



GST DRAFT LAW | AN INSIGHT

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PREFACE

Dear Reader,

Till now, the discussions on introduction of Goods & Services Tax (GST) in India were based on discussion papers, reports on procedures and news reports on statements of various ministers / government officials. There was hardly any policy document available in the public domain on the shape and form of GST in India. A GST Model Law was in anticipation for quite some time to give greater understanding of nuances of GST.

Apart from the overhaul in Indirect Tax regime, GST is supposed to herald the fundamental principle of 'ease of doing business'. For this, it is important that GST regime is kept simple which eliminates the fundamental problems in the present structure. As observed by philosopher George Santayana, *"Progress, far from consisting change, depends upon retentiveness... Those who cannot remember the past are condemned to repeat it"*.

The Empowered Group of Committee of State Finance Ministers released the Draft GST Model Law (Draft law) into public domain on June 14, 2016. The Draft law contain specific and detailed provisions with respect to levy, taxable event, input tax credits, payment mechanism, refund, litigation procedures etc. and is a market step laying down a concrete road-map and structure of GST regime in India.

It is important to analyse and reflect upon the provisions of Draft law and understand the ramifications on each industry. Industry can make a significant contribution through comments and representations and help the Government chisel the Draft law.

The appended booklet contains our detailed insight on various provisions of Draft law.

Trust you 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 present Place of Supply Rules
- 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 favourable
- Continuation of output stage rebate for export goods and reinstatement of **output stage rebate for export services** will promote exports
- Setting up of 1 bench of Tribunal in each State, will **fasten 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 assessable value will make determination of value contentious like present regime
- **Inclusion of subsidies linked to supply** in the assessable value likely to have wide ramifications and likely to cover incentives granted by government, third parties etc.
- No clear guidelines on determination of assessable value in case of **stock transfers and supplies to principal / agent**
- Meagre threshold for small taxpayers likely to **significantly increase tax as well as compliance burden** of such businesses
- **Requirement of registration** in each State and **filing of multiple returns** will multiply compliance burden of taxpayers
- Exclusion of certain goods and services from the purview of input tax credit, will create **cascading effect** for taxpayers

- Requirement of payment of tax (through cash / credits) by supplier as a **pre-condition of claiming input tax credit**, likely to significantly increase compliance burden of taxpayers
- Wide powers to levy **penalty and prosecute taxpayers**
- Grand-fathering of area based **excise duty exemptions and VAT concessions absent**
- Multiplicity of assessments, scrutiny and audits** will always 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 will significantly add to the compliance burden of the taxpayers
- Higher amount of **mandatory pre-deposit for filing SGST appeals** will add to financial strain on taxpayers

Overall comments:

On a perusal of the Draft law, the Government has made a decent attempt to overhaul the indirect tax regime. The Draft law is precise on many relevant issues that will be faced in GST regime. At same point of time, the Draft law still suffers from timid approach as input tax credit is restricted on certain goods and services and overarching powers have been given to the authorities for governing the law. Besides this, stricter penal and prosecution provisions are uncalled for

LEVY

Territorial jurisdiction of GST

- GST to apply to **whole of India** including territorial waters, continental shelf, exclusive economic zones, installations, vessels located in continental shelf and exclusive economic zone

Draft law does not specifically refer to applicability of GST to Jammu & Kashmir ('J&K'). Concurrence of J&K Government would be needed to apply GST in J&K

Presently, VAT / CST do not apply to continental shelf and exclusive economic zone. In GST regime, supply in such areas would also be subject to tax

Taxable Event

- Supply** shall be the taxable event. 'Supply' defined to include:
 - Supply of goods or services in form of sale, transfer, barter, exchange, license, rental, lease or disposal for a consideration in the course of business
 - Import of service (with or without consideration), whether or not in the course of business
 - Transactions between principal and agent where agent receives commission or brokerage
 - Provision of branded service by an aggregator
 - Following supplies without consideration:
 - Permanent disposal of business assets
 - Use of business assets to private or non-business use
 - Retention of assets after de-registration
 - Supply of goods or services by taxable to another taxable / non-taxable person in course of business
- Consideration** include monetary and non-monetary consideration and receipt of goods or services or payment by any other person. Consideration specifically excludes deposit that is not treated by supplier as consideration for supply
- 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

The fundamental terms like supply, consideration and business has not been defined and given an ‘inclusive’ definition. This may result in different interpretations and disputes

