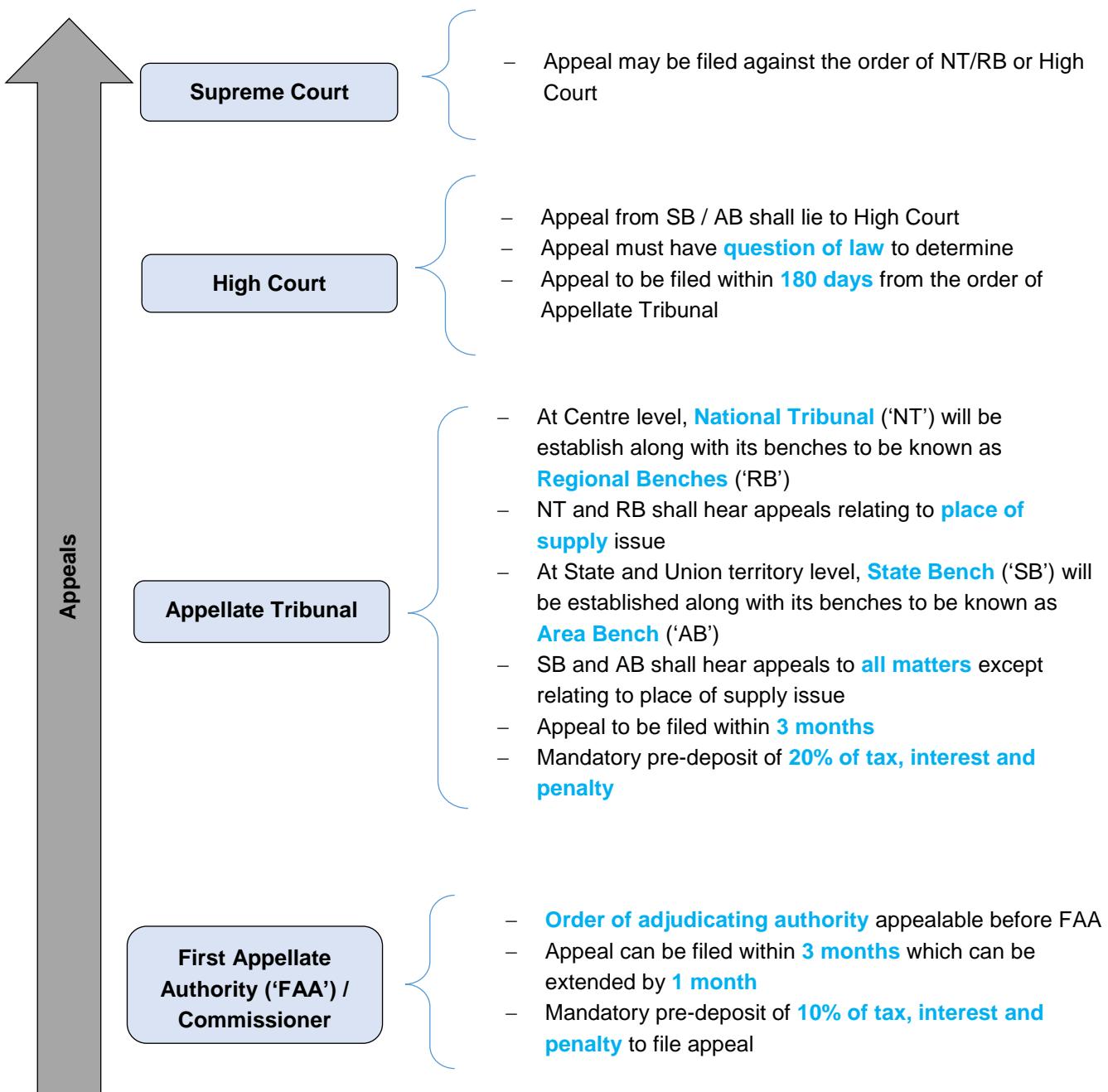
- Option provided for **compounding of offences**
- Provision introduced for imprisonment of upto 6 months and fine upto ₹25,000 or both where any person (including officers of central tax) willfully **discloses data from taxpayers return to anyone**
- Persons liable for prosecution:**

Status of taxpayer committing offence	Person liable for prosecution
Company	Director, Manager, Secretary or other officer
LLP	Partner
Partnership Firm	Partner
Hindu Undivided Family	Karta
Trust	Managing Trustee

APPEALS, ADVANCE RULING AND SETTLEMENT OF CASES

Appeals

- An assessee aggrieved by an order of adjudicating authority, can litigate the matter in the following manner:



Authority of Advance Ruling

- Proposal to establish **AAR in each State**. Applicant may obtain advance ruling on any **activity / transaction**. The requirement of 'proposed activity' under existing Excise and Service Tax laws expunged
- Apart from existing issues, AAR can also determine the following:
 - Whether a person is **required to be registered** under the Act
 - Whether a transaction **qualify as 'supply'**
 - Time of supply
 - Value of supply
- AAR to pronounce its ruling within **90 days** from the date of filing application
- Any person aggrieved by the order of AAR can appeal to **Appellate Authority for Advance Ruling** within 30 days

TRANSITIONAL PROVISIONS

Migration of Existing taxpayers

- All registered assessee granted **provisional registration** in form REG-25. Such person required to file an application in form GST REG-24 on common portal. The final certificate of registration to be granted in form GST REG-06 after due verification

Input tax credit

Unutilized CENVAT credit balance

- Registered person entitled to transfer **Cenvat credit balance in return** relating to the period before appointed date under GST regime
 - The transfer of credit subject to fulfilment of following conditions:
 - Credit is admissible under CGST Bill
 - Assessee filed all the returns under existing law for 6 months immediately preceding the appointed date
 - Credit does not pertain to goods manufactured and cleared under notified exemptions
 - In case of inputs received from EOU or EHTP, unit will be entitled to transfer credit only to the extent specified under Cenvat Credit Rules, 2004
 - An application in form GST TRAN-1 to be submitted electronically within sixty days of appointed date

Unavailed credit on capital goods

- Registered persons entitled to claim credit of **unavailed Cenvat credit on capital goods** under GST regime. Credit admissible only if credit is eligible under existing law and CGST Bill

Credit on stocks

- Registered person paying tax at fixed rate under existing law, entitled to credit of eligible duties in respect of inputs held in stock or contained in semi-finished or finished goods
- Registered **person not registered under existing law** such as depot, dealers, importers, etc. **entitled to credit of eligible duties** in respect of inputs held in stock or contained in semi-finished or finished goods
 - Credit will be subject to fulfilment of following conditions:
 - The goods are used or intended to be used for making taxable supplies

- The person is eligible for credit on such inputs under CGST Bill
- The person is in possession of documents evidencing payment of duty under the existing law
- Such document is issued within 12 months immediately preceding appointed date
- The supplier of service is not eligible for abatement under CGST Bill
- Where registered person is not in possession of documents evidencing the payment of duty, credit will be admissible at **40 percent of Central tax** applicable on supply of goods
 - The credit will be available subject to fulfilment of following conditions:
 - The person has discharged applicable Central tax liability on the goods
 - The scheme is available for 6 tax periods from the appointed date
 - The goods are neither wholly exempt from excise duty nor nil rated
 - Document for procurement of goods is available with person
 - The stock of goods on which credit is availed is stored in a manner so that it can be easily identified
 - The benefit of such credit is passed on to the recipient by way of reduced prices

Credit to persons making taxable and exempt supply

- Registered person earlier engaged in manufacture of taxable and exempted goods or provision of taxable and exempted service but liable under GST, entitled to following credit:
 - Carry forward credit in return preceding appointed date
 - Credit of eligible duties in respect of inputs held in stock or contained in semi-finished or finished goods

Credit on in-transit goods

- Registered person entitled to credit on **goods in transit** on which duties and taxes were paid under existing law. The document evidencing payment of tax or duty must be recorded within 30 days of the appointed date

Credit to input service distributor

- **Input service distributors** eligible to distribute credit on services received prior to appointed date even if the invoices are received subsequently
- Registered person earlier having **centralised registration** under existing law, entitled to carry forward eligible credit to any GST registration covered under the same PAN
- Registered persons entitled to **reclaim credit of input services** earlier reversed for non-payment of consideration. Credit will be eligible only where the consideration is paid within 3 months of the appointed date

Job work

- **No tax to be paid on inputs / goods** received in following cases:
 - Inputs received from job worker
 - Semi-finished goods removed to any other premises and received after manufacturing processes
 - Excisable goods removed without payment of excise duty and received after undertaking processes not amounting to manufacture
- The benefit shall be extended to inputs / goods received within 6 months from appointed date. The period of 6 months may be enhanced by 2 months by the Commissioner upon sufficient cause
- Input tax credit liable to be reversed where goods do not come back within 6 months

Miscellaneous

- No tax payable on goods to the extent VAT was leviable under respective state VAT laws
- No tax payable on services to the extent service tax was leviable under Finance Act, 1994
- No tax payable on goods sent on approval basis and rejected by the buyer. The benefit admissible only where such goods are returned to seller within 6 months from appointed date

Differential GST payable on advances received prior to the appointed date where service rendered post appointed date

