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**CENTRAL BOARD OF EXCISE & CUSTOMS**

**NEW DELHI**

# FREQUENTLY ASKED QUESTIONS (FAQ) ON GST

# Foreword

With the 101st Constitution Amendment Act coming into force on 8th September, 2016 and notification of the GST Council on 15th September – the road to GST rollout is clear. Government is keen on introducing GST- the biggest indirect tax reform, with effect from 01 April 2017. One of the biggest challenges is to train the indirect tax officials of both Centre and State, as well as the trade on the concepts, processes and procedures of GST.

National Academy of Customs, Excise & Narcotics (NACEN), the apex training institution for capacity building in indirect taxation under the Central Board of Excise and Customs, has been mandated to impart training on GST to Central and State Government officers. NACEN is conducting a mammoth capacity building exercise to train about 60,000 indirect tax officers of the Centre and State so that officers are well equipped to implement GST when it is rolled out. NACEN has already created a team of almost 2000 trainers across the country to train the field officers. Considering the limited time available, NACEN apart from Classroom training, is also planning to use advanced information technology tools, such as Virtual Classrooms and E-Learning modules, to ensure larger coverage.

As part of this capacity building exercise, the NACEN has prepared a compilation of Frequently Asked Questions

(FAQ) based on inputs gathered while conducting training and interactive sessions, as a training tool for helping the officers as well as public, to get acquainted with the Model GST Law and its nuances. The FAQs have been prepared and reviewed by a team of officials from both Centre and States. I congratulate all the officers who worked in the preparation of this booklet, and NACEN for their efforts.

I am sure that this FAQ compilation covering 24 topics with over 500 questions, will be an effective tool in disseminating knowledge on GST to Tax officials, Trade and Public. This is the first version based on the Model GST Law which has been released in the public domain. NACEN will bring out updated versions of the FAQ, as and when relevant statutes are enacted and rules are framed.

**Najib Shah**
**Chairman, CBEC**

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***Prepared by:*** *Shri Deepak Mata, Assistant Director, NACEN Mumbai and Sanjeev Nair, Examiner, CESTAT Mumbai under the supervision of Shri Samir Bajaj, Additional Director, NACEN, Mumbai*

***Reviewed by :*** *: S/Shri P.K. Mohanty, Consultant, CBEC (Chap. 1); Shri Vishal Pratap Singh, DC(GST), GST Policy Wing, CBEC ( Chap. 2), Dr. P.D. Vaghela, CCT, Gujarat (Chap. 3&7); Shri D.P. Nagendra Kumar, Pr. ADG, DGCEI, Bengaluru (Chap. 4 to 6); Shri Upender Gupta, Commissioner, GST, CBEC (Chap. 8 to 11); Shri Ritvik Pandey, CCT, Karnataka (Chap.12); Shri Arun Kumar Mishra, Jt. Secretary, CTD, Bihar (Chap. 13); Shri Khalid Anwar, Senior JCT, WB (Chap.14 & 24); Shri Ajay Jain, Pr. Commissioner of Customs, Ahmedabad (Chap. 15); Shri BB Agarwal, Pr. Commissioner, Hyderabad (Chap. 16) ; Shri Shashank Priya, ADG, DG GST, CBEC (Chap. 17 to 20); Shri G.D. Lohani, CCE, Faridabad (Chap. 21 & 22); and Shri Prakash Kumar, CEO, GSTN (Chap.23).*

*Comments and Suggestions on FAQ may please be sent to dg.nacen-cbec@nic.in*

***Disclaimer****:*

*This FAQ on GST compiled by NACEN and vetted by the Source Trainers is based on the draft Model GST Law released in public domain in June, 2016. This FAQ is for training and academic purposes only.*

*The information in this booklet is intended only to provide a general overview and is not intended to be treated as legal advice or opinion. For greater details, you are requested to refer to the model GST law.*

# Overview of Goods and Services Tax (GST)

# 1. Overview of Goods and Services Tax (GST)

**Q 1. What is Goods and Service Tax (GST)?**

*Ans. It is a destination based tax on consumption of goods and services. It is proposed to be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.*

**Q 2. What exactly is the concept of destination based tax on consumption?**

*Ans. The tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.*

**Q 3. Which of the existing taxes are proposed to be subsumed under GST?**

*Ans. The GST would replace the following taxes:*

*(i) taxes currently levied and collected by the Centre:*

- *a. Central Excise duty*
- *b. Duties of Excise (Medicinal and Toilet Preparations)*
- *c. Additional Duties of Excise (Goods of Special Importance)*
- *d. Additional Duties of Excise (Textiles and Textile Products)*

e. *Additional Duties of Customs (commonly known as CVD)*

f. *Special Additional Duty of Customs (SAD)*

g. *Service Tax*

h. *Central Surcharges and Cesses so far as they relate to supply of goods and services*

(ii) *State taxes that would be subsumed under the GST are:*

a. *State VAT*

b. *Central Sales Tax*

c. *Luxury Tax*

d. *Entry Tax (all forms)*

e. *Entertainment and Amusement Tax (except when levied by the local bodies)*

f. *Taxes on advertisements*

g. *Purchase Tax*

h. *Taxes on lotteries, betting and gambling*

i. *State Surcharges and Cesses so far as they relate to supply of goods and services*

*The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.*

**Q 4. What principles were adopted for subsuming the above taxes under GST?**

*Ans. The various Central, State and Local levies were*

*examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:*

*(i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.*

*(ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.*

*(iii) The subsumation should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.*

*(v) Revenue fairness for both the Union and the States individually would need to be attempted.*

**Q 5. Which are the commodities proposed to be kept outside the purview of GST?**

*Ans. Alcohol for human consumption, Petroleum Products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel& Electricity.*

**Q 6. What will be the status in respect of taxation of above commodities after introduction of GST?**

*Ans. The existing taxation system (VAT & Central Excise) will continue in respect of the above commodities.*

**Q 6A. What will be status of Tobacco and Tobacco products under the GST regime?**

*Ans. Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products.*

**Q 7. What type of GST is proposed to be implemented?**

*Ans. It would be a dual GST with the Centre and States simultaneously levying it on a common tax base. The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States would be called the State GST (SGST). Similarly Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services.*

**Q 8. Why is Dual GST required?**

*Ans. India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism.*

**Q 9. Which authority will levy and administer GST?**

*Ans. Centre will levy and administer CGST & IGST while respective states will levy and administer SGST.*

**Q 10. Why was the Constitution of India amended recently in the context of GST?**

*Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that is empowered to levy service tax.*

*Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 recently for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.*

**Q 11. How a particular transaction of goods and services would be taxed simultaneously under Central GST (CGST) and State GST (SGST)?**

*Ans. The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further,*

*both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State.*

*Illustration I: Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10 ) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.*

*Illustration II: Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, the ad company would charge CGST of*

*Rs. 10 as well as SGST of Rs. 10 to the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of inputs such as stationery, office equipment, services of an artist etc). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilise the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.*

**Q 12. What are the benefits which the Country will accrue from GST?**

*Ans. Introduction of GST would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market. For the consumers, the biggest gain would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make our products competitive in the domestic and international markets. Studies show that this would instantly spur economic growth. There may also be revenue gain for the Centre and the States due to widening of the tax base, increase in trade volumes and improved*

*tax compliance. Last but not the least, this tax, because of its transparent character, would be easier to administer.*

**Q 13. What is IGST?**

*Ans. Under the GST regime, an Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Under Article 269A of the Constitution, the GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.*

**Q 14. Who will decide rates for levy of GST?**

*Ans. The CGST and SGST would be levied at rates to be jointly decided by the Centre and States. The rates would be notified on the recommendations of the GST Council.*

**Q 15. What would be the role of GST Council?**

*Ans. A GST Council would be constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on*

*(i) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;*

*(ii) the goods and services that may be subjected to or exempted from the GST;*

*(iii) the date on which the GST shall be levied on petroleum crude, high speed diesel, motor sprit (commonly known as petrol), natural gas and aviation turbine fuel;*

*(iv) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;*

*(v) the threshold limit of turnover below which the goods and services may be exempted from GST;*

*(vi) the rates including floor rates with bands of GST;*

*(vii) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;*

*(viii) special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarakhand; and*

*(ix) any other matter relating to the GST, as the Council may decide.*

**Q 16. What is the guiding principle of GST Council?**

*Ans. The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (one hundred and first amendment) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.*

**Q 17. How will decisions be taken by GST Council?**

*Ans. The Constitution (one hundred and first amendment) Act, 2016 provides that every decision of the GST Council shall be taken at a meeting by a majority of not less than 3/4th of the weighted votes of the Members present and voting. The vote of the Central Government shall have a weightage of 1/3rd of the votes cast and the votes of all the State Governments taken together shall have a weightage of 2/3rd of the total votes cast in that meeting. One half of the total number of members of the GST Council shall constitute the quorum at its meetings.*

**Q 18. Who is liable to pay GST under the proposed GST regime?**

*Ans. Under the GST regime, tax is payable by the taxable person on the supply of goods and/or services. Liability to pay tax arises when the taxable person crosses the threshold exemption, i.e. Rs.10 lakhs (Rs. 5 lakhs for NE States) except in certain specified cases where the taxable person is liable to pay GST even though he has not crossed the threshold limit. The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter-State supply of goods and/or services. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.*

**Q 19. What are the benefits available to small tax payers under the GST regime?**

*Ans. Tax payers with an aggregate turnover in a financial year up to [Rs.10 lakhs] would be exempt from tax.*

*[Aggregate turnover shall include the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services and exclude taxes viz. GST.] Aggregate turnover shall be computed on all India basis. For NE States and Sikkim, the exemption threshold shall be [Rs. 5 lakhs]. All taxpayers eligible for threshold exemption will have the option of paying tax with input tax credit (ITC) benefits. Tax payers making inter-State supplies or paying tax on reverse charge basis shall not be eligible for threshold exemption.*

**Q 20. How will the goods and services be classified under GST regime?**

*Ans. HSN (Harmonised System of Nomenclature) code shall be used for classifying the goods under the GST regime. Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores shall use 2 digit code and the taxpayers whose turnover is Rs. 5 crores and above shall use 4 digit code. Taxpayers whose turnover is below Rs. 1.5 crores are not required to mention HSN Code in their invoices.*

*Services will be classified as per the Services Accounting Code (SAC)*

**Q 21. How will imports be taxed under GST?**

*Ans. Imports of Goods and Services will be treated as inter-state supplies and IGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off*

*will be available on the GST paid on import on goods and services.*

**Q 22. How will Exports be treated under GST?**

*Ans. Exports will be treated as zero rated supplies. No tax will be payable on exports of goods or services, however credit of input tax credit will be available and same will be available as refund to the exporters.*

**Q 23. What is the scope of composition scheme under GST?**

*Ans. Small taxpayers with an aggregate turnover in a financial year up to [Rs. 50 lakhs] shall be eligible for composition levy. Under the scheme, a taxpayer shall pay tax as a percentage of his turnover during the year without the benefit of ITC. The floor rate of tax for CGST and SGST shall not be less than [1%]. A tax payer opting for composition levy shall not collect any tax from his customers. Tax payers making inter- state supplies or paying tax on reverse charge basis shall not be eligible for composition scheme.*

**Q 24. Whether the composition scheme will be optional or compulsory?**

*Ans. Optional.*

**Q 25. What is GSTN and its role in the GST regime?**

*Ans. GSTN stands for Goods and Service Tax Network (GSTN). A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. The GSTN shall provide a shared IT infrastructure and services to Central*

*and State Governments, tax payers and other stakeholders for implementation of GST. The functions of the GSTN would, inter alia, include: (i) facilitating registration; (ii) forwarding the returns to Central and State authorities; (iii) computation and settlement of IGST; (iv) matching of tax payment details with banking network; (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information; (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.*

*The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/ reports. The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers. Further, the GSTN is developing back-end modules like assessment, audit, refund, appeal etc. for 19 States and UTs (Model II States). The CBEC and Model I States (15 States) are themselves developing their GST back-end systems. Integration of GST front-end system with back-end systems will have to be completed and tested well in advance for making the transition smooth.*

**Q 26. How are the disputes going to be resolved under the GST regime?**

*Ans. The Constitution (one hundred and first amendment) Act, 2016 provides that the Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute-*

*(a) between the Government of India and one or more States; or*

*(b) between the Government of India and any State or States on one side and one or more other Sates on the other side; or*

*(c) between two or more States,*

*arising out of the recommendations of the Council or implementation thereof.*

**Q 27. What are the other legislative requirements for introduction of the GST?**

*Ans. Suitable legislation for the levy of GST (Central GST Bill, Integrated GST Bill and State GST Bills) drawing powers from the Constitution would need to be passed by the Parliament and the State Legislatures. Unlike the Constitutional Amendment which requires 2/3rd majority, the GST Bills would need to be passed by a simple majority. Obviously, the levy of the tax can commence only after the GST law has been enacted by the Parliament and respective Legislatures.*

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# Levy of and Exemption from Tax

# 2. Levy of and Exemption from Tax

**Q 1. Where is the power to levy GST derived from?**

*Ans. Article 246A of the Constitution, which was introduced by the Constitution (101st Amendment) Act, 2016 confers concurrent powers to both parliament and state legislatures to make laws with respect to GST. However, -clause 2 of Article 246A read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-state trade or commerce.*

**Q 2. What is the taxable event under GST?**

*Ans. Supply of goods and/or services. CGST & SGST will be levied on intra-state supplies while IGST will be levied on inter-state supplies. The charging section is section 7 (1) of CGST/SGST Act and Section 4(1) of the IGST Act.*

**Q 3. Is the reverse charge mechanism applicable only to services?**

*Ans. No, reverse charge applies to supplies of both goods and services.*

**Q 4. What will be the implications in case of purchase of goods from unregistered dealers?**

*Ans. The receiver of goods will not be able to get ITC. Further, the recipients who are registered under composition schemes would be liable to pay tax under reverse charge.*

**Q 5. In respect of exchange of goods, namely gold watch for restaurant services will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?**

*Ans. No. In the above case the transaction of supply of watch from consumer to the restaurant will not be an independent supply as the same is not in the course of business. It is a consideration for a supply made by the restaurant to him. The same will be a taxable supply by the restaurant.*

**Q 6. Whether supplies made without consideration will also come within the purview of Supply under GST?**

*Ans. Yes only those cases which are specified under Schedule I to the Model GST Law.*

**Q 7. Who can notify a transaction to be supply of goods and/or services?**

*Ans. Central Government or State Government on the recommendation of the GST Council can notify a transaction to be the supply of goods and/or services.*

**Q 8. Will a taxable person be eligible to opt for composition scheme only for one out of 3 business verticals?**

*Ans. No, composition scheme would become applicable for all the business verticals/registrations which are separately held by the person with same PAN*

**Q 9. Can composition scheme be availed if the taxable person effects inter-State supplies?**

*Ans. No, composition scheme is applicable subject to the condition that the taxable person does not affect inter-state supplies.*