Barter and free of cost supplies specifically included in the definition of supply and will attract tax and invite disputes

The purpose of specific inclusion of importation of service without consideration and not in the course of furtherance of business, is not clear and likely to raise disputes

- **Criterion** laid down as to which transactions will be treated as goods and which ones as services

Levy and collection of GST

- **CGST and SGST** to be levied on all intra-state supplies of goods and services and to be paid by every taxable person
- **IGST** to be levied on all inter-state supplies of goods and services and to be paid by every taxable person
- GST to be also levied on supply of notified goods and services on which receiver to pay tax under **reverse charge**. Such receiver to be treated as the person liable to pay GST
- **Rate of CGST, SGST and IGST** and **collection mechanism** to be prescribed in due course

Taxable Person

- **‘Taxable person’** defined as a person:
 - Who carries on business in India; and
 - Who either is registered or is required to be registered.
- Taxable person **excludes agriculturists**
- **Threshold limit** for payment of GST:

| Region | Amount (in ₹) |
|---|---------------|
| North eastern States (including Sikkim) | 5 Lakhs |
| Other areas | 10 Lakhs |

- **Central or State Government or Local Authority** to be treated as taxable person for specified activities
- Following persons **not** considered as **taxable person**:
 - Employee providing services to employer in course of employment
 - Person engaged in exclusive supply of goods and services not liable to tax
 - Person liable to pay service tax under reverse charge who receives services for personal use and where value of such services do not exceed specified amount
- **CGST and SGST** to be levied on all intra-state supplies of goods and services and to be paid by every taxable person

Composition levy

- Option to pay GST at concessional rate for small taxpayers. **Concessional rate** to be **minimum 1 percent and notified separately**
- Scheme available to registered taxable person whose **aggregate turnover does not exceed ₹ 50 Lakhs** in a financial year. Aggregate turnover to include all supplies of goods and services (taxable, non-taxable, exempt and export) in India
- Taxpayer opting for scheme, to **opt for all the registrations in India**
- Taxpayer opting for scheme, **not allowed** to:
 - Collect GST from recipient; and
 - Claim input tax credit on purchase of goods and services
- Scheme **not available** to taxpayer **making inter-state supplies** of goods and services

Exemption from levy of GST

- The Central or State Government **empowered to grant exemption** to any goods or service from whole or part of GST based on recommendation 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

PLACE AND TIME OF SUPPLY

Place of supply of goods and services

- Supply of goods / services to be an **inter-state supply** if the location of supplier and place of supply in different States
- Supply of goods / services to be an **intra-state supply** if the location of supplier and place of supply in same State
- In general, place of supply of 'goods' is location where goods are **delivered** and for 'services', **location of recipient**
- Separate provisions** to determine the place of supply for goods and services
- Place of supply of goods:**

| Situation | Place of supply |
|---|---|
| Supply involving movement of goods | Location where movement of goods terminates for delivery to the 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 |
| 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 | Location as prescribed by law |

- **Place of supply of services:**

| Situation | Place of supply | |
|--|---------------------------------|--|
| | Service recipient is registered | Service recipient is not registered |
| General Rule | Location of service recipient | Location of recipient of services as per the records of supplier, or Else, location of supplier |
| Training and performance appraisal | | Location where services are actually performed |
| Organization of event, conference etc. and ancillary services | | Location where event is held |
| Transportation of goods | | Location where goods are handed over for transportation |
| Transportation of passengers | | Location where the passenger embarks on conveyance for continuous journey |
| Insurance | | Location of recipient as per records of supplier |
| 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 |
| Restaurant / catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery | | Location where services are actually performed |
| Admission to event, amusement park etc. and ancillary services | | Location of event or park |
| Services provided on board a conveyance | | Location of first scheduled point of departure of conveyance |

| Situation | Place of supply | |
|---|--|---|
| | Service recipient is registered | Service recipient is not registered |
| 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 - Mobile connection on pre-payment or voucher basis (manual payment) - Mobile connection on pre-payment or vouchers basis (electronic payment) | <ul style="list-style-type: none"> Location where line, circuit or antenna is installed Location of billing address of recipient on records of supplier Location where pre-payment is received or vouchers are sold Location of recipient on records of supplier | |
| Banking and other financial services including stock broking services: | | |
| <ul style="list-style-type: none"> - Service to account holders - Service to non-account holders | <ul style="list-style-type: none"> Location of recipient Location of supplier | |
| Advertisement services to government, statutory body or local authority meant for identifiable States | | Location of each State for which services are taken |