MISCELLANEOUS PROVISIONS

Anti-Profiteering

- Anti-profiteering provision revamped as compared to Revised Model GST Law. No statutory obligation under Revised Model GST Law which required tax payer to pass on the benefits to customers. Such obligation now casted under CGST Bill
- Any **reduction in rate of tax** on supply of goods or services or the benefit of **input tax credit** shall **be passed on to the recipient** by way of commensurate **reduction in prices**
- Constitution of an authority or empowering existing authority to ensure compliance of this provision

The statutory provision uses the phrases 'rate of tax' and 'input tax credit' which needs to be read in the context of CGST Bill and not in reference to existing laws. Thus, anti-profiteering provision may not come into play where effective rate of tax reduces or eligible input credit increases in comparison with the existing laws

Deemed exports

- The Government will notify certain supplies of goods which will be treated as deemed exports
- Only goods **manufactured in India** to qualify as deemed exports
- Refund** defined to include **tax on supply of deemed export goods**. Option also available with recipient unit to claim input tax credit refund on goods used for exports

Common portal

- The following specific **functions** has been entrusted to **GSTN**:
 - Registration
 - Payment of tax
 - Furnishing of returns
 - Computation and settlement of integrated tax
 - Electronic way bill

UNION TERRITORY GST

UT GST

- The Government also passed Union Territory Goods and Services Tax Bill, 2017 ('UTGST').
- Union tax extends to following Union territories:
 - Andaman and Nicobar Island
 - Lakshadweep
 - Dadra and Nagar Haveli
 - Daman and Diu
 - Chandigarh and
 - Other territory

The Union territories of Delhi and Pondicherry will have separate SGST Law

- GST leviable under Union tax named as Union territory tax ('UTT').
- UTT to be levied on all intra-State supplies of goods or services or both (except on the supply of alcoholic liquor for human consumption)

UTT to be levied on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel from notified date
- UTT to be paid on reverse charge basis by the recipient on notified categories of supply of goods or services
- Input tax credit of UTT first to be utilized against payment of UTT and then against payment of Integrated tax. UTT cannot be utilized against payment of Central tax / State tax.
- Union tax explicitly contains certain provisions in the bill and borrows certain provisions from CGST bill

CORRESPONDING AMENDMENTS IN TAXATION LAWS

- Taxation Laws (Amendment) Act, 2017 passed by the Parliament to make corresponding amendments in other taxation laws for their adaptation to GST regime. The key amendments have been highlighted as under:

S. No.	Legislation amended	Amendment proposed
1.	Customs Tariff Act, 1975	<ul style="list-style-type: none"> • Insertion of charging provision for levy of IGST on import of articles • Insertion of charging provision for levy of Compensation Cess on import of scheduled goods
2.	Central Excise Act, 1944	<ul style="list-style-type: none"> • Levy of excise duty restricted to goods specified in Fourth Schedule • Central Government empowered to change excise rates through notification in emergency circumstances.
3.	Cesses imposed under various enactment specified in Column (3) in Row (3) have been abolished	<ul style="list-style-type: none"> • Rubber Cess levied under the Rubber Act, 1947 • Cess on scheduled industries levied under the Industries (Development and Regulation) Act, 1951 • Tea Cess levied under the Tea Act, 1953 • Coal Cess levied under the Coal Mines (Conservations and Development) Act, 1974 • Beedi Cess levied under the Beedi Workers Welfare Cess Act, 1976 • Water Cess levied under the Water (Prevention and Control of Pollution) Cess Act, 1977 • Sugar Cess levied under the Sugar Cess Act, 1982 and the Sugar Development Fund Act, 1982 • Jute Cess levied under the Jute Manufacturers Cess Act, 1983 • Education Cess on excisable goods levied under the Finance Act, 2004 • Clean Energy Cess levied under the Finance Act, 2010

		<ul style="list-style-type: none"> • Swachh Bharat Cess levied under the Finance Act, 2015 • Krishi Kalyan Cess and Infrastructure Cess levied under the Finance Act, 2016 <p><i>(Education Cess and Secondary and Higher Education Cess in the nature of customs have not been proposed to be repealed)</i></p>
4.	Central Excise Tariff Act, 1985	Repealed

Disclaimer

This publication is being sent to provide general information about the topics covered herein. The analysis in this publication should not be considered as expression of formal opinion or rendering of professional advice. Should you need and clarifications with respect to analysis in this publication or wish to know more about the specific areas of covered herein, you should write to the sender of this publication.



Contact Us



CALL US

+91 11 4109 1200
+91 11 4109 1201



MAIL US

info@nityatax.com
www.nityatax.com



REACH US

NITYA TAX ASSOCIATES,
B-3/58, 3rd Floor,
Safdarjung Enclave,
New Delhi, 110029