**Q 10. Can the taxable person under composition scheme claim input tax credit?**

*Ans. No, taxable person under composition scheme is not eligible to claim input tax credit.*

**Q 11. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?**

*Ans. No, customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit because a composition scheme supplier cannot issue a tax invoice*

**Q 12. Can composition tax be collected from customers?**

*Ans. No, the taxable person under composition scheme is restricted from collecting tax. It means that a composition scheme supplier cannot issue a tax invoice.*

**Q 13. What is the threshold for opting to pay tax under the composition scheme?**

*Ans. The threshold for composition scheme is Rs. 50 Lakhs of aggregate turnover in financial year.*

**Q 14. How to compute 'aggregate turnover' to determine eligibility for composition scheme?**

*Ans. The methodology to compute aggregate turnover is given in Section 2(6). Accordingly, 'aggregate turnover' means 'Value of all supplies (taxable and non-taxable supplies + Exempt supplies + Exports) and it excludesTaxes levied under CGST Act, SGST Act and IGST Act, Value of inward supplies + Value of supplies taxable under reverse charge of a person having the same PAN.*

**Q 15. What are the penal consequences if a taxable person violates the condition and is not eligible for payment of tax under the Composition scheme?**

*Ans. Taxable person who was not eligible for the composition scheme would be liable to pay tax, interest and in addition he shall also be liable to a penalty equivalent to the amount of tax payable. (Section 8 (3) of the MGL).*

**Q 16. What is the minimum rate of tax prescribed for composition scheme?**

*Ans. 1%*

**Q 17. When exemption from whole of tax collected on goods and/or services has been granted unconditionally, can taxable person pay tax?**

*Ans. No, the taxable person providing such goods or services shall not collect the tax on such goods or services.*

**Q 18. What is remission of tax/duty?**

*Ans. It means relieving the tax payer from the obligation to pay taxon goods when they are lost or destroyed due*

*to any natural causes. Remission is subject to conditions stipulated under the law and rules made thereunder.*

**Q 19. Whether remission is allowed under GST law?**

*Ans. Yes, proposed section 11 of Model GST law permits remission of tax on supply of goods.*

**Q 20. Whether remission is allowed for goods lost or destroyed before supply?**

*Ans. Remission of tax will apply only when tax is payable as per law i.e. taxable event should have happened and tax is required to be paid as per law. Under GST Law, levy is applicable upon supply of goods. Where goods are lost or destroyed before supply, taxable event does not occur in order to pay tax. Accordingly, question of remission of tax does not rise.*

**Q 21. Whether remission is allowed on goods lost or destroyed for all reasons?**

*Ans. No, on plain reading of the language of proposed Section 11, remission is allowed only for those cases where supply of goods is found to be deficient in quantity due to natural causes.*

**Q 22. Does the model GST Law empower the competent government to exempt supplies from the levy of GST?**

*Ans. Yes. Under Section 10 of the Model GST Law, the Central or the State Government, on the recommendation of the GST council can exempt the supplies from the levy of GST either generally or subject to conditions.*

# Registration

# 3. Registration

**Q 1. What is advantage of taking registration in GST?**

*Ans. Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:*

- *Legally recognized as supplier of goods or services.*
- *Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.*
- *Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.*

**Q 2. Can a person without GST registration claim ITC and collect tax?**

*Ans. No. A person without GST registration can neither collect GST from his customers nor claim any input tax credit of GST paid by him.*

**Q 3. What will be the effective date of registration?**

*Ans. Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be date of his liability for registration.*

*Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.*

*In case of suomoto registration, i.e. taking registration voluntarily while being within the threshold exemption limit for paying tax, the effective date of registration shall be the date of order of registration.*

**Q 4. Who are the persons liable to take a Registration under the Model GST Law?**

*Ans. Any supplier who carries on any business at any place in India and whose aggregate turnover exceeds threshold limit as prescribed in a year is liable to get himself registered. However, certain categories of persons mentioned in Schedule III of MGL are liable to be registered irrespective of this threshold.*

*An agriculturist shall not be considered as a taxable person and shall not be liable to take registration. (As per section 9 (1))*

**Q 5. What is aggregate turnover?**

*Ans. As per section 2 (6) of the MGL, aggregate turnover includes the aggregate value of:*

*(i) all taxable and non-taxable supplies,*

*(ii) exempt supplies, and*

*(iii) exports of goods and/or service of a person having the same PAN.*

*The above shall be computed on all India basis and excludes taxes charged under the CGST Act, SGST Act and the IGST Act.*

*Aggregate turnover does not include value of supplies on which tax is levied on reverse charge basis, and value of inward supplies.*

**Q 6. Which are the cases in which registration is compulsory?**

*Ans. As per paragraph 5 in Schedule III of MGL, the following categories of persons shall be required to be registered compulsorily irrespective of the threshold limit:*

*a) persons making any inter-State taxable supply;*

*b) casual taxable persons;*

*c) persons who are required to pay tax under reverse charge;*

*d) non-resident taxable persons;*

*e) persons who are required to deduct tax under section 37;*

*f) persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise;*

*g) input service distributor;*

*h) persons who supply goods and/or services, other than branded services, through electronic commerce operator;*

*i) every electronic commerce operator;*

*j) an aggregator who supplies services under his brand name or his trade name; and*

*k) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.*

**Q 7. What is the time limit for taking a Registration under Model GST Law?**

*Ans. Any person should take a Registration, within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.*

**Q 8. If a person is operating in different states, with the same PAN number, whether he can operate with a single Registration?**

*Ans. No. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Sub-section (1) of Section 19 of Model GST Law.*

**Q 9. Whether a person having multiple business verticals in a state can obtain for different registrations?**

*Ans. Yes. In terms of Sub-Section (2) of Section 19, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.*

**Q 10. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?**

*Ans. Yes. In terms of Sub-section (3) of Section 19, a person, though not liable to be registered under Schedule III, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.*

**Q 11. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a Registration?**

*Ans. Yes. Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under Section 19 of the Model GST Law.*

*However as per section 19 (4A) of MGL, PAN is not mandatory for a non-resident taxable person who may be granted registration on the basis of any other document as may be prescribed.*

**Q 12. Whether the Department through the proper officer, can suo-moto proceed with registration of a Person under this Act?**

*Ans. Yes. In terms of sub-section (5) of Section 19, where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action that is, or may be taken under the MGL, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed.*

**Q 13. Whether the proper Officer can reject an Application for Registration?**

*Ans. Yes. In terms of sub-section 7 of MGL, the proper officer can reject an application for registration after due verification. However, it is also provided in sub-section 8 of Section 19, the proper officer shall not reject the application for registration or the Unique Identity Number without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.*

**Q 14. Whether the Registration granted to any person is permanent?**

*Ans. Yes, the registration Certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.*

**Q 15. Is it necessary for the UN bodies to get registration under MGL?**

*Ans. All UN bodies Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal. The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid by them and for any other purpose as may be prescribed in the GST Rules.*

**Q 16. What is the responsibility of the taxable person supplying to UN bodies?**

*Ans. The taxable supplier supplying to these organizations is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B) and the invoices of the same will be uploaded by the supplier.*

**Q 17. Is it necessary for the Govt. organization to get registration?**

*Ans. A unique identification number (ID) would be given by the respective state tax authorities through GST portal to Government authorities / PSUs not making outwards supplies of GST goods (and thus not liable to obtain GST registration) but are making inter-state purchases.*

**Q 18. Who is a Casual Taxable Person?**

*Ans. Casual Taxable Person has been defined in Section 2 (21) of MGL. It means a person who occasionally undertakes transactions in a taxable territory where he has no fixed place of business.*

**Q 19. Who is a Non-resident Taxable Person?**

*Ans. A taxable person residing outside India and coming to India to occasionally undertake transaction in the country but has no fixed place of business in India is a non-resident taxable person in terms of Section 2 (69) of the MGL.*

**Q 20. What is the validity period of the Registration certificate issued to a Casual Taxable Person and non-Resident Taxable person?**

*Ans. The certificate of registration issued to a "casual*

*taxable person" or a "non-resident taxable person" shall be valid for a period of ninety days from the effective date of registration. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of ninety days by a further period not exceeding ninety days.*

**Q 21. Is there any Advance tax to be paid by a Casual Taxable Person and Non-resident Taxable Person at the time of obtaining registration under this Special Category?**

*Ans. Yes. While a normal taxable person does not have to make any deposit of money to obtain registration, a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 19, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. If registration is to be extended beyond the initial period of ninety days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond ninety days is being sought.*

**Q 22. Whether Amendments to the Registration Certificate is permissible?**

*Ans. Yes. In terms of Section 20, the proper officer may, on the basis of such information furnished either by the registrant or as ascertained by him, approve or reject amendments in the registration particulars in the manner*

*and within such period as may be prescribed. It is to be noted that permission of the proper officer for making amendments will be required for only certain core fields of information, whereas for the other fields, the registrant can himself carry out the amendments.*

**Q 23. Whether Cancellation of Registration Certificate is permissible?**

*Ans. Yes. Any Registration granted under this Act may be cancelled by the Proper Officer, in circumstances mentioned in Section 21 of the MGL. The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.*

**Q 24. Whether cancellation of Registration under CGST Act means cancellation under SGST Act also?**

*Ans. Yes. The cancellation of registration under one Act (say CGST Act) shall be deemed to be a cancellation of registration under the other Act (i.e. SGST Act). (Section 21 (6))*

**Q 25. Can the proper Officer Cancel the Registration on his own?**

*Ans. Yes, in certain circumstances specified under section 21(2) of MGL, the proper officer can cancel the registration on his own. Such circumstances include not filing return for a continuous period of six months (for a normal taxable*

*person) or three months (for a compounding taxpayer), and not commencing business within six months from the date of registration. However, before cancelling the registration, the proper officer has to follow the principles of natural justice. (Section 21 (4))*

**Q 26. What happens when the registration is obtained by means of wilful mis-statement, fraud or suppression of facts?**

*Ans. In such cases, the registration may be cancelled with retrospective effect by the proper officer. Section 21(3).*

**Q 27. Is there an option to take centralized registration for services under MGL?**

*Ans. No.*

**Q 28. If the taxpayer has different business verticals in one state, will he have to obtain separate registration for each such vertical in the state?**

*Ans. No. However the taxpayer has the option to register such separate business verticals independently in terms of Section 19(2) of MGL.*

**Q 29. Who is an ISD?**

*Ans. ISD stands for Input Service Distributor and has been defined under Section 2 (56) of MGL. It is basically an office meant to receive tax invoices towards receipt of input services and further distribute the credit to supplier units proportionately.*

**Q 30. Will ISD be required to be separately registered other than the existing taxpayer registration?**

*Ans. Yes. The ISD registration is for one office of the taxpayer which will be different from the normal registration.*

**Q 31. Can a taxpayer have multiple ISDs?**

*Ans. Yes. Different offices of a taxpayer can apply for ISD registration.*

**Q 32. What could be the liabilities (in so far as registration is concerned) on transfer of a business?**

*Ans. The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from such date. (Schedule III of MGL).*

**Q 33. Whether all assessees/dealers who are already registered under existing central excise/service tax/ vat laws will have to obtain fresh registration?**

*Ans. No. GSTN shall migrate all such assessees/dealers to the GSTN network and shall issue GSTIN number and password. They will be asked to submit all requisite documents and information required for registration in a prescribed period of time. Failure to do so will result in cancellation of GSTIN number.*

*The service tax assessees having centralized registration will have to apply afresh in the respective states wherever they have their businesses.*

**Q 34. Whether the job worker will have to be compulsorily registered?**

*Ans. No. Section 43A of MGL does not prescribe any such condition.*

**Q 35. Whether the goods will be permitted to be supplied from the place of business of a job worker?**

*Ans. Yes. But only in cases where the job worker is registered or the principal declares the place of business of the job worker as his additional place of business.*

**Q 36. At the time of registration will the assessee have to declare all his places of business?**

*Ans. Yes. The principal place of business and place of business have been separately defined under section 2(78) & 2(75) of MGL respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.*

**Q 37. Is there any system to facilitate smaller dealers or dealers having no IT infrastructure?**

*Ans. In order to cater to the needs of taxpayers who are not IT savvy, following facilities shall be made available:-*

*Tax Return Preparer (TRP): A taxable person may prepare his registration application /returns himself or can approach the TRP for assistance. TRP will prepare the said registration document / return in prescribed format on the basis of the information furnished to him by the taxable person. The legal responsibility of the correctness*

*of information contained in the forms prepared by the TRP will rest with the taxable person only and the TRP shall not be liable for any errors or incorrect information.*

*Facilitation Centre (FC): shall be responsible for the digitization and / or uploading of the forms and documents including summary sheet duly signed by the Authorized Signatory and given to it by the taxable person. After uploading the data on common portal using the ID and Password of FC, a print-out of acknowledgement will be taken and signed by the FC and handed over to the taxable person for his records. The FC will scan and upload the summary sheet duly signed by the Authorized Signatory.*

**Q 38. Is there any facility for digital signature in the GSTN registration?**

*Ans. Taxpayers would have the option to sign the submitted application using valid digital signatures (if the applicant is required to obtain DSC under any other prevalent law then he will have to submit his registration application using the same). For those who do not have a digital signature, alternative mechanisms will be provided in the GST Rules on Registration.*

**Q 39. What will be the time limit for the decision on the online application?**

*Ans. If the information and the uploaded documents are found in order, the State and the Central authorities shall approve the application and communicate the approval to the common portal within three common working days. The portal will then automatically*

*generate the Registration Certificate. In case no deficiency is communicated to the applicant by both the tax authorities within three common working days, the registration shall be deemed to have been granted [section 19(9) of MGL] and the portal will automatically generate the Registration Certificate.*

**Q 40. What will be the time of response by the applicant if any query is raised in the online application?**

*Ans. If during the process of verification, one of the tax authorities raises some query or notices some error, the same shall be communicated to the applicant and to the other tax authority through the GST Common Portal within 3 common working days. The applicant will reply to the query / rectify the error / answer the query within a period informed by the concerned tax authorities (Normally this period would be seven days).*

*On receipt of additional document or clarification, the relevant tax authority will respond within seven common working days.*

**Q 41. What is the process of refusal of registration?**

*Ans. In case registration is refused, the applicant will be informed about the reasons for such refusal through a speaking order. The applicant shall have the right to appeal against the decision of the Authority. As per sub-section (10) of section 19 of MGL, any rejection of application for registration by one authority (i.e. under the CGST Act /*

*SGST Act) shall be deemed to be a rejection of application for registration by the other tax authority (i.e. under the SGST Act / CGST Act).*

**Q 42. Will there be any communication related to the application disposal?**

*Ans. The applicant shall be informed of the fact of grant or rejection of his registration application through an e-mail and SMS by the GST common portal. Jurisdictional details would be intimated to the applicant at this stage.*