Place of supply of services aligned to present Place of Provision Rules

Following services covered under the present Rules, missing in the Draft law and will be governed under general Rule:

- Services undertaken in respect of goods (like repair etc.)
- Intermediary
- Online information and database access or retrieval services
- Where provider and recipient are located in taxable territory

Time of supply

- **Liability to pay GST** to arise at the time of supply
- Time of supply for **goods** to be earliest of the following dates:
 - Removal of goods
 - Issuance of invoice
 - Receipt of payment
 - Receipt of the goods in books of accounts of the recipient
- If the **goods are not required to be removed**, viz. in case of immovable property, goods supplied in assembled / installed form, supplied to agent / principal, the date when goods made available to the recipient to be considered instead of removal of goods
- **Goods sent on approval basis**, time of supply shall be earliest of the following dates:
 - When it is known that the supply has taken place
 - 6 months from the date of removal
- Time of supply for **services** (similar to the POT Rules) to be earliest of the following dates:
 - Issuance of invoice or completion of service if invoice not issued within specified period
 - Receipt of payment
 - In case above two dates not available, receipt of services in books of accounts of the recipient
- In **reverse charge** cases, time of supply to be earliest of the following dates:
 - Receipt of goods / services
 - Making of payment
 - Receipt of invoice
 - Debit in books of accounts of the recipient
- Time of supply in case of **continuous supply of goods** to be the following date:

| Particulars | Date |
|--|---|
| Where successive statements of accounts / successive payments are involved | Expiry of the period to which successive statements of accounts or successive payments relate |
| In other cases | Issuance of invoice or receipt of payment, whichever is earlier |

In case of continuous supply of goods & services (where successive statement is issued or due date is ascertainable) and situations of goods sent on approval basis, date of invoice or payment will be irrelevant

- Time of supply in case of **continuous supply of services** to be the following date:

| Particulars | Date |
|--|---|
| Where due date of payment is ascertainable from the contract | Due date of payment |
| In other cases | Issuance of invoice or receipt of payment, whichever is earlier |

- Where **supply of services ceases** before the completion of supply under a contract, time of supply to be when supply ceases
- If **not determinable**, time of supply to be the following date:
 - Where periodical return has to be filed, due date of filing the return
 - In other cases, date on which tax is paid
- Where there is a change in rate of effective rate of tax, time of supply shall be similar to as provided in present Rule 4 of the POT Rules
- Supply of goods / services to be an **inter-state supply** if the location of supplier and place of supply in different States

VALUATION

Value of taxable service

- **Assessable value** to be the transaction value. Transaction value is price paid or payable where:
 - Supplier and recipient not related
 - Price is the sole consideration
- **Transaction value to include** following amounts:
 - Amount liable to be paid by supplier in relation to supply but incurred by recipient and not included in the price
 - Value of goods and services supplied free of cost or at concessional rate by recipient in connection with supply and not included in the price
 - Royalty and licence fee payable by the recipient as a condition of supply
 - Taxes, duties, fees and charges levied under other laws
 - Incidental expenses charged by supplier for activities done by supplier before delivery of goods or supply of services
 - Subsidies linked to supply
 - Reimbursable expenditure incurred by or on behalf of the supplier in relation to supply

Inclusion of free of cost or concessional rate supplies made by recipient, likely to pose valuation issues

Inclusion of subsidy is widely worded and would raise issues on taxability of subsidies received from government (capital subsidy, excise duty exemptions in form of refunds, VAT subsidy etc.) or third parties (like suppliers etc.)

- **Deduction of discount** from transaction value to be allowed in following cases:
 - Discount allowed before or at the time of supply where discount allowed in course of normal trade practice and recorded on the invoice
 - Discount allowed after supply where discount known at the time of supply and specifically linked to relevant invoices
- **GST Valuation Rules** to be applied for determining assessable value in the following cases:
 - Non-monetary consideration paid
 - Transactions between related parties
 - Tax authorities have reason to doubt truth or accuracy of transaction value
 - Transactions of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery
 - Notified supplies

Valuation Rules

- Where **supply consists of taxable and non-taxable supply**, monetary consideration needs to be attributed to taxable supply
- In case of transactions between **related parties**, transaction value to be accepted if relationship has not affected the price
- For **stock transfer of goods** and **transaction of goods between principal and agent**, transaction value to be the assessable value
- Following values to be assessable value determined **sequentially**:

Transaction value of supplies of like kind and quality subject to adjustments



Computed value – cost of production of goods / provision of service plus profit



Residual method – reasonable means

- Reimbursements made to **pure agent** not to be included
- Value of money changer service similar to methodology prescribed under Service Tax Valuation Rules
- Tax authorities can reject transaction value where **truth or accuracy of transaction value doubted**

Scheme of valuation similar to valuation mechanism provided under Customs law

GST Valuation Rules do not detail the manner of determining transaction value in case of stock transfer of goods or to principal / agent

Parting away with MRP based assessment is a welcome move

SPECIAL TRANSACTIONS

Job work

- The taxpayer **allowed to take ITC** on inputs and capital goods sent to a job worker (either from its premises or directly from supplier's premises)
- The taxpayer needs to **receive back** inputs and capital goods within 180 days and 2 years respectively
- In case where inputs or capital goods are **not received** within the prescribed period, ITC originally claimed needs to be reversed along with interest. ITC and interest can be re-claimed when inputs or capital goods are received back
- The taxpayer can take permission from Commissioner to **remove taxable goods without payment of tax** to a job worker and from there to a subsequent job worker for job work. The processed goods can either be brought back by the taxpayer for clearance or directly cleared from job-worker's premises, on payment of tax or export

Presently, Cenvat Credit Rules, 2004 do not prescribe any time limit for taxpayer to receive moulds, dies etc. There is no specific provision in Draft law for dies, moulds etc. Hence, such transactions will be governed by time limit of 2 years

E-commerce

- Specific provisions provided to tax electronic commerce ('e-commerce')

Services provided under brand name

- '**Aggregator**' defined to mean person who owns and manages electronic platform and through application and communication device, enables potential customer to connect with the person providing service under the brand name of the aggregator
- Service provided by an aggregator under brand name or trade name, liable to GST. The **liability to pay GST** will be of aggregator not of actual service provider

Services not provided under brand name

- '**Electronic 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 shall not include persons who supply goods or services on their own behalf
- Operator **liable to collect tax at source** ('TCS') at notified rate on amount remitted to suppliers at the earliest of following point of time:

- Credit of amount
 - Payment of amount
- **Credit of TCS** available to suppliers to adjust against their output GST liability
- Operator to furnish information asked by tax officers within **5 days** from the date of receipt of notice

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:
 - IGST and CGST / IGST and SGST charged on supply of goods and services; and
 - Used or intended to be used in the course or furtherance of business.
- 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, life insurance etc. when used primarily for personal use or consumption of any employee
 - Goods and services used by principal in the execution of works contract resulting in construction of immovable property (except plant and machinery)
 - Goods and services on which composition levy paid by supplier
 - Goods and services used for private or personal consumption
- ITC available on fulfilment of following **conditions**:
 - Availability of tax invoice, debit note, supplementary invoice or other prescribed document issued by supplier
 - Receipt of goods and services
 - Supplier has paid tax to the appropriate government
 - Recipient has filed return under Section 27 of the GST Act
 - For goods received in lots, ITC available upon receipt of last lot or instalment
- 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. | IGST | IGST | CGST SGST (in above order) |
| 2. | CGST | CGST | IGST |
| 3. | SGST | SGST | IGST |

- Credit of CGST **cannot** be utilized against SGST 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
- ITC to be claimed before **filing of return for September of succeeding financial year** or **filing of relevant annual return**, whichever is earlier
- Where goods and services used for both business and **non-business purposes** or **taxable and non-taxable supplies (including exempt supplies)**, attributable ITC available. Manner of apportionment to be prescribed
- **Transitional provisions:**
 - Unutilised Cenvat credit and VAT credit disclosed in return for the period immediately before GST coming into effect, shall be carried forward under GST regime
 - Cenvat credit on capital goods rightfully entitled but not availed (*balance 50% credit allowable in next financial year*), shall be carried forward under GST regime
 - ITC on inputs, inputs contained in semi-finished or finished goods permitted when taxpayer seeks registration or shifts from composition scheme to normal tax payment scheme
 - Transfer of ITC on change in constitution of taxpayer permitted in the prescribed manner
 - ITC on inputs, inputs contained in semi-finished or finished goods to be reversed when taxpayer shifts from normal tax payment scheme to composition scheme or when its goods become absolutely exempt from tax
- **Concept of matching** introduced and in the event of non-matching, ITC not available. ITC claimed by recipient need to match with the following:
 - Details of outward supply furnished by supplier in its return; and
 - Additional duty of customs paid on imported goods

Though Draft law defines input, input service and capital goods, the satisfaction of these definitions not necessary to claim ITC

Non-availability of ITC on motor vehicles, employee related services, goods and services used for construction of immovable property will create cascading effect

Requirement of payment of tax by supplier and matching of details of ITC with return filed by supplier will create significant compliance burden on the taxpayers

Bills of entry, challan for payment of tax on are not documents issued by supplier. Draft law does not mention availability of ITC on these documents

No provision to reverse ITC in case of non-payment of value of service, removal of inputs / capital goods, writing off of value of inputs / capital goods

Input Service Distributor

- Concept of Input Service Distributor ('ISD') existing under the Cenvat Credit Rules, 2004, continued in Draft law. 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 | IGST / CGST | IGST |
| Where ISD and recipient located in different States | SGST | IGST |
| Where ISD and recipient (being business vertical) located in the same State | IGST / CGST | CGST |
| Where ISD and recipient (being business vertical) located in same State | IGST / SGST | SGST |

- Distribution of credit shall be subject to **conditions** similar to conditions prescribed in the Cenvat Credit Rules, 2004

REFUND

Refund

- **Exports** continue to remain zero rated in GST regime. The facility of making export of goods and services on payment of tax under claim of **rebate** also available
- 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 continue to be refuted by taxpayer as pre-condition for grant of refund
- In case of export of goods and services, refund of 80% to be granted **provisionally** and remaining 20% to be refunded after due verification of documents
- Refund to be processed within **90 days** of receipt of application with complete details
- Refund to be **withheld** till all past tax dues are cleared else amount of 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 CGST / SGST can be filed if deposited on an inter-state supply transaction which is subject to payment of IGST

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

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

Interest on refund

- Entitlement of interest **if refund not granted within 3 months** from the date of receipt of application
- 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** where person is liable for registration
- 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 available subject to prescribed conditions
- Every person required to obtain registration whose aggregate turnover exceeds **₹ 9 Lakhs in a financial year** (threshold is **₹ 4 Lakhs** if business conducted in North Eastern States including Sikkim)
- **Compulsory registration** 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
 - Persons supplying goods and services (other than branded services through e-commerce operator)
 - An aggregator who supplies services under his brand name
- **No registration** requirement if person engaged in exempt supplies or if exempted from registration
- Authorities empowered to **suo-moto register** a person who has failed to obtain the registration
- Special provisions relating to registration and payment of tax by **casual taxable persons** and **non-resident taxable persons** prescribed

Invoices, credit and debit notes

- **Tax Invoice**
 - **Tax invoice** to be issued **at the time of supply** by **supplier of goods** containing description, quantity, value, tax charged and other prescribed particulars
 - **Tax invoice** to be issued **within prescribed time** by **supplier of services** 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
- Credit and Debit Notes
 - Provision to issue credit / debit note prescribed in case of **excess or shortfall in taxable value or tax charged** on tax invoice
- **Adjustment permissible** only if credit / debit note is 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 is required to furnish **following returns**:

| Particulars | Timeline |
|----------------------------|--|
| Return of outward supplies | 10 th of next month |
| TDS return | 10 th of next month |
| Return of inward supplies | 15 th of next month |
| Monthly / quarterly return | Normal: 20 th of next month Composition: 18 th of month succeeding end of quarter |
| ISD return | 13 th of next month |
| Annual return | Before 31 st December succeeding end of financial year |

- Return for **inward supplies** to be prepared by verifying, validating or modifying details of outward supplies as prepared by supplier
- 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** permissible. Such rectification 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

No time-line prescribed for payment of tax. Tax to be paid before filing of return

- Payment of tax, interest, penalty or other amount permitted by way of **internet banking, credit / debit cards, NEFT, RTGS** or other prescribed mode
- Personnel Ledger Account replaced with **electronic cash ledger** and:
 - Electronic cash ledger can be used for making payment of tax, interest, penalty, fees or other amount
 - Refund available of amount lying balance in electronic cash ledger
- Any tax payment will be **appropriated** in the following order:
 - Towards tax and other dues related to previous tax periods
 - Towards tax and other dues related to current tax period
 - Any other amount payable
- Facility of payment of tax (other than self-assessed tax liability) in **monthly installments** upto 24 months subject to approval of Commissioner / Chief Commissioner and prescribed conditions