**Q 43. Can the registration certificate be downloaded from the GSTN portal?**

*Ans. In case registration is granted, applicant can download the Registration Certificate from the GST common portal. ]*

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# Meaning and Scope of Supply

# 4. Meaning and Scope of Supply

**Q 1. What is the taxable event under GST?**

*Ans. The taxable event under GST shall be the supply of goods and / or services made for consideration in the course or furtherance of business. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'supply'.*

**Q 2. What is the meaning of 'Supply'?**

*Ans. The term 'supply' is wide in its import and includes all forms of supply of goods and / or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of service. The model GST law also provides for including certain transactions made without consideration within the scope of supply.*

**Q 3. What is a taxable supply?**

*Ans. A 'taxable supply' means a supply of goods and / or services which is chargeable to good and services tax under the GST Act.*

**Q 4. What are the necessary elements that constitute supply under MGL?**

*Ans. In order to constitute a 'supply', the following elements are required to be satisfied, i.e.-*

*(i) supply of goods and / or services;*

*(ii) supply is for a consideration;*

*(iii) supply is made in the course or furtherance of business;*

*(iv) supply is made in the taxable territory;*

*(v) supply is a taxable supply; and*

*(vi) Supply is made by a taxable person.*

**Q 5. Can a transaction in which any one or more of the above criteria is not fulfilled, be still considered as supply under GST?**

*Ans. Yes. Under certain circumstances such as importation of service (Section 3(1) (b)) or supplies made without consideration, specified under Schedule-I of MGL, where one or more ingredients specified in answer to question no. 4 are not satisfied, it shall still be treated as supply under GST Law*

**Q 6. Importation of Goods is conspicuous by its absence in Section 3. Why?**

*Ans. Importation of goods is dealt separately under the Customs Act, 1962, wherein IGST shall be levied as additional duty of customs in addition to basic customs duty.*

**Q 7. Are self-supplies taxable under GST?**

*Ans. Inter-state self-supplies such as stock transfers will be taxable as a taxable person has to take state wise*

*registration in terms of Schedule 1(5). Such transactions have been made taxable even if there is no consideration. However, intra-state self-supplies are not taxable.*

**Q 8. Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?**

*Ans. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II (1). In some cases, possession may be transferred immediately but titled may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.*

**Q 9. What do you mean by "supply made in the course or furtherance of business"?**

*Ans. No definition or test as to whether the activity is in the course or furtherance of business has been specified under the MGL. However, the following business test is normally applied to arrive at a conclusion whether a supply has been made in the course or furtherance of business:*

1. *Is the activity, a serious undertaking earnestly pursued?*
2. *Is the activity is pursued with reasonable or recognisable continuity?*
3. *Is the activity conducted in a regular manner based on sound and recognised business principles?*

4. *Is the activity predominantly concerned with the making of taxable supply for consideration/ profit motive?*

*The test may ensure that occasional supplies, even if made for consideration, will not be subjected to GST.*

**Q 10. An individual buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of MGL? Give reasons for the answer.**

*Ans. No, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.*

**Q 11. A dealer of air-conditioners transfers an air conditioner from his stock in trade, for personal use at his residence. Will the transaction constitute a supply?**

*Ans Yes. As per Schedule-I (1) business assets put to a private or non-business use without consideration will be treated as supply.*

**Q 12. Whether provision of service or goods by a club or association or society to its members will be treated as supply or not?**

*Ans. Yes. Provision of facilities by a club, association, society or any such body to its members shall be treated as supply. This is included in the definition of 'business' in section 2(17) of MGL.*

**Q 13. What are inter-state supplies and intra-state supplies?**

*Ans. Inter-state and intra-state supplies have specifically been defined in Section 3 & 3A of IGST Act respectively. Broadly, where the location of the supplier and the place of supply are in same state it will be intra-state and where it is in different states it will be inter-state supplies.*

**Q 14. Whether transfer of right to use goods will be treated as supply of goods or supply of service? Why?**

*Ans. Transfer of right to use goods shall be treated as supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of MGL*

**Q 15. Whether Works contracts and Catering services will be treated as supply of goods or supply of services? Why?**

*Ans. Works contract and catering services shall be treated as supply of service as specified in Schedule-II of MGL.*

**Q 16. Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services? Why?**

*Ans. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.*

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# Time of Supply

# 5. Time of Supply

**Q 1. What is time of supply?**

*Ans. The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The MGL provides separate time of supply for goods and services.*

**Q 2. When does the liability to charge GST arise in respect of supply of goods?**

*Ans. Section 12 of the MGL provides for time of supply of goods. The time of supply of goods shall be the earliest of the following namely,*

*(i) the date on which the goods are removed by the supplier, where the supply of goods require removal; or*

*(ii) the date on which the goods are made available where the supply does not require removal; or*

*(iii) the date on which the supplier issues invoices with respect to the supply where the above two situations do not apply; or*

*(iv) the date on which the recipient shows the receipt of the goods in his books of accounts.*

**Q 3. What is time of supply of continuous supply of goods?**

*Ans. The time of supply of continuous supply of goods is;*

*a) where successive statements of accounts or successive payments are involved, the date of expiry of the period to which such successive statements of accounts or successive payments relate.*

b) *where there are no successive statements of account or successive payments involved, the date of issue of the invoice or the date of receipt of payment whichever is earlier.*

**Q 4. What is time of supply of goods sent on approval basis?**

*Ans. In case of supply on approval basis, the time of supply shall be the time at which it is known whether a supply will take place or six months from the date of supply, whichever is earlier.*

**Q 5. Where it is not possible to determine the time of supply in terms of sub-section 2, 3, 5 or 6 of Section 12 or that of Section 13 of MGL, how will time of supply be determined?**

*Ans. There is a residual entry in Section 12(7) as well as 13 (7) which say that if periodical return has to be filed, then the due date of filing of such periodical return shall be the time of supply. In other cases, it will be the date on which the CGST/SGST/IGST is paid.*

**Q 6. When does the liability to pay GST arise in respect of supply of services?**

*Ans. Unlike goods, in the case of services, the time of supply is determined by the fact whether the invoice for supply of services has been issued within the prescribed period or beyond such prescribed period.*

**Q 7. What is time of supply of service when invoice is not issued within prescribed period?**

*Ans. The time of supply of service in such cases shall be the earliest of the following:*

*(i) date completion of the provision of service; or*

*(ii) the date of receipt of payment.*

**Q 8. What is time of supply of service when invoice is issued within prescribed period?**

*Ans. The time of supply of service in such cases shall be the earliest of the following:*

*(i) date of issue of invoice; or*

*(ii) the date of receipt of payment.*

**Q 9. What does "date of receipt of payment" mean?**

*Ans. It is the earliest of the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank account.*

**Q 10. Suppose, invoice is not issued and date of payment or date of completion of provision of service are also not ascertainable, what will be the time of supply?**

*Ans. The time of supply shall be the date on which the recipient shows the receipt of services in his books of accounts.*

**Q 11. Suppose part advance payment is made or invoice issued is for part payment, whether the time of supply will cover the full supply?**

*Ans. No. The supply shall be deemed to have been made*

*to the extent it is covered by the invoice or the part payment.*

**Q 12. What is time of supply of service in case of tax payable under reverse charge?**

*Ans. The time of supply will be the earliest of the following dates:*

a) *date of receipt of services;*

b) *date on which payment is made;*

c) *date of receipt of invoice;*

d) *date of debit in the books of accounts by supplier.*

**Q 13. What will be the time of supply in continuous supply of services?**

*Ans. The time of supply shall be the due date of payment, if ascertainable from the contract. If not ascertainable, it will be earliest of date of receipt of payment or the date of issue of invoice or completion of event where payment is linked to completion of event.*

**Q 14. Let's say there was increase in tax rate from 18% to 20% w.e.f. 1.6.2017. What is the tax rate applicable when services provided and invoice issued before change in rate in April 2017, but payment received after change in rate in June 2017?**

*Ans. The old rate of 18% shall be applicable as services are provided prior to 1.6.2017.*

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# Valuation in GST

# 6. Valuation in GST

**Q 1. What is the value of taxable supply to be adopted for the levy of GST?**

*Ans. The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the actually the price paid or payable, when the parties are not related and price is the sole consideration. The MGL further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed before or at the time of supply.*

**Q 2. What is transaction value?**

*Ans. Transaction value refers to the price actually paid or payable for the supply of goods and or services where the supplier and the recipient are not related and price is the sole consideration for the supply. It includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply.*

**Q 3. Are there separate valuation provisions for CGST, SGST and IGST and Goods and Services?**

*Ans. No, section 15 is common for all three taxes and also common for goods and services.*

**Q 4. Is contract price not sufficient to determine valuation of supply?**

*Ans. Contract price is more specifically referred to as 'transaction value' and that is the basis for computing tax.*

*However, when the price is influenced by some factors like relationship of parties or certain transactions are deemed to be supply, which do not have a price, it is required to overcome these factors to determine the transaction value correctly.*

**Q 5. Is reference to Valuation Rules required in all cases?**

*Ans. No. Reference to Valuation Rules is required only in cases listed under section 15(4) i.e., where consideration payable is not money, or parties to the transaction are related.*

**Q 6. What is to be done if there are certain factors affecting price though the transaction is not covered by section 15(4)?**

*Ans. Section 15(2) provides the list of adjustments that may be made to make the price of a transaction reliable for purposes of determining tax payable.*

**Q 7. Can the transaction value declared under section 15(1) be accepted?**

*Ans. Yes, it can be accepted after examining for inclusions in section 15(2). Furthermore, the transaction value can be accepted even where the supplier and recipient are related, provided the relationship has not influenced the price. (Rule 3(4) of draft GST valuation rules)*

**Q 8. Whether post-supply discounts or incentives are to be included in the transaction value?**

*Ans. Yes. Unless the post-supply discount is established as per the agreement and is known at or before the time of supply and specifically linked to relevant invoice.*

**Q 9. Whether pre-supply discounts allowed before or at the time of supply are includible in the transaction value?**

*Ans. No, provided it is allowed in the course of normal trade practice and has been duly recorded in the invoice.*

**Q 10. When are Valuation Rules applicable?**

*Ans. Valuation Rules are applicable when (i) Consideration not in money terms; (ii) parties are related or supply by any specified category of supplier; and (iii) transaction value declared is not reliable.*

**Q 11. What are the reasons for doubting transaction value declared?**

*Ans. The reasons have been indicated in Rule 7(b) of the draft GST Valuation Rules. It is:- (i) comparable supplies are at significantly higher value; (ii) transaction is at significantly lower or higher than market value of supplies; and (iii) misdeclaration in parameters like description, quantity, quality, year of make etc. The list is indicative and not exhaustive.*

**Q 12. What are the methods provided for determining the value, in terms of draft GST Valuation Rules?**

*Ans. Three methods are prescribed under GST Valuation*

*Rules for determining the transaction value i.e., comparative method, computation method and residual method, which are required to be followed sequentially. Besides, some specific valuation methods have been specified like in case of pure agents and money changers. Further specific rules may later be notified in case of Insurer, Air travel Agent and distributor or selling agents of lottery.*

**Q 13. What are the inclusions specified in Section 15(2) which could be added to Transaction Value?**

*Ans. The inclusions specified in Section 15(2) which could be added to Transaction Value are as follows:*

a) *Any amounts paid by recipient that are obligation of supplier to pay;*

b) *Money value of goods or services provided free or at concession by recipient;*

c) *Royalties and license fees payable by recipient as a condition of supply;*

d) *Taxes levied under any other law(s) (other than SGST / CGST or IGST);*

e) *Expenses incurred by supplier before supply and charged separately;*

f) *Subsidy realized by supplier on the supply;*

g) *Reimbursements claimed separately by supplier;*

h) *Discounts allowed 'after' supply except when known before supply; (Discounts allowed as a normal trade practice and reflected on the face of the invoice shall not be included).*

# GST Payment of Tax

# 7. GST Payment of Tax

**Q 1. What are the Payments to be made in GST regime?**

*Ans. In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST, going into the account of the Central Government) and the State GST (SGST, going into the account of the concerned State Government). For any inter-state supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the government account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, Interest, Penalty, Fees and any other payment will also be required to be made.*

**Q 2. Who is liable to pay GST?**

*Ans. In general the supplier of goods or service is liable to pay GST. However in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Further, in some cases, the liability to pay is on the third person (say in the case of e-commerce operator responsible for TCS or Government Department responsible for TDS).*

**Q 3. When is GST payment to be done by the taxable person?**

*Ans. At the time of supply of Goods as explained in Section 12 and at the time of supply of services as explained in Section 13. The time is generally the earliest of one of the*

*three events, namely receiving payment, issuance of invoice or completion of supply. Different situations envisaged and different tax points have been explained in the aforesaid sections.*

**Q 4. What are the main features of GST payment process?**

*Ans. The payment processes under proposed GST regime will have the following features:*

- *Electronically generated challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;*
- *Facilitation for the taxpayer by providing hassle free, anytime, anywhere mode of payment of tax;*
- *Convenience of making payment online;*
- *Logical tax collection data in electronic format;*
- *Faster remittance of tax revenue to the Government Account;*
- *Paperless transactions;*
- *Speedy Accounting and reporting;*
- *Electronic reconciliation of all receipts;*
- *Simplified procedure for banks;*
- *Warehousing of Digital Challan.*

**Q 5. How can payment be done?**

*Ans. Payment can be done by the following methods:*

*(i) Through debit of Credit Ledger of the taxpayer*

*maintained on the Common Portal- ONLY Tax can be paid. Interest, Penalty and Fees cannot be paid by debit in the credit ledger..*

*Tax payers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax. However, no input tax credit on account of CGST shall be utilized towards payment of SGST and vice versa. The credit of IGST would be permitted to be utilized for payment of IGST, CGST and SGST in that order.*

(ii) *In cash by debit in the Cash Ledger of the taxpayer maintained on the Common Portal. Money can be deposited in the Cash Ledger by different modes, namely, E-Payment (Internet Banking, Credit Card, Debit Card); Real Time Gross Settlement (RTGS)/ National Electronic Fund Transfer (NEFT); Over the Counter Payment in branches of Banks Authorized to accept deposit of GST.*

**Q 6. When is payment of taxes to be made by the Supplier?**

*Ans. Payment of taxes by the normal taxpayer is to be done on monthly basis by the 20th of the succeeding month. Cash payments will be first deposited in the Cash Ledger and the taxpayer shall debit the ledger while making payment in the monthly returns and shall reflect the relevant debit entry number in his return. As mentioned earlier, payment can also be debited from the Credit Ledger. Payment of taxes for the month of March shall be paid by the 20th of April. Composition tax payers will need to pay tax on*

*quarterly basis. Timing of payment will be from 0000 Hrs to 2000 Hrs.*

**Q 7. Whether time limit for payment of tax can be extended or paid in monthly installments?**

*Ans. No, this is not permitted in case of self-assessed liability. In other cases, competent authority has been empowered to extend the time period or allow payment in installments. (Section 55 of MGL).*

**Q 8. What happens if the taxable person files the return but does not make payment of tax?**

*Ans. In such cases, the return is not considered as a valid return. Section 27 (3) of the MGL provides that the return furnished by a taxable person shall not be treated as valid return unless the full tax due as per the said return has been paid. It is only the valid return that would be used for allowing input tax credit (ITC) to the recipient. In other words, unless the supplier has paid the entire self-assessed tax and filed his return and the recipient has filed his return, the ITC of the recipient would not be confirmed.*

*As per section 28, a taxable person who has not furnished a valid return shall not be allowed to utilize such credit till he discharges his self-assessed tax liability.*

**Q 9. Which date is considered as date of deposit of the tax dues- Date of presentation of cheque or Date of payment or Date of credit of amount in the account of government account?**

*Ans. It is the date of credit to the Government account.*

**Q 10. What are E-Ledgers?**

*Ans. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. Once a taxpayer is registered on Common Portal (GSTN), 2 e-ledgers (Cash & Input Tax Credit) and an electronic tax liability register will be automatically opened and displayed on his dashboard at all times.*

**Q 11. What is a tax liability register?**

*Ans. Tax Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.*

**Q 12. What is a Cash Ledger?**

*Ans. The cash ledger will reflect all deposits made in cash, and TDS/TCS made on account of the taxpayer. The information will be reflected on real time basis. This ledger can be used for making any payment on account of GST.*

**Q 13. What is an ITC Ledger?**

*Ans. Input Tax Credit as self-assessed in monthly returns will be reflected in the ITC Ledger. The credit in this ledger can be used to make payment of TAX ONLY and not other amounts such as interest, penalty, fees etc.*

**Q 14. What is the linkage between GSTN and the authorized Banks?**

*Ans. There will be real time two way linkage between the GSTN and the Core Banking Solution (CBS) of*

*the Bank. CPIN is automatically routed to the Bank via electronic string for verification and receiving payment and a challan identification number (CIN) is to automatically sent by the Bank to the Common Portal confirming payment receipt. No manual intervention will be involved in the process by any one including bank cashier or teller or the taxpayer.*

**Q 15. Can a taxpayer generate challan in multiple sittings?**

*Ans. Yes, a taxpayer can partially fill in the challan form and temporarily "save" the challan for completion at a later stage. A saved challan can be "edited" before finalization. After the tax payer has finalized the challan, he will generate the challan, for use of payment of taxes. The remitter will have option of printing the challan for his record.*

**Q 16. Can a challan generated online be modified?**

*Ans. No. After logging into GSTN portal for generation of challan, payment particulars have to be fed in by the tax payer or his authorized person. He can save the challan midway for future updation. However once the challan is finalized and CPIN generated, no further changes can be made to it by the taxpayer.*

**Q 17. Is there a validity period of challan?**

*Ans. Yes, a challan will be valid for fifteen days after its generation and thereafter it will be purged from the System. However, the taxpayer can generate another challan at his convenience.*

**Q 18. What is a CPIN?**

*Ans. CPIN stands for Common Portal Identification Number (CPIN) given at the time of generation of challan. It is a 14 digit unique number to identify the challan. As stated above, the CPIN remains valid for a period of 15 days.*

**Q 19. What is a CIN and what is its relevance?**

*Ans. CIN stands for Challan Identification Number. It is a 17 digit number that is 14-digit CPIN plus 3-digit Bank Code. CIN is generated by the authorized banks/ Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.*

**Q 20. What is the sequence of payment of tax where that taxpayer has liabilities for previous months also?**

*Ans. Section 35(8) prescribes an order of payment where the taxpayer has tax liability beyond the current return period. In such a situation, the order of payment to be followed is: First self-assessed tax and interest for the previous period; thereafter self-assessed tax and interest for the current period; and thereafter any other amounts payable including any confirmed demands under section 51. This sequence has to be mandatorily followed.*

**Q 21. What is an E-FPB?**

*Ans. E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India Transactions. The E-FPB will have to open accounts under each major head for all governments. Total 38 accounts (one each for CGST, IGST and one each for SGST for each State/UT Govt.) will have to be opened. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB.*

*For NEFT/RTGS Transactions, RBI will act as E-FPB.*

**Q 22. What is TDS?**

*Ans. TDS stands for Tax Deducted at Source (TDS). As per section 37, this provision is meant for Government and Government undertakings and other notified entities making contractual payments in excess of Rs. 10 Lakhs to suppliers. While making such payment, the concerned Government/authority shall deduct 1% of the total payable amount and remit it into the appropriate GST account.*

**Q 23. How will the Supplier account for this TDS while filing his return?**

*Ans. Any amount shown as TDS will be reflected in the electronic cash ledger of the concerned supplier. He can*

*utilize this amount towards discharging his liability towards tax, interest fees and any other amount.*

**Q 24. How will the TDS Deductor account for such TDS?**

*Ans. TDS Deductor will account for such TDS in the following ways:*

1. *Such deductors needs to get compulsorily registered under section 19 read with Schedule III of MGL.*

2. *They need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected and reported in GSTR 7.*

3. *The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.*

4. *They need to issue certificate of such TDS to the deductee within 5 days of deducting TDS failing which fees of Rs. 100 per day subject to maximum of Rs. 5000/- will be payable by such deductor.*

**Q 25. What is Tax Collected at Source (TCS)?**

*Ans. This provision is applicable only for E-Commerce Operator under section 43C of MGL. Every E-Commerce Operator needs to withhold a percentage (to be notified later on the recommendation of the GST Council) of the amount which is due from him to the supplier at the time of making actual payment to the supplier. Such withheld amount is to be deposited by such E-Commerce Operator to the appropriate GST account by the 10th of the next*

*month. The amount deposited as TCS will be reflected in the electronic cash ledger of the supplier.*

**Q 26. Is the pre-registration of credit card necessary in the GSTN portal for the GST payment?**

*Ans. Yes. The taxpayer would be required to pre-register his credit card, from which the tax payment is intended, with the Common Portal maintained on GSTN. GSTN may also attempt to put in a system with banks in getting the credit card verified by taking a confirmation from the credit card service provider. The payments using credit cards can therefore be allowed without any monetary limit to facilitate ease of doing business.*

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# Electronic Commerce

# 8. Electronic Commerce

**Q 1. What is e-commerce?**

*Ans. Section 43B(d) of the MGL defines an Electronic Commerce to mean the supply or receipt of goods and/ or services, or transmitting of funds or data, over an electronic network, primarily the internet, by using any of the applications that rely on the internet, like but not limited to e-mail, instant messaging, shopping carts, web services, universal description Discovery and integration (UDDI), File Transfer Protocol (FTP) and Electronic Data Interchange (EDI) whether or not the payment is conducted online and whether or not the ultimate delivery of the goods and/or services is done by the operator.*

**Q 2. Who is an e-commerce operator?**

*Ans. Section 43B(e) of the MGL defines an Electronic Commerce Operator (Operator) as every person who, directly or indirectly, owns, operates or manages an electronic platform which is engaged in facilitating the supply of any goods and/or services. Also a person providing any information or any other services incidental to or in connection with such supply of goods and services through electronic platform would be considered as an Operator. A person supplying goods/services on his own account, however, would not be considered as an Operator. For instance, Amazon and Flipkart are e-commerce Operators because they are facilitating actual suppliers to supply goods through their platform (popularly called Market place model or Fulfillment Model). However, Titan*

*supplying watches and jewels through its own website would not be considered as an e-commerce operator for the purposes of this provision. Similarly Amazon and Flipkart will not be treated as e-commerce operators in relation to those supplies which they make on their own account (popularly called inventory Model).*

**Q 3. Is it mandatory for e-commerce operator to obtain registration?**

*Ans. Yes. Section 19 r/w Schedule-III of the MGL, provides that the threshold exemption is not available to e-commerce operators and they would be liable to be registered irrespective of the value of supply made by them.*

**Q 4. Whether a supplier of goods/services supplying through e-commerce operator would be entitled to threshold exemption?**

*Ans. No. Section 19 r/w Schedule-III of the MGL, provides that the threshold exemption is not available to such suppliers and they would be liable to be registered irrespective of the value of supply made by them.*

**Q 5. Who is an aggregator?**

*Ans. Section 43B(a) of the MGL defines aggregator to mean a person, who owns and manages an electronic platform, and by means of the application and communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said aggregator. For instance, Ola cabs would be an aggregator.*

**Q 6. Is an aggregator required to be registered under GST?**

*Ans. Yes. Section 19 r/w Schedule-III of the MGL, provides that the threshold exemption is not available to aggregators and they would be liable to be registered irrespective of the value of supply made by them.*

**Q 7. What is Tax Collection at Source (TCS)?**

*Ans. In terms of Section 43C(1) of the MGL, the e-commerce operator is required to collect (i.e. deduct) an amount out of the consideration paid or payable to the actual supplier of goods or services in respect of supplies of goods and / or services made through such operator. The amount so deducted/collected is called as Tax Collection at Source (TCS).*

**Q 8. At what time/intervals should the e-commerce operator make such deductions?**

*Ans. The timings for such collection/deduction are earlier of the two events:*

*(i) the time of credit of any amount to the account of the actual supplier of goods and / or services;*

*(ii) the time of payment of any amount in cash or by any other mode to such supplier.*

**Q 9. What is the time within which such TCS is to be remitted by the e-commerce operator to Government account? Is the operator required to file any returns for this purpose?**

*Ans. In terms of Section 43C(3) of the MGL, the amount collected by the operator is to be paid to the credit of appropriate government within 10 days after the end of the month in which amount was so collected. Further, in terms of Section 43C(4) of the MGL, the operator is required to file a Statement, electronically, containing details of all amounts collected by him for the outward supplies made through his Portal, within 10 days of the end of the calendar month to which such statement pertains. The said statement would contain the names of the actual supplier(s), details of respective supplies made by them and the amount collected on their behalf. The Form and Manner of the said Statement would be prescribed in the GST Rules.*

**Q 10. How can actual suppliers claim credit of this TCS?**

*Ans. Such TCS which is deposited by the operator into government account will be reflected in the cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator. The same can be used at the time of discharge of tax liability in respect of the supplies by the actual supplier.*

**Q 11. Is the e-commerce operator required to furnish information to the Government?**

*Ans. Yes. In terms of section 43C(10), an officer not below the rank of Joint Commissioner may require the operator to furnish details relating to:*

*(i) supplies of goods / services effected through the operator during any period;*

*(ii) stock of goods held by actual supplier making supplies through such operator in the godowns or warehouses belonging to the operator and registered as additional place of business by the actual supplier.*

*The operator is required to furnish the above information within 5 working days from the date of service of notice asking such information. In case of failure to furnish such information, the penalty could be extended to Rs. 25,000/- .*

**Q 12. Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?**

*Ans. Yes, in terms of Section 43C (4), every operator is required to furnish a statement, electronically, of all amounts collected as TCS towards outward supplies of goods and/or services effected through it, during a calendar month within ten days after the end of such calendar month. The statement shall contain, inter alia, the details of the amount collected on behalf of each supplier in respect of all supplies of goods and/or services effected through the operator and the details of such supplies during the said calendar month.*

**Q 13. What is the concept of matching in e-commerce provisions and how it is going to work?**

*Ans. As per section 43C (6), the details of supplies and the amount collected during a calendar month, and furnished*

*by every operator in his statement will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return filed under section 27 for the same calendar month or any preceding calendar month. Where the details of outward supply, on which the tax has been collected, as declared by the operator in his statement do not match with the corresponding details declared by the supplier the discrepancy shall be communicated to both persons.*

**Q 14. What will happen if the details remain mismatched?**

*Ans. As per section 43C (8), the value of a supply relating to any payment in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output liability of the said supplier, for the calendar month succeeding the calendar month in which the discrepancy is communicated. The concerned supplier shall, in whose output tax liability any amount has been added shall be liable to pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 36 on the amount so added from the date such tax was due till the date of its payment.*

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# Job Work

# 9. Job Work

**Q 1. What is job-work?**

*Ans. Section 2(62) of the MGL provides that "job-work" means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression "job-worker" shall be construed accordingly.*

*This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986 as amended, wherein job-work has been defined in such a manner so as to ensure that the activity of job-work must amount to manufacture. Thus the definition of job-work itself reflects the change in basic scheme of taxation relating to job-work in the proposed GST regime.*

**Q 2. Whether goods sent by a taxable person to a job-worker will be treated as supply and liable to GST? Why?**

*Ans. No. It will not be treated as a supply. In terms of proviso to Para 5 of Schedule I of the MGL the supply of goods by a registered taxable person (principal) to job-worker, in terms of Section 43A, shall not be regarded as supply of goods. Therefore, it can be inferred that no GST shall be applicable on the goods supplied by the registered principal to a job-worker.*

**Q 3. Can a registered taxable person send goods without payment of tax to his job-worker?**

*Ans. Yes. Section 43A of the MGL provides that the registered taxable person (principal) can send the taxable*

*goods to a job-worker for job-work without payment of tax. He can further send the goods from one job-worker to another job-worker and so on subject to certain condition. It may be noted that provisions of Section 43A are not applicable if non-taxable or exempted goods are proposed to be sent for job-work.*

**Q 4. Is a job-worker required to take registration?**

*Ans. Yes, as a Job-worker would be a supplier of services, he would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold.*

**Q 5. Whether the goods of principal directly supplied from the job-worker's premises will be included in the aggregate turnover of the job-worker?**

*Ans. No. It will be included in the aggregate turnover of the principal.*

**Q 6. Can the principal supply the goods directly from the premises of the job-worker without bringing it back to his own premises?**

*Ans. Yes but with a rider that the principal should have declared the premises of such job-worker as his additional place of business or where the job-worker is a registered person or where the goods have been notified.*

**Q 7. Under what circumstances can the principal directly supply goods from the premises of job-worker?**

*Ans. The goods can be supplied directly from the place of business of job-worker without declaring it as additional*

*place of business in two circumstances namely where the job-worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified in this behalf.*

**Q 8. What are the provisions concerning taking of ITC in respect of inputs/capital goods sent to a job-worker?**

*Ans. In the MGL, aspects relating to taking input tax credit in respect of inputs/capital goods sent for job-work have been specifically dealt in Section 16A, which provides that the credit of taxes paid on inputs or capital goods can be taken in the following manner:*

*Principal shall be entitled to take credit of inputs sent to a job-worker if the said inputs, after completion of job-work are received back in 180 days from the date of being sent out. In case the inputs are sent directly to the job-worker, the date shall be counted from the date of receipt of inputs by job-worker. Further an amount equivalent to the input tax credit availed on such inputs has to be paid along with interest, in case the inputs are not received back within the specified time. The credit can be reclaimed when the inputs are actually received back.*

**Q 9. Are the provisions of job-work applicable to all category of goods?**

*Ans. No. The provisions relating to job-work are applicable only when registered taxable person intends to send taxable goods. In other words, these provisions are not applicable to exempted or non-taxable goods or when the sender is a person other than registered taxable person.*

# Input Tax Credit

# 10. Input Tax Credit

**Q 1. What is input tax?**

*Ans. "Input tax" has been defined in section 2 (57) of the MGL and section 2 (1) (d) of the IGST Act. Input tax in relation to a taxable person, means the {IGST and CGST} in respect of CGST Act and {IGST and SGST} in respect of SGST Act, charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under sub-section (3) of section 7.*

*Under the IGST Act, input tax is defined as IGST, CGST or SGST charged on any supply of goods and / or services.*

**Q 2. What is the implication of different definition of "input tax" in three acts viz CGST, SGST and IGST Acts?**

*Ans. It implies that input tax consists of IGST & CGST in CGST Act and IGST & SGST in SGST Act. In the IGST Act, input tax consists of all three taxes namely, IGST, CGST and SGST.*

*It further implies that credit of all three can be used for discharging IGST liability, whereas only credit of IGST & CGST can be taken in CGST Act and that of IGST & SGST can be taken under SGST Act. Further the credit of CGST & SGST cannot be cross-utilized.*

**Q 3. Can GST paid on reverse charge be considered as input tax?**

*Ans. Yes. The definition of input tax includes the tax payable under sub-section (3) of section 7 (Reverse*

*Charge). The credit can be availed if such goods and/or services are used, or are intended to be used, in the course or furtherance of his business.*

**Q 4. Does input tax includes tax (CGST/ IGST/SGST) paid on input goods, input services and/ or capital goods?**

*Ans. Yes, in terms of section 2(54), 2(55) & 2(20) of the MGL respectively. It may be noted that credit of tax paid on capital goods also is permitted to be availed in one instalment.*

**Q 5. What is the ITC entitlement of a person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration? (Section 16(2))**

*Ans. He shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act. It may be noted that the credit on pre-registration stock would not be admissible if the registration has not been obtained within a period of 30 days from the date on which he becomes liable to registration.*

**Q 6. A person becomes liable to pay tax on 1st August, 2017 and has obtained registration on 15th August, 2017. Such person is eligible for input tax credit on inputs held in stock as on …….**

*Ans. 31st July, 2017.*

**Q 7. What is the eligibility of input tax credit on inputs in stock for a person who obtains voluntary registration?**

*Ans. As per section 16(2A) of MGL, the person who obtains voluntary registration is entitled to take the input tax credit of input tax on inputs in stock, inputs in semi-finished goods and finished goods in stock, held on the day immediately preceding the date of registration.*

**Q 8. Where goods and/or services received by a taxable person are used for effecting both taxable and non-taxable supplies, whether the input tax credit is available to the registered taxable person?**

*Ans. As per section 16(6) of MGL, the input tax credit of goods and / or service attributable to only taxable supplies can be taken by registered taxable person. The amount of eligible credit would be calculated in a manner to be prescribed in terms of section 16(7) of the MGL read with GST ITC Rules (yet to be issued). It is important to note that credit on capital goods also would now be permitted on proportionate basis.*

**Q 9. Where goods and/or services received by a taxable person are used for the purpose of business and non-business supplies, whether the input tax credit is available to the registered taxable person?**

*Ans. As per section 16(5) of the MGL, the input tax credit of goods and / or service attributable to only supplies effected*

*for business purpose can be taken by registered taxable person. The amount of eligible credit would be calculated in a manner to be prescribed in terms of section 16(7) of the MGL read with GST ITC Rules (yet to be issued). It is important to note that credit on capital goods also would now be permitted on proportionate basis.*

**Q 10. What would be input tax eligibility in cases where there is a change in the constitution of a registered taxable person?**

*Ans. As per section 16(8) of the MGL, the transferor shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to the transferee provided that there is a specific provision for transfer of liabilities.*

**Q 11. What would be input tax eligibility in case where the goods and/or services supplied by a registered taxable person become absolutely exempt?**

*Ans. As per section 16(12) of the MGL, the registered taxable person who supplies goods and / or services which become absolutely exempt, has to pay an amount equivalent to the input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such exemption. It has also been provided that after payment of the amount on such goods, the balance, if any available in electronic credit ledger would lapse. The amount, required to be paid, is to be calculated as per GAAP in terms of section 16(13) of the MGL.*

**Q 12. What would be input tax eligibility in cases where taxable person paying tax under section 7 opts to pay tax under Compounding Scheme under Section 8?**

*Ans. As per section 16(12) of the MGL, the registered taxable person, who was paying tax under section 7 opts to pay tax under Compounding Scheme under Section 8, has to pay an amount equivalent to the input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such switch over. It has also been provided that after payment of the amount on such goods, the balance, if any available in electronic credit ledger would lapse. The amount, required to be paid, is to be calculated as per GAAP in terms of section 16(13) of the MGL.*

**Q 13. A dealer paying tax on compounding basis crosses the compounding threshold and becomes a regular taxable person. Can he avail ITC and if so from what date?**

*Ans. As per section 16(3) of the MGL, he can avail ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under section 7.*

**Q 14. Mr. B, a registered taxable person was paying tax under composition rate up to 30th July, 2017. However, w.e.f 31st July, 2017. Mr. B becomes liable to pay tax under regular scheme. Is he eligible for ITC?**

*Ans. Mr. B is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock as on 30th July,2017.*

**Q 15. Mr. A applies for voluntary registration on 5th June, 2017 and obtained registration on 22nd June, 2017. Mr. A is eligible for input tax credit on inputs in stock as on ……..**

*Ans. Mr. A is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock as on 21st June, 2017.*

**Q 16. When shall a taxable person be not entitled to take input tax credit under sub-section (2), (2A) or sub-section (3) of Section 16 in respect of any supply of goods and / or services to him?**

*Ans. As per section 16(4) of the MGL, he cannot avail ITC after the expiry of one year from the date of issue of tax invoice relating to such supply.*

**Q 17. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?**

*Ans. Yes, the principal is eligible to avail the input tax credit on inputs sent to job worker for job work in terms of Section 16A(2) of the MGL.*

**Q 18. What is the time period within which the inputs sent for job work has to be received back by the principal?**

*Ans. 180 days.*

**Q 19. Whether principal has to reverse the input tax credit on inputs which have not been received back from the job worker within 180 days?**

*Ans. Yes, the principal has to reverse the credit along with interest on inputs which have not been received back from job worker within 180 days but he can reclaim the credit on receipt of inputs.*

**Q 20. Which of the following is included for computation of taxable supplies for the purpose of availing credit:**

*(a) Zero-rated supplies;*

*(b) Exempt supplies;*

*(c) Both?*

*Ans. Zero rated supplies.*

**Q 21. What is the time period within which the capital goods sent for job work has to be received back by the principal?**

*Ans. Two years.*

**Q 22. What is the liability of the principal if the capital goods sent to job worker have not been received within 2 years from the date of being sent?**

*Ans. Principal has to pay an amount equal to credit taken on such capital goods along with interest. But he can reclaim the credit on receipt of inputs.*

**Q 23. A Taxable person is in the business of information technology. He buys a motor vehicle for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?**

*Ans. No. As per section 16(9)(a) of the MGL, ITC on motor vehicles can be availed only if the taxable person is in the business of transport of passengers or goods or is providing the services of imparting training on motor vehicles.*

**Q 24. Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961, will ITC be allowed in such cases?**

*Ans. As per section 16(10) of the MGL, the input tax credit shall not be allowed on the said tax component.*

**Q 25. What are the conditions necessary for obtaining ITC?**

*Ans. As per Section 16(11) of the MGL, following four conditions are stipulated:*

*(a) The registered taxable person should be in possession of tax paying document issued by a supplier;*

*(b) The taxable person must have received the goods and / or services;*

*(c) The tax charged on such supply has been actually paid to the government either in cash or through utilization of input tax credit; and*

*(d) The taxable person should have furnished the return under section 27.*

**Q 26. Where the goods against an invoice are received in lots or instalments, how will a registered taxable person be entitled to ITC?**

*Ans. As per proviso to section 16(11) of the MGL, the registered taxable person shall be entitled to the credit upon receipt of the last lot or installment.*

**Q 27. Who will get the ITC where goods have been delivered to a person other than taxable person ('bill to'- 'ship to' scenarios)?**

*Ans. As per explanation clause to section 16(11) of the MGL, for this purpose of receiving the goods, it would be deemed that the taxable person has received the goods when the goods have been delivered to a third party on the direction of such taxable person. So ITC will be available to the person on whose order the goods are delivered to third person.*

**Q 28. What is the time limit for taking ITC?**

*Ans. As per Section 16 (15) of the MGL, ITC cannot be taken beyond the month of September of the following FY to which invoice pertains or date of filing of annual return, whichever is earlier.*

*The underlying reasoning for this restriction is that no change in return is permitted after September of next FY. If annual return is filed before the month of September then no change can be made after filing of annual return.*

**Q 29. Is there any negative list on which ITC is not permitted?**

*Ans. Section 16 (9) of the MGL provides for the negative list*

*with respect to the admissibility of ITC. It has been provided that the ITC on following items cannot be availed:*

*(a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—*

*(i) transportation of passengers, or*

*(ii) transportation of goods, or*

*(iii) imparting training on motor driving skills;*

*(b) goods and / or services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness center, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/ or services are used primarily for personal use or consumption of any employee;*

*(c) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;*

*(d) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;*

*(e) goods and/or services on which tax has been paid under section 8; and*

*(f) goods and/or services used for private or personal consumption, to the extent they are so consumed.*

**Q 30. Section 29 of the MGL provides that the ITC would be confirmed only if the inward details filed by the recipient are matched with the outward details furnished by the supplier in his valid return. What happens if there is a mismatch?**

*Ans. In case of mismatch between the inward and outward details, the supplier would be required to rectify the mis-match within a period of two months and if the mis-match continues, the ITC would have to be reversed by the recipient.*

**Q 31. What will be the tax impact when capital goods on which ITC has been taken are supplied by taxable person?**

*Ans. As per section 16(15) of the MGL, in case of supply of capital goods on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods, whichever is higher.*

**Q 32. What is the recovery mechanism for wrongly availed credit?**

*Ans. As per section 16(16) of the MGL, the wrongly availed credit would be recovered from the registered taxable person in terms of section 51 of MGL.*

# Concept of Input Service Distributor in GST

# 11. Concept of Input Service Distributor in GST

**Q 1. What is Input Service Distributor (ISD)?**

*Ans. As per Section 2(56) of MGL, ISD means an office of the supplier of goods and / or services which receives tax invoices issued under section 23 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above. For the purpose of distributing the credit, ISD is deemed as supplier of services.*

**Q 2. What are the requirements for registration as ISD?**

*Ans. An ISD is required to obtain registration as a deemed supplier of services [section 19 read with para 5(vii) of Schedule III]. The threshold limit of registration is not applicable to ISD. The registration of ISD under the existing regime (i.e. under Service Tax) would not be migrated in GST regime. All the existing ISDs will be required to obtain fresh registrations under new regime in case they want to operate as an ISD.*

**Q 3. What are the conditions/restrictions for distribution of credit?**

*Ans. The distribution of credit would be done subject to the following conditions:*

a. *Credit should be distributed through tax invoice or other document as prescribed;*

b. *Amount of credit distributed should not exceed the amount of credit available;*

c. *Credit should be distributed only to such suppliers to whom such services are attributable;*

d. *Credit in respect of services attributable to more than one supplier should be distributed proportionately on the basis of turnover of respective supplier during the preceding financial year.*

**Q 4. Is the ISD required to file return?**

*Ans. Yes, as per Section 27(6) of MGL, ISD is required to file monthly return by 13th of the following month in form GSTR-6.*

**Q 5. Can a company have multiple ISD?**

*Ans. Yes, different offices like marketing division, security division etc. may apply for separate ISD.*

**Q 6. What are the provisions for recovery of excess/ wrongly distributed credit by ISD?**

*Ans. Sections 18(1) and 18(2) provide for recovery of excess/wrongly distributed credit by initiating action against the ISD itself or against the recipient of credit so distributed under section 51 of the Model GST Law.*

**Q 7. Whether CGST and IGST credit can be distributed by ISD as IGST credit to units located in different States?**

*Ans. Yes, CGST credit can be distributed as IGST and IGST credit can be distributed as IGST by an ISD for the units located in different States (Section 17(1)).*

**Q 8. Whether SGST credit can be distributed as IGST credit by an ISD to units located in different States?**

*Ans. Yes, an ISD can distribute SGST credit as IGST for the units located in different States.(Section 17(2)*

**Q 9. Whether the ISD can distribute the CGST and IGST Credit as CGST credit?**

*Ans. Yes, CGST and IGST credit can be distributed as CGST credit by an ISD for the units located in same State.*

**Q 10. Whether the SGST and IGST Credit can be distributed as SGST credit?**

*Ans. Yes, ISD can distribute SGST and IGST credit for the units located in same State.*

**Q 11. What are the documents through which the credit can be distributed by an ISD?**

*Ans. The document under which the credit can be distributed is yet to be prescribed. The Act provides that the credit can be distributed only through prescribed document.*

**Q 12. How to distribute common credit among all the units of an ISD?**

*Ans. The common credit used by all the units can be distributed by ISD on pro rata basis i.e. based on the turnover of each unit to the aggregate turnover of all the units to which credit is distributed.*

**Q 13. The ISD may distribute the CGST and IGST credit to recipient outside the State as_____**

**(a) IGST**

**(b) CGST**

**(c) SGST**

*Ans. (a) IGST.*

**Q 14. The ISD may distribute the CGST credit within the State as___**

**(a) IGST**

**(b) CGST**

**(c) SGST**

**(d) Any of the above.**

*Ans. (b) CGST.*

**Q 15. The credit of tax paid on input service used by more than one supplier is _____**

*(a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.*

*(b) Distributed equally among all the suppliers.*

*(c) Distributed only to one supplier.*

*(d) Cannot be distributed.*

*Ans. (a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.*

**Q 16. Whether the excess credit distributed could be recovered by the department?**

*Ans. Yes, excess credit distributed could be recovered along with interest from an ISD by the department.*

**Q 17. What are the consequences of credit distributed in contravention of the provisions of the Act?**

*Ans. The credit distributed in contravention of provisions of Act could be recovered from the unit to which it is distributed along with interest.*

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# Returns Process and matching of Input Tax Credit

# 12. Returns Process and matching of Input Tax Credit

**Q 1. What is the purpose of returns?**

*Ans.*

*a) Mode for transfer of information to tax administration;*

*b) Compliance verification program of tax administration;*

*c) Finalization of the tax liabilities of the taxpayer within stipulated period of limitation; to declare tax liability for a given period;*

*d) Providing necessary inputs for taking policy decision;*

*e) Management of audit and anti-evasion programs of tax administration.*

**Q 2. Who needs to file Return in GST regime?**

*Ans. Every registered taxable person - who crosses the threshold limit for payment of taxes. A supplier needs to be registered when the aggregate turnover crosses Rs. nine lacs but he become taxable person ONLY when he crosses Rs. ten lacs. So he will be required to file returns when he crosses the threshold limit of Rs. ten lacs. There are some other class of persons who need to be registered and therefore will have to file returns like interstate suppliers, TDS deductors, e-commerce operators, suppliers supplying goods through e-commerce operators etc (reference Schedule-III and Question 6 of the Registration Chapter).*

**Q 3. What type of outward supply details are to be filed in the return?**

*Ans. A normal registered taxpayer has to file the outward supply details in GSTR-1 in relation to various types of supplies made in a month, namely outward supplies to registered persons, outward supplies to unregistered persons (consumers), details of Credit/Debit Notes, zero rated, exempted and non-GST supplies, exports, and advances received in relation to future supply.*

**Q 4. Is the scanned copy of invoices to be uploaded along with GSTR-1?**

*Ans. No, scanned copy of invoices is to be uploaded. Only certain prescribed fields of information from invoices need to be uploaded.*

**Q 5. Whether all invoices will have to be uploaded?**

*Ans. No. It depends on whether B2B or B2C plus whether Intra-state or Inter-state supplies.*

*For B2B supplies, all invoices, whether Intra-state or Inter-state supplies, will have to be uploaded. Why So? Because ITC will be taken by the recipients, invoice matching is required to be done.*

*In B2C supplies, uploading in general may not be required as the buyer will not be taking ITC. However still in order to implement the destination based principle, invoices of value more than Rs.2.5 lacs in inter-state B2B supplies will have to be uploaded. For intra-state invoices below Rs. 2.5*

*lacs and all intra-state invoices, state wise summary will be sufficient.*

**Q 6. Whether description of each item in the invoice will have to be uploaded?**

*Ans. No. In fact description will not have to be uploaded. Only HSN code in respect of supply of goods and Accounting code in respect of supply of services will have to be fed. The minimum number of digits that the filer will have to upload would depend on his turnover in the last year.*

**Q 7. Whether value for each transaction will have to be fed? What if no consideration?**

*Ans. Yes. Not only value but taxable value will also have to be fed. In some cases both may be different.*

*In case there is no consideration, but it is supply by virtue of schedule 1, the taxable value will have to be uploaded.*

**Q 8. Can a recipient feed information in his GSTR-2 which has been missed by the supplier?**

*Ans Yes, the recipient can himself feed the invoices not uploaded by his supplier. The credit on such invoices will also be given provisionally but will be subject to matching. On matching, if the invoice is not uploaded by the supplier, both of them will be intimated. If the mismatch is rectified, provisional credit will be confirmed. But if mismatch continues even after intimation, the credit provisionally allowed will be reversed.*

**Q 9. Do the taxable person have to feed anything in the GSTR-2 or everything is auto-populated from GSTR-1?**

*Ans. While a large part of GSTR-2 will be auto-populated, there are some details that only recipient can fill like details of imports, details of purchases from non-registered or composition suppliers and exempt/non-GST/nil GST supplies etc.*

**Q 10. What if the invoices do not match? Whether ITC given or denied? If denied, what action is taken against supplier?**

*Ans. If invoices in GSTR-2 do not match with invoices in counter-party GSTR-1, the ITC will be reversed if the mismatch continues even after it is made known to both and still it is not rectified. Mismatch can be because of two reasons. First, it could be due to mistake at the side of the recipient, and in such a case, no further action is required. Secondly, it could be possible that the said invoice was issued by supplier but he did not upload it and pay tax on it. In such a case, recovery action shall be taken against the supplier. In short, all mismatches will lead to proceedings if the supplier has made a supply but not paid tax on it.*

**Q 11. What will be the legal position in regard to the reversed input tax credit if the supplier later realises the mistake and feeds the information?**

*Ans. At any stage, but before September of the next financial year, supplier can upload the invoice and pay duty and interest on such missing invoices in his GSTR-3 of*

*the month in which he uploaded the invoice. The recipient will then automatically get ITC on that invoice. The interest paid by the recipient at the time of reversal will also be returned to the recipient through an automated system on the GSTN.*

**Q 12. What is the special feature of GSTR-2?**

*Ans. The special feature of GSTR-2 is that the details of supplies received by a recipient can be auto populated on the basis of the details furnished by the counterparty supplier in his GSTR-1.*

**Q 13. Whether the ITC denied can be restored?**

*Ans. If the supplier uploads the invoice at any time after the reversal but by September of the next financial year, the credit reversed earlier gets restored along with refund of the interest paid during reversal.*

**Q 14. Do tax payers under the composition scheme also need to file GSTR-1 and GSTR-2?**

*Ans. No. Composition tax payers do not need to file any statement of outward or inward supplies. They have to file a quarterly return in Form GSTR-4 by the 1st of the month after the end of the quarter. Since they are not eligible for any input tax credit, there is no relevance of GSTR-2 for them and since they do not pass on any credit to their recipients, there is no relevance of GSTR-1 for them. In their return, they have to declare summary details of their outward supplies along with the details of tax payment. They also have to give details of their*

*purchases in their quarterly return itself, most of which will be auto populated.*

**Q 15. Do Input Service Distributors (ISDs) need to file separate statement of outward and inward supplies with their return?**

*Ans. No, the ISDs need to file only a return in GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the subsidiaries. Since their return itself covers these aspects, there is no requirement to file separate statement of inward and outward supplies.*

**Q 16. How does a taxpayer get the credit of the tax deducted at source on his behalf? Does he need to produce TDS certificate from the deductee to get the credit?**

*Ans. Under GST, the deductor will be submitting the deductee wise details of all the deductions made by him in his return in Form GSTR-7 to be filed by 10th of the month next to the month in which deductions were made. The details of the deductions as uploaded by the deductor shall be auto populated in the GSTR-2 of the deductee. The taxpayer shall be required to confirm these details in his GSTR-2 to avail the credit for deductions made on his behalf. To avail this credit he does not require to produce any certificate in physical or electronic form. The certificate will only be for record keeping of the tax payer and can be downloaded from the Common Portal.*

**Q 17. Who all need to file Annual Return?**

*Ans. All taxpayers filing return in GSTR-1 to 3 other than casual taxpayers and taxpayers under composition scheme are required to file an annual return. Casual taxpayers, non-resident taxpayers, ISDs and persons authorized to deduct tax at source are not required to file annual return.*

**Q 18. Is an Annual Return and a Final Return one and the same?**

*Ans. No. Annual Return has to be filed by every registered taxable person paying tax as a normal or a compounding taxpayer. Final Return has to be filed only by those registered taxable persons who have applied for cancellation of registration. This has to be filed within three months of the date of cancellation or the date of cancellation order.*

**Q 19. If a return has been filed, how can it be revised if some changes are required to be made?**

*Ans. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system will allow changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR-1/2 in the tables specifically provided for the purposes of amending previously declared details.*

**Q 20. How can taxpayers file their returns?**

*Ans. Taxpayers will have various modes to file the statements and returns. Firstly, they can file their statement and returns directly on the Common Portal online. However, this may be tedious and time taking for taxpayers with large number of invoices. For such taxpayers, an offline utility will be provided that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the Common Portal. GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the Common Portal.*

**Q 21. What all should a diligent taxpayer ensure for a hassle free compliance under GST?**

*Ans. One of the most important things under GST will be timely uploading of the details of outward supplies in Form GSTR-1 by 10th of next month. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues. If the number is small, the taxpayer can upload all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be uploaded on a regular basis. GSTN will allow regular uploading of invoices even on a real time basis. Till the statement is actually submitted, the system will also allow the taxpayer to modify the uploaded invoices. Therefore, it would always be beneficial for the taxpayers to regularly upload the invoices. Last minute rush will make uploading difficult and will come with higher risk of possible failure and default. The second thing would be to ensure that taxpayers follow up on uploading the invoices of their inward supplies by their*

*suppliers. This would be helpful in ensuring that the input tax credit is available without any hassle and delay. Recipients can also encourage their suppliers to upload their invoices on a regular basis instead of doing it on or close to the due date. The system would allow recipients to see if their suppliers have uploaded invoices pertaining to them. The GSTN system will also provide the track record about the compliance level of a tax payer, especially about his track record in respect of timely uploading of his supply invoices giving details about the auto reversals that have happened for invoices issued by a supplier. The Common Portal of GST would have pan India data at one place which will enable valuable services to the taxpayers. Efforts are being made to make regular uploading of invoices as easy as possible and it is expected that an enabling eco-system will develop towards this objective. Taxpayers should make efficient use of this ecosystem for easy and hassle free compliance under GST.*

**Q 22. Is it compulsory for taxpayer to file return by himself?**

*Ans. No. A registered taxpayer person can also get his return filed through a Tax Return Preparer, duly approved by the Central or the State tax administration.*

**Q 23. What is the consequence of not filing the return within the prescribed date?**

*Ans. A registered taxable person who files return beyond the prescribed date will have to pay late fees of rupees one hundred for every day of delay subject to a maximum of rupees five thousand.*

# Assessment and Audit

# 13. Assessment and Audit

**Q 1. Who is the person responsible to make assessment of taxes payable under the Act?**

*Ans. Every person registered under the Act shall himself assess the tax payable by him for a tax period and after such assessment he shall file the return required under section 27.*

**Q 2. Is there any provision in MGL for tax treatment of goods returned by the recipient?**

*Ans. Yes, Explanation to Section 44 of MGL has such a provision. It provides that where goods received as an inward supply is returned by the recipient to the supplier within six months from the date of the relevant invoice, the tax payable on such supplies shall be equal to the input tax credit availed earlier on such inward supply. This provision essentially ensures that if the recipient returns the goods to the supplier within six months of the date of its original supply, his tax liability on such returned goods will be the same as was at the time of the original supply. If goods are returned after six months of the date of the original supply invoice, the rate of tax applicable will be the rate prevailing on date of such return.*

**Q 3. 'A' supplied goods to 'B' in April 2017, these goods were returned by 'B' to 'A' on June 2017. The tax rate charged by 'A' on such goods was 18%. In May 2017, the rate was amended to 18.5%. What is**

**the tax payable on return of such inward supply by 'B' to 'A'?**

*Ans. 18%.*

**Q 4. When can a taxable person pay tax on a provisional basis?**

*Ans. As a taxpayer has to pay tax on self-assessment basis, a request for paying tax on provisional basis has to come from the taxpayer which will then have to be permitted by the proper officer. In other words, no tax officer can suomoto order payment of tax on provisional basis. This is governed by section 44A of MGL. Tax can be paid on a provisional basis only after the proper officer has permitted it through an order passed by him. For this purpose, the taxable person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. Such a request can be made by the taxable person only in such cases where he is unable to determine:*

*a) the value of goods or services to be supplied by him, or*

*b) determine the tax rate applicable to the goods or services to be supplied by him.*

*In such cases the taxable person has to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.*

**Q 5. What is the latest time by which final assessment is required to be made?**

*Ans. The final assessment order has to be passed by the*

*proper officer within six months from the date of the communication of the order of provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the above period of six months may be extended:*

*a) by the Joint/Additional Commissioner for a further period not exceeding six months, and*

*b) by the Commissioner for such further period as he may deem fit.*

**Q 6. Where the tax liability as per the final assessment is higher than in provisional assessment, will the taxable person be liable to pay interest?**

*Ans. Yes. He will be liable to pay interest from the date the tax was due to be paid originally till the date of actual payment.*

**Q 7. What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed under section 45 of MGL?**

*Ans. If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or does not take corrective action within a reasonable period after accepting the discrepancies, the Proper Officer may take recourse to any of the following provisions:*

*(a) Proceed to conduct audit under Section 49 of the Act;*

(b) *Direct the conduct of a special audit under Section 50 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or*

(c) *Undertake procedures of inspection, search and seizure under Section 60 of the Act; or*

(d) *Initiate proceeding for determination of tax under Section 51 of the Act.*

**Q 8. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 46?**

*Ans. As this provision relates to 'best judgment assessment', giving a notice to the taxable person is not required.*

**Q 9. If a taxable person fails to file the return required under law (under section 27 or 31), what legal recourse is available to the tax officer?**

*Ans. The proper officer has to first issue a notice to the defaulting taxable person under section 32 of MGL requiring him to furnish the return within a specified period of time, which has to be a minimum of fifteen days as per section 46 of MGL. If the taxable person fails to file return within the given time, the proper officer shall proceed to assess the tax liability of the return defaulter to the best of his judgement taking into account all the relevant material available with him. This power is given under section 46 of MGL.*

**Q 10. Under what circumstances can a best judgment assessment order issued under section 46 be withdrawn?**

*Ans. The best judgment order passed by the Proper Officer under section 46 of MGL shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order.*

**Q 11. What is the time limit for passing order u/s 46 and 47?**

*Ans. The time limit for passing an assessment order under section 46 or 47 is three or five years from the due date for filing the annual return.*

**Q 12. What is the legal recourse available in respect of a person who is liable to pay tax but has failed to obtain registration?**

*Ans. Section 47 of MGL provides that in such a case, the proper officer can assess the tax liability and pass an order to his best judgment for the relevant tax periods. However, such an order must be passed within a period of five years from the due date of filing of the annual return for the financial year to which non-payment of tax relates.*

**Q 13. Under what circumstances can a tax officer initiate Summary Assessment?**

*Ans. As per section 48 of MGL, Summary Assessments can be initiated to protect the interest of revenue when:*

a) *the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and*

b) *the proper officer believes that delay in passing an assessment order will adversely affect the interest of revenue.*

*Such order can be passed after seeking permission from the Additional Commissioner / Joint Commissioner.*

**Q 14. Other than appellate remedy, is there any other recourse available to the taxpayer against a summary assessment order?**

*Ans. A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 51 of MGL. The Additional/Joint Commissioner can follow a similar course of action on his own motion if the finds the summary assessment order to be erroneous (section 48 of MGL).*

**Q 15. Is summary assessment order to be necessarily passed against the taxable person?**

*Ans. No. In certain cases like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be*

*ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax (section 48 of MGL).*

**Q 16. Who can conduct audit of taxpayers?**

*Ans. As per section 49 of MGL, any officer of CGST or SGST authorized by his Commissioner by a general or specific order may conduct audit of a taxpayer. The frequency and manner of audit will be prescribed in due course.*

**Q 17. Whether any prior intimation is required before conducting the audit?**

*Ans. Yes, prior intimation is required and the taxable person should be informed at least 15 days prior to conduct of audit.*

**Q 18. What is the period within which the audit is to be completed?**

*Ans. The audit is required to be completed within 3 months from the date of commencement of audit or within a further period of a maximum of 6 months subject to the approval of the Commissioner.*

**Q 19. What is meant by commencement of audit?**

*Ans. The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:*

*a) the date on which the records/accounts called for by the audit authorities are made available to them, or*

b) *the actual institution of audit at the place of business of the taxpayer.*

**Q 20. What are the obligations of the taxable person when he receives the notice of audit?**

*Ans. The taxable person is required to:*

a) *facilitate the verification of accounts/records available or requisitioned by the authorities,*

b) *provide such information as the authorities may require for the conduct of the audit, and*

c) *render assistance for timely completion of the audit.*

**Q 21. What would be the action by the proper officer upon conclusion of the audit?**

*Ans. The proper officer must without delay inform the taxable person about his findings, reasons for findings and the taxable person's rights and obligations in respect of such findings.*

**Q 22. Under what circumstances can a special audit be instituted?**

*Ans. A special audit can be instituted in limited circumstances where during scrutiny, investigation, etc. it comes to the notice that a case is complex or the revenue stake is high. This power is given in section 50 of MGL.*

**Q 23. Who can serve the notice for special audit?**

*Ans. The Assistant / Deputy Commissioner is to serve the*

*notice for special audit only after prior approval of the Commissioner.*

**Q 24. Who will do the special audit?**

*Ans. A Chartered Accountant or a Cost Accountant so nominated by the Commissioner may undertake the audit.*

**Q 25. What is the time limit to submit the audit report?**

*Ans. The auditor will have to submit the report within 90 days or within the further extended period of 90 days.*

**Q 26. Who will bear the cost of special audit?**

*Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.*

**Q 27. What action the tax authorities may take after the special audit?**

*Ans. Based on the findings / observations of the special audit, action can be initiated under Section 51 of the MGL.*

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# Refunds

# 14. Refunds

**Q 1. What is refund?**

*Ans. Refund has been discussed in section 38 of the MGL. "Refund" includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under section 38(2).*

**Q 2. Can unutilized Input tax credit be allowed as refund?**

*Ans. Yes, but only in following cases as given in sub-section (2) of section 38:-*

*(i) Exports of goods on which export duty is not payable;*

*(ii) Exports of services;*

*(iii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of taxes on Outputs.*

**Q 3. Can unutilized ITC be given refund, in case goods exported outside India are subjected to export duty?**

*Ans. No (Second proviso to Section 38(2) of MGL).*

**Q 4. Can ITC of goods lying in stock at the end of the financial year (after introduction of GST) be refunded?**

*Ans. No. It is proposed to be carried forward.*

**Q 5. Suppose a taxable person has paid IGST/ CGST/SGST mistakenly as an Interstate/intrastate supply, but the nature of which is subsequently clarified. Can the CGST/SGST be adjusted against wrongly paid IGST or vice versa?**

*Ans. No. He will have to pay the appropriate tax and claim refund of the tax wrongly paid. (IGST Sec.30 and Sec.53 GST).*

**Q 6. Whether purchases made by Embassies or UN be taxed or exempted?**

*Ans. It will be taxed, which later on can be claimed as refund by them.*

*[The United Nations Organization and Consulates or Embassies are required to take a Unique Identity Number and purchases made by them will be reflected against their number in the return of outward supplies of the supplier and refunds of taxes can be granted. A separate process will be notified in the Rules. GST Sec.19 (6)].*

**Q 7. What is the time limit for taking refund?**

*Ans. The person concerned is required to file the application before expiry of two years from the relevant date, as given in the explanation to section 38 of MGL.*

**Q 8. Whether principle of unjust enrichment will be applicable in refund?**

*Ans. Yes, except in cases of exports and refund of unutilized*

*ITC as referred to in sub-section (2) of section 38 (also refer to question no. 2 above).*

**Q 9. In case the tax has been passed on to the consumer, whether refund will be sanctioned?**

*Ans. Yes, however, the amount so determined shall be credited to the Consumer Welfare Fund.*

**Q 10. Is there any time limit for sanctioning of refund?**

*Ans. Yes, it is 90 days in all cases, excepting in a case where the refund to the extent of 80% of the total amount claimed is refundable to certain categories of exporters referred to in sub-section (4A) of section 38. If refund is not sanctioned within the period of three months, interest will have to be paid by the department.*

**Q 11. Can refund be withheld by the department?**

*Ans. Yes, refund can be withheld in the following circumstances:*

- *If the registered dealer has not submitted return(s), till he files the return(s);*
- *If the registered taxable person is required to pay any tax, interest or penalty which has not been stayed by the appellate authority/Tribunal/ court, till he pays such tax interest or penalty;*

  *[The proper officer can also deduct unpaid taxes if any of the dealer from the refundable amount].*

- *Commissioner/Board can withhold refund, if, the Order of Refund is under appeal and he is of the opinion that grant of such refund will adversely affect revenue - (Sec.38(9) of MGL).*

**Q 12. Where the refund is withheld under 38(9), as discussed in 11(c) above, will the taxable person be given interest?**

*Ans. If as a result of appeal or further proceeding the taxable person becomes entitled to refund then he shall be also entitled to interest.*

**Q 13. Is there any minimum threshold for refund?**

*Ans. No refund shall be granted if the amount is less that Rs.1000/-. (Sec.38 (11) of MGL)*

**Q 14. How will the refunds arising out of earlier law be paid?**

*Ans. The refund arising out of earlier law will be paid as per the earlier law and will be paid in cash (under CGST) or as per the provisions of the earlier law (under SGST) and will not be available as ITC (Section 156, 157 and 158 of MGL).*

**Q 15. Whether refund can be paid before verification of documents?**

*Ans. For export refunds to notified category of dealers, 80% refund can be granted before verification subject to such conditions and restrictions as may be prescribed – section 38(4A).*

**Q 16. In case of refund under exports, whether BRC is necessary for granting refund?**

*Ans. Since the exporter has a time period of one year from the date of export for remitting of export proceeds, BRC may not be available at the time of refund application. But if export proceeds are received in advance BRC may be available. Thus, refund should be subject to submission of BRC details within a period of maximum one year or as extended by RBI. e-BRC module of DGFT will be integrated with GST module.*

*However for export of services BRC would be required before sanction of refund.*

**Q 17. Will the principle of unjust enrichment apply to exports or deemed exports?**

*Ans. The principle of unjust enrichment is not applicable in case of actual exports of goods or services as the recipient is located outside the taxable territory. However, in case of deemed exports it will be applicable.*

**Q 18. How will the person prove that the principle of unjust enrichment do not apply in his case?**

*Ans. The person concerned may furnish together with the application such document(s) or evidence(s) to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was not passed on by him to any other person – section 38(3)(b).*

*Further, to provide relief to taxpayers the above sub-section also provides that where the refund amount, as claimed, is less than Rs 5 lakh a self-declaration will only be required.*

**Q 19. Today under VAT/CST merchant exporters can purchase goods without payment of tax on furnishing of a declaration form. Will this system be there in GST?**

*Ans. No, there will be no such provision in GST. They will have to purchase goods upon payment of tax and claim refund of the accumulated ITC as discussed in section 38(2).*

**Q 20. Presently under Central law, exporters are allowed to obtain duty paid inputs, avail ITC on it and export goods upon payment of duty (after utilizing the ITC) and thereafter claim refund of the duty paid on exports. Will this system continue in GST?**

*Ans. Under the GST regime exports will be zero rated which means that the export goods would not suffer any actual tax liability although inputs for such exports would be tax paid. Under GST, refund will be allowable on the accumulated inputs as well as on exported finished goods.*

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# Demands and Recovery

# 15. Demands and Recovery

**Q 1. Which is the applicable section for the purpose of recovery of tax short paid or not paid or amount erroneously refunded or input tax credit wrongly availed or utilized?**

*Ans. Section 51A in cases where there is no invocation of fraud/suppression/mis-statement etc and Section 51B where the ingredients of fraud/suppression/mis-statement etc are present.*

**Q 2. Can the person chargeable with tax pay the amount of demand along-with interest before issue of notice under section 51A?**

*Ans. Yes. In such cases no notice can be issued by the proper officer.*

**Q 3. If notice is issued under Section 51A and thereafter the noticee makes payment, is there any need to adjudicate the case?**

*Ans. Where the person to whom a notice has been issued under sub-section (1) of section 51A, pays the tax along with interest within 30 days of issue of notice, no penalty shall be payable and all proceedings in respect of such notice shall be deemed to be concluded.*

**Q 4. What is the relevant date for issue of Show Cause Notice under Section 51A/B?**

*Ans. The relevant date is the date of filing of annual return*

*where such returns of actually filed or where such returns are not filed, the due date for filing of annual return.*

**Q 5. Is there any time limit to issue SCN or adjudicate the case u/s 51A/B?**

*Ans. There is no time limit to issue SCN. However the issuance of SCN and adjudication of the case has to be completed within the period of 3 years (for Section 51A cases) and 5 years (for Section 51B cases) from the relevant date.*

**Q 6. Can the person chargeable with tax pay the amount of demand along-with interest before issue of notice under section 51B?**

*Ans. Yes. Before issue of notice under sub section (1) or a statement under sub-section (2), a person chargeable with tax, shall have an option to pay the amount of tax along with interest and fifteen percent penalty, ascertained either on his own or informed by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid.*

**Q 7. If notice is issued under Section 51B and thereafter the noticee makes payment, is there any need to adjudicate the case?**

*Ans. No if tax/interest and penalty has been paid. Where the person to whom a notice has been under sub-section (1) issued, pays the tax along with interest with twenty five percent penalty within 30 days of issue of notice all proceedings in respect of such notice shall be deemed to be concluded.*

**Q 8. In case a notice is adjudicated under Section 51B and order issued confirming tax demand and penalty, does the noticee have any option to pay reduced penalty?**

*Ans. Yes. He needs to pay tax/interest and 50% of penalty within 30 days of communication of order. Where any person served with an order issued under sub-section (6) of Section 51B pays the tax along with interest and a penalty equivalent to fifty percent of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.*

**Q 9. What happens in cases (both under Section 51A & B) where notice is issued but order has not been passed within 3 years (51A)/5 years (51B)?**

*Ans. The Model GST Law provides for deemed conclusion of the adjudication proceedings if the order is not issued within three years as provided for in section 51A (7) or within five years as provided for in section 51B (7).*

**Q 10. What happens if a person collects tax from another person but does not deposit the same with Government?**

*Ans. As per Section 52 of MGL, every person who has collected from any other person any amount as representing the tax under this Act, shall deposit the said amount to the credit of the Central or a State Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.*

**Q 11. In case the person does not deposit tax collected in contravention of Section 52, what is the proper course of action to be taken?**

*Ans. Notice to be issued. Principles of natural justice to be followed and order to be issued. It is to be noted that such order has to be invariably issued within 1 year of date of issue of notice. However there is no time limit for issue of show cause notice. Thus, in such cases duty can be recovered even after ten years.*

**Q 12. Is there any time limit to issue notice in cases under Section 52- tax collected but not paid?**

*Ans. No. There is no time limit. Notice can be issued on detection of such cases without any time limit. Once notice is issued, the order has to be passed within 1 year from the date of issue of notice.*

**Q 13. What are the modes of recovery of tax available to the proper officer?**

*Ans. The following options are available to the proper officer:*

a) *The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person;*

b) *The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person;*

c) *The proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;*

d) *The proper officer may, on an authorization by the competent authority, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; if the dues remains unpaid for a period of thirty days after any such distress, he may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and pay the surplus amount, if any, to such person;*

e) *The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and on receipt of such certificate, the Collector shall proceed to recover from such person the amount specified as if it were an arrear of land revenue.*

**Q 14. Can the proper officer allow payment of tax dues in installments?**

*Ans. Yes, in cases other than self-assessed tax. The*

*Commissioner/Chief Commissioner may extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 36 with such restrictions and conditions as may be prescribed. However, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and recovered without any further notice.*

**Q 15. What happens in cases where the tax demand confirmed is enhanced in appeal/revision proceedings?**

*Ans. The notice of demand is required to be served only in respect of the enhanced dues. In so far as the amount already confirmed prior to disposal of appeal/revision, the recovery proceedings may be continued from the stage at which such proceedings stood immediately before such disposal.*

**Q 16. If a person liable to pay tax has certain tax liability and in the meantime he transfers his business to another person, what happens to the existing tax liability?**

*Ans. Where any person liable to pay tax, transfers his business in whole/part, by sale, gift, lease, leave and license, hire, or in any other manner, then such person and the person to whom the business is transferred shall*

*jointly and severally be liable to pay the tax, interest or penalty due from the taxable person up to the time of such transfer, whether such dues has been determined before such transfer, but has remained unpaid or is determined thereafter.*

**Q 17. What happens to tax dues where the Company (taxable person) goes into liquidation?**

*Ans. When any company is wound up and any tax or other dues determined whether before or after liquidation that remains unrecovered, every person who was a director of the company during the period for which the tax was due, shall jointly and severally be liable for payment of dues unless he proves to the satisfaction of the Commissioner that such non-recovery is not attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company.*

**Q 18. What is the liability of partners of a partnership firm (Taxable person) to pay outstanding tax?**

*Ans. Partners of any firm shall jointly and severally liable for payment of any tax, interest or penalty. Firm/ partner shall intimate the retirement of any partner to the Commissioner by a notice in writing – liability to pay tax, interest or penalty up to the date of such retirement, whether determined on that date or subsequently, shall be on such partner. If no intimation is given within one month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.*

**Q 19. What happens to the tax liability of a taxable person, whose business is carried on by any guardian / trustee or agent of a minor?**

*Ans. Where the business in respect of which any tax is payable is carried on by any guardian / trustee / agent of a minor or other incapacitated person on behalf of and for the benefit of such minor/incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian / trustee / agent.*

**Q 20. What happens when the estate of a taxable person is under the control of Court of Wards?**

*Ans. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General / Official Trustee / Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/ Administrator General / Official Trustee / Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.*

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# Appeals, Review and Revision in GST

# 16. Appeals, Review and Revision in GST

**Q 1. Whether any person aggrieved by any order or decision passed against him has the right to appeal?**

*Ans. Yes. Any person aggrieved by any order or decision passed against him has the right to appeal. It must be an order or decision passed by an "adjudicating authority".*

*However, some decisions or orders (as provided for in Section 93) are not appealable.*

**Q 2. When Commissioner of CGST feels that the order passed is not legal and proper, whether he can revise the order himself?.**

*Ans. No. The Commissioner of CGST cannot revise the order. In the model law, for CGST and SGST, there are different provisions in this regard. For CGST, as per Section 79(2), the Commissioner of CGST if he finds an order or decision (passed by an adjudicating authority) to be not legal or proper, can pass an order setting out the points for determination where he is of the view that the order is not legal and proper and directing a GST officer sub-ordinate to him to file an application to First Appellate Authority (FAA). Such application is then treated by the FAA as if it were an appeal.*

**Q 3. What is the time limit to file appeal to First Appellate Authority?**

*Ans. The time limit is fixed as 3 months from the date of communication of order or decision.*

**Q 4. Whether this time limit applies even for the departmental appeal/application filed consequent to order of Commissioner of CGST?**

*Ans. Yes. It applies even for such applications filed which are to be treated as appeal and all the provisions of appeal are made applicable for such application as well.*

**Q 5. Whether the first appellate authority has any powers to condone the delay in filing appeal?**

*Ans. Yes. He can condone a delay of upto one month from the end of the prescribed period of 3 months for filing the appeal (3+1), provided there is "sufficient cause" as laid down in the proviso to section 79(4).*

**Q 6. Whether the first appellate authority has any powers to allow additional grounds not specified in the appeal memo?**

*Ans. Yes. He has the powers to allow additional grounds if he is satisfied that the omission was not wilful or unreasonable.*

**Q 7. The order passed by First Appellate Authority has to be communicated to whom?**

*Ans. First appellate authority has to communicate the copy of order to the appellant and the adjudicating authority with a copy to jurisdictional Commissioner of CGST and SGST.*

**Q 8. What is the amount of mandatory pre-deposit which should be made alongwith every appeal?**

*Ans. 10% of amount in dispute (however, for SGST, there*

*are additional provisions for which the model law may be referred to, see question no 12 and 13).*

**Q 9. What is the amount in dispute?**

*Ans. As per explanation to Section 79(6) of MGL, the expression "amount in dispute" shall include–*

*(i) amount determined under section 46 or 47 or 48 or 51;*

*(ii) amount payable under rule-------of the GST Credit Rules 201…; and*

*(iii) amount of fee levied or penalty imposed.*

**Q 10. Whether in an appeal the FAA can pass an order enhancing the quantum ofduty/fine/penalty/reduce the amount of refund/ITC from the one passed by the original authority?**

*Ans. The FAA is empoweredto pass an order enhancing the* ***fees or penalty or fine in lieu of confiscation or reducing the amount of refund or input tax credit*** *provided the appellant has been given reasonable opportunity of showing cause against the proposed detrimental order. (First Proviso to Section 79(10)).*

*In so far as the question of enhancing the duty or deciding wrong availment of ITC is concerned, the FAA can do so only after giving specific SCN to the appellant against the proposed order and the order itself should be passed within the time limit specified under Section 51. (Second Proviso to Section 79(10).*

**Q 11. (only for SGST law) What is the provision relating to pre-deposit before filing appeal to file appeal to First Appellate Authority under SGST?**

*Ans. 10% of the amount in dispute has to paid before filing appeal. This is common for both CGST and SGST. However, for SGST, in addition to this 10%, the appellant has to also pay " in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him"*

*Further, if the Commissioner of SGST considers any case to be a "serious case", the departmental authority can apply to the first Appellate Authority for ordering a higher amount of pre-deposit not exceeding 50% of the amount in dispute.*

**Q 12. (only for SGST law) What is the meaning of "serious case"?**

*Ans. It is defined to mean a case involving a disputed tax liability of not less than Rs. 25 Crores and where the Commissioner of SGST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.*

**Q 13. Can the Commissioner of SGST revise any order passed under the Act by his subordinates?**

*Ans. Yes. Section 80(1) of SGST Act authorises Commissioner to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial*

*to revenue, he can revise the order after giving opportunity of being heard to the noticee.*

**Q 14. Can the Commissioner of SGST order for staying of operation of any order passed by his subordinates pending such revision?**

*Ans. Yes.*

**Q 15. Are there any fetters to the powers of Commissioner under SGST to revise orders ofsubordinates?**

*Ans. Yes. The Commissioner shall not revise any order if (a) the order has been subject to an appeal under section 79 or under section 82 or under section 87 or under section 88; or*

*(b) more than three years have expired after the passing of the decision or order sought to be revised.*
*For details of these and some other "fetters", please refer to Section 80 of the MDL.*

**Q 16. When the Tribunal is having powers to refuse to admit the appeal?**

*Ans. In cases where the appeal involves –*

- *tax amount or*
- *input tax credit or*
- *the difference in tax or*
- *the difference in input tax credit involved or*
- *amount of fine,*

- *amount of fees or*
- *amount of penalty ordered*

*less than Rs. 1,00,000/-, the Tribunal has discretion to refuse to admit such appeal.(Section82(2) of MGL)*

**Q 17. What is the time limit within which appeal has to be filed before the Tribunal?**

*Ans. 3 months from the date of receipt of the order appealed against.*

**Q 18. Can the Tribunal condone delay in filing appeal before it beyond the period of 3 months? If so till what time?**

*Ans. Yes the Tribunal has powers to condone delay of <u>any period of time</u> beyond the period of 3 months provided sufficient case is shown by the appellant for such delay.*

**Q 19. What is the time limit for filing memorandum of cross objections before Tribunal?**

*Ans. 45 days from the date of receipt of appeal.*

**Q 20. Bring out the differences in appeal (to Tribunal) provisions under CGST & SGST?**

*(i) The provisions under Section 82 of SGST Act for appeal by any person aggrieved by the order or decision passed against him by First Appellate Authority are essentially similar to provisions contained in Section 82 of CGST Act and discussions made therein are equally applicable to section 82 of SGST as well.*

*(ii) In addition to the above the provision of Section 82 of SGST Act also covers an appeal to be filed to Appellate Tribunal against the revisionary order passed by Commissioner.*

*(iii) However the provisions relating to appeal by the revenue against the order of first appellate authority as CGST Act is not provided in SGST Act since the revisionary powers (against the orders passed by the FAA, who in the states is likely to be "subordinate" to the Commissioner) is provided to Commissioner to SGST.*

*(iv) In addition, the person aggrieved under SGST Act has to pre-deposit full deposit of admitted tax, interest, fine, fee and penalty arising from the impugned order.*

**Q 21. Whether interest becomes payable on refund of pre-deposit amount?**

*Ans. Yes. As per Section 85 of MGL Where an amount deposited by the appellant under sub-section (6)/(4) of section 79 or under sub-section (10)/(7) of section 82 is required to be refunded consequent to any order of the First Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 39 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.*

**Q 22. An appeal from the order of Tribunal lies to which forum?**

*Ans. High Court if the High Court is satisfied that such an appeal involves a substantial question of law. (Section 87(1)). However, if the order passed by the Tribunal relates to a matter where two or more States, or a State and Centre, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or a matter where two or more States, or a State and Center, have a difference of views regarding place of supply, then appeal against such order shall lie to the Supreme Court and not High Court.*

**Q 23. What is the time limit for filing an appeal before the High Court?**

*Ans. 180 days from the date of receipt of the order appealed against. However, the High Court has the power to condone further delay on sufficient cause being shown.*

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# Advance Ruling

# 17. Advance Ruling

**Q 1. What is the meaning of Advance Ruling?**

*Ans. As per section 94 of Model CGST/SGST Law, 'advance ruling' means a written decision provided by the authority to an applicant on matters or on questions as enumerated in section 97 and appeals thereon (section 99).*

**Q 2. Which are the matters enumerated in Section 97 for which advance ruling can be sought?**

*Ans. Advance Ruling can be sought for the following matters:*

*(a) classification of any goods or services under the Act;*

*(b) applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;*

*(c) the principles to be adopted for the purposes of determination of value of the goods or services under the provisions of the Act;*

*(d) admissibility of input tax credit of tax paid or deemed to have been paid;*

*(e) determination of the liability to pay tax on any goods or services under the Act;*

*(f) whether applicant is required to be registered under the Act;*

*(g) whether any particular thing done by the applicant with respect to any goods or services*

*amounts to or results in a supply of goods or services, within the meaning of that term.*

**Q 3. What is the objective of having a mechanism of Advance Ruling?**

*Ans. The broad objective for setting up such an authority is to:*

i. *provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;*

ii. *attract Foreign Direct Investment (FDI);*

iii. *reduce litigation;*

iv. *pronounce ruling expeditiously in transparent and inexpensive manner.*

**Q 4. What will be the composition of Authority for advance rulings (AAR) under GST?**

*Ans. 'Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST. They will be appointed by the Central and State government respectively. Their qualification and eligibility condition for appointment will be prescribed in the Model GST Rules. (Section 95).*

**Q 5. What is the Appellate authority for advance ruling (AAAR) and what would be its composition?**

*Ans. Appellate authority for advance ruling (AAAR) will hear appeal against advance ruling given by the AAR. This will comprise of two members namely Chief Commissioner*

*of CGST designated by the Central Board Excise and Customs (CBEC) and Commissioner of SGST having jurisdiction over the applicant. (Section 96).*

**Q 6. How may AAR and AAAR will be constituted under GST?**

*Ans. There will be one AAR and AAAR for each State (sections 95 and 96).*

**Q 7. To whom will the Advance Ruling be applicable?**

*Ans. Section 102 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.*

**Q 8. What is the time period for applicability of Advance Ruling?**

*Ans. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 102, it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed.*

**Q 9. Can an advance ruling given be nullified?**

*Ans. Section 103 provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the*

*advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the CGST/SGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.*

**Q 10. What is the procedure for obtaining Advance Ruling?**

*Ans. Section 97 and 98 deals with procedure for obtaining advance ruling. Section 97 provides that the applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner. The format of the form and the detailed procedure for making application will be prescribed in the Model GST Rules.*

*Section 98 provides the procedure for dealing with the application for advance ruling. The AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.*

**Q 11. Under what circumstances will the application for Advance Ruling be compulsorily rejected?**

*Ans. Application has to be invariably rejected in certain situations as prescribed under section 98 (2) which are enumerated as below:*

(a) *if the question raised in the application is already pending in the applicant's case before any First Appellate Authority, the Appellate Tribunal or any Court;*

(b) *if the question raised in the application is the same as in a matter already decided by the First Appellate Authority, the Appellate Tribunal or any Court;*

(c) *if the question raised in the application is the same as in a matter already pending in any proceedings in the applicant's case under any of the provisions of the Act;*

(d) *if the question raised in the application is the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable.*

*If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.*

**Q 12. What is the procedure to be followed by AAR once the application is admitted?**

*Ans. If the application is admitted, the AAR shall pronounce its ruling within ninety days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.*

*Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.*

**Q 13. What happens if there is a difference of opinion amongst members of AAR?**

*Ans. If there is difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.*

**Q 14. What are the provisions for appeals against order of AAR?**

*Ans. The provisions of appeal before AAAR are dealt in section 99 and 100 of Model GST Law.*

*If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the prescribed or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word prescribed officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.*

*Any appeal must be filed within thirty days from the receipt of the advance ruling. The appeal has to be in prescribed*

*form and has to be verified in prescribed manner. This will be prescribed in the Model GST Rules.*

*The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.*

**Q 15. Can the AAR & AAAR order for rectification of mistakes in the ruling?**

*Ans. Yes. Section 101 of the Act gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of six months from the date of the order. Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the prescribed or the jurisdictional CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.*

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# Settlement Commission

# 18. Settlement Commission

**Q 1. What are the basic objective of Settlement Commission?**

*Ans. The basic objectives of setting up of the Settlement Commission are:-*

i. *to provide an alternate channel for dispute resolution for the taxpayer;*

ii. *to expedite payment of GST involved in disputes by avoiding costly and time consuming litigation process;*

iii. *to provide an opportunity to tax payers to come clean who may have evaded payment of tax;*

iv. *to serve as a forum for the taxpayer to apply for settlement of their cases, on the basis of true and complete disclosure of their tax liability;*

v. *to encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.*

**Q 2. Can tax disputes arising on account of both intra-state and inter-state transactions be settled under the MGL?**

*Ans. In the Model GST Law, the provisions for Settlement Commission are incorporated only under the IGST Act (sections 11 to 26). This implies that cases cannot be settled in relation to tax liability pertaining to intra-state transactions. However, there is a possibility that those state tax administrations which want to constitute Settlement*

*Commission can do so on the basis of the template provided under the IGST Act and the CGST Act can have an enabling provision drawing from the IGST Act for such states.*

**Q 3. What is meant by a Case under the provisions of Settlement in the MGL?**

*Ans. As per Section 11, Case means any proceeding under the IGST Act for levy, assessment and collection of IGST before an IGST officer or before a First Appellate Authority in connection with such levy, assessment or collection of IGST pending on the date on which an application for settlement is made. Case will also mean an order passed by an adjudicating authority for which the period of appeal has not expired. It is clarified in the definition that an appeal filed after the expiry of the period of appeal or a case remanded by a higher judicial authority to a lower one will not be treated as a proceeding pending and therefore no application for settlement can be made in such cases.*

**Q 4. What will be the composition of members which will consider/hear settlement application?**

*Ans. Every application for settlement shall be heard by a bench presided over by the State Chairman and shall consist of two other members. The State Chairman shall be a sitting or a retired judge of a High Court. The other two members will be Technical members drawn from the CGST administration.*

**Q 5. What happens when there is difference of opinion amongst members hearing the settlement application?**

*Ans. Section 14 of the IGST Act provides that where the members of a bench of Settlement Commission differ on any point, the decision shall be taken on the basis of the majority opinion. It is provided that a decision can also be taken by a bench consisting of only two members, if the third member is not available due to factors like absence, illness or vacancy. If there is a difference of opinion between such two members, the matter will then be referred to a third member, and decision will be taken by the majority opinion.*

**Q 6. Who can apply for settlement?**

*Ans As per section 15 of the IGST Act, any taxable person can apply for settlement of a case in relation to which he has been issued one or more show cause notice(s) under the IGST Act and the same is pending before the adjudicating authority or the First Appellate Authority.*

**Q 7. What should be the contents of the settlement application?**

*Ans. The settlement application should contain full and true disclosure of:*

i. *tax Liability which has not been disclosed to the proper officer of IGST;*
ii. *manner of deriving such tax liability;*
iii. *additional amount of tax which he accepts to be payable;*
iv. *other particulars such as misclassification, exemption notification because of which he admits to short payment.*

**Q 8. What are the conditions which must be fulfilled before application for settlement can be accepted?**

*Ans. As per section 15 of the IGST Act, the following conditions must be fulfilled before an application for settlement of a case can be accepted:*

*(a) the applicant has furnished the return(s), which he is or was required to furnish under the IGST Act or this requirement has been waived by the Settlement Commission after recording the reasons that it was satisfied that certain valid circumstances existed for not filing the return(s);*

*(b) the applicant has received a show cause notice for demand of tax or has received an order confirming the demand of tax issued by the IGST officer and the same is pending before the First Appellate Authority;*

*(c) the additional amount of tax accepted by the applicant in his application exceeds five lakh rupees; and*

*(d) the applicant has paid the additional amount of tax accepted by him along with the interest due thereon under section 36 of the CGST Act.*

**Q 9. What are