Tax deducted at source

- 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 supply in **single contract exceeds ₹ 10 Lakhs**
- Taxpayer need to deposit TDS before **10th of succeeding month**
- Taxpayer deducting tax, to **issue certificate to deductee within 5 days**. The deductee can claim credit of amount of TDS in its electronic cash ledger

Accounts and Records

- Every taxpayer to keep and maintain following records at **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 and 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 prescribed 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 **5 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 **5 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
- Various 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 assessments | Where proper officer believes that delay in doing assessment will cause loss to revenue |
| Scrutiny of returns | To verify correctness of returns |
| Audit | To audit the 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

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 | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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 is not issued within three years from the due date or the actual date, whichever is earlier, for filing of annual return | If order is not issued within five years from the due date or the actual date, whichever is earlier, for filing of annual return |

Unlike current regime, Draft law does not prescribe any time limit for issuance of show cause notice. Thus, the authorities can issue notice and conclude the proceedings at any time before three years / five years which is regressive

- Limitation of 3 years / 5 years **not applicable** in cases pending before the Appellate Forums (including High Courts and Supreme Court). In such cases, the period counted post the order of appellate authority
- Forfeiture provisions for recovery where **tax collected but not deposited** with the government. No time limit prescribed for issuance of notice for such recovery

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

Recovery of tax

- Various modes of recovery of tax dues incorporated under GST Law and tax authorities can recover tax dues using these modes. Some of the **key modes of recovery of taxes** are given below:
 - 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 the person and sell the same
 - By recovering **as arrears of land revenue**
- Power given to **Central Government to recover arrears towards SGST** and vice versa
- Commissioner empowered to **provisionally attach** property belonging to a 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 of business will solely be liable

Amalgamation / merger of companies

- When two or more companies are amalgamated / merged and is effective from a retrospective date, such companies shall be deemed to be 'distinct companies' during the interim period
- In case there is supply of goods or services between the companies during the interim period, such transactions shall be included in the supply or receipt of respective companies and taxed accordingly

Liquidation

- In case of liquidation, Liquidator need to intimate his appointment to the Commissioner within 30 days of his appointment. The Commissioner will inform Liquidator (within 3 month of receipt of intimation), the amount payable by the company
- When any company is wound up and tax demand cannot be recovered, then every Director of company shall jointly and severally be liable. Director will not be liable if the tax demand is not attributable to any gross neglect or breach on his 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 will 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

- **Failure to pay tax within prescribed period** to attract interest at notified rate for the period of delay
- **Undue or excess claim of input tax credit** to attract interest at notified rate for the prescribed period

The period of payment of interest in case of input tax credit does not seem to be linked to date of availment of credit. Interest is likely to be from the period when credit is utilised

Offences and Penalties

- Provisions pertaining to penalty **similar** to penalties prescribed under existing Excise and Service Tax laws
- **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 |
| Repeated short payment of tax (<i>Short payment in 3 out of 6 consecutive returns</i>) | 10% of tax short paid 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 |

- 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 less than ₹ 5,000
 - Mistake is **apparent on record**

Prosecution

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

| Amount of tax evasion | Imprisonment |
|--|------------------------|
| More than ₹ 250 Lakhs | Upto 5 years with fine |
| More than ₹ 50 Lakhs but not more than ₹ 250 Lakhs | Upto 3 years with fine |
| More than ₹ 25 Lakhs but not more than ₹ 50 Lakhs | Upto 1 year with fine |
| Second and subsequent offence | Upto 5 years with fine |

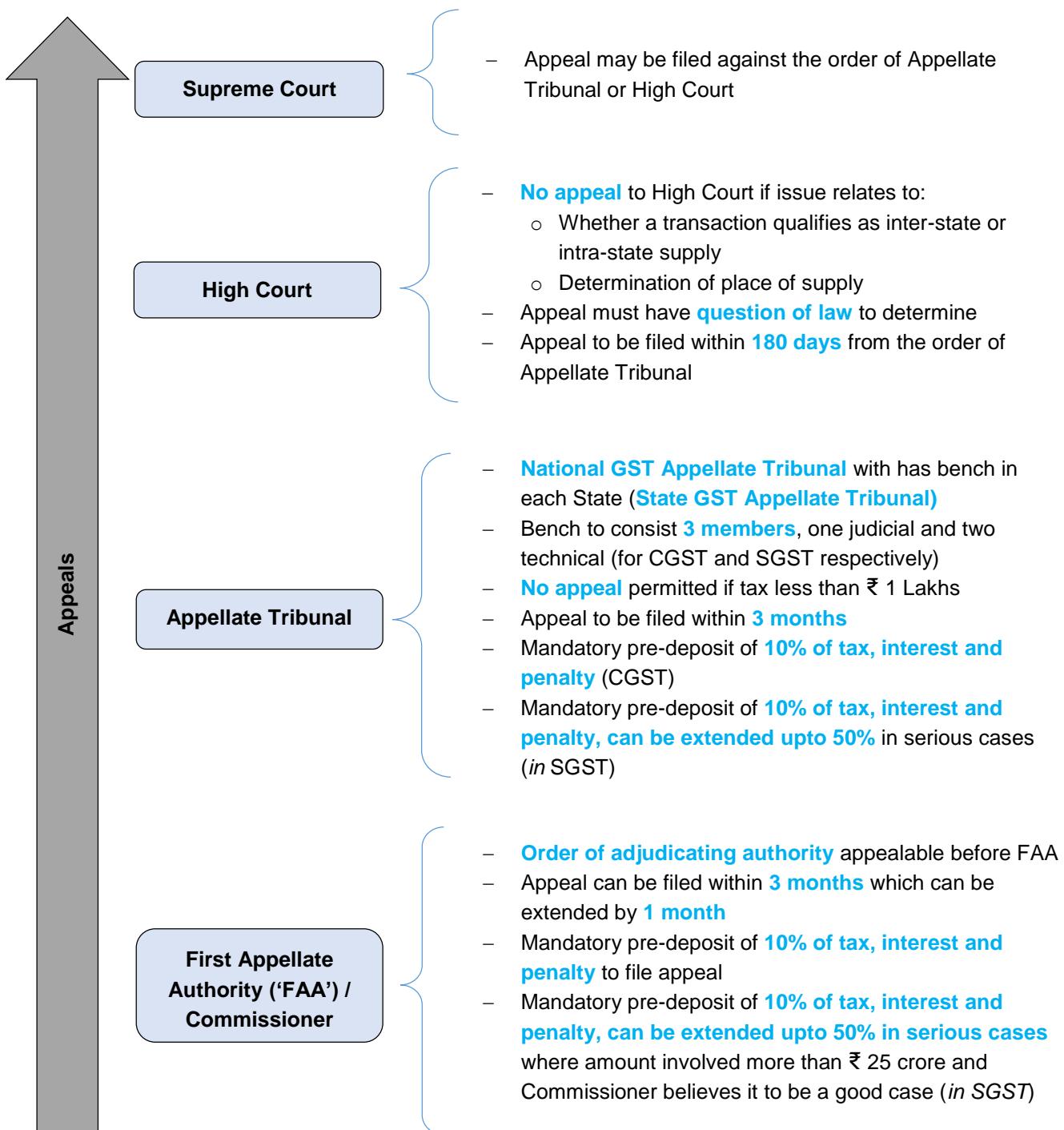
- Offences involving tax of more than **₹ 250 Lakhs** liable for prosecution, **cognizable and non-bailable**
- Option provided for **compounding of offences** similar to existing Excise and Service Tax laws
- Persons liable for prosecution:**

| 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 that AAR can determine, AAR can also determine the following:
 - whether a person is **required to be registered** under the Act or not
 - whether a transaction can be **qualify as 'supply'** or not
- AAR is required 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

Settlement of cases

- A **National Goods and Service Tax Settlement Commission** ('NGSTSC') proposed to be established
- Benches of NGSTSC proposed in **one or more States** which shall be called as State Settlement Commission (SSC)
- The NGSTSC / SSC can adjudicate a case where:
 - Issue involved is relating to levy, assessment and collection of tax
 - Cases pending before IGST Officer or before FAA
 - Cases where order passed by FAA and period for filing appeal has not expired
- A case before the Settlement Commission to be concluded within **12 months**

TRANSITIONAL PROVISIONS

Transition Provisions

- Power given to Central and State Government to issue orders or make Rules for smooth transition to GST

Draft law silent on grand-fathering of area based Excise Duty exemptions and VAT concessions granted in various States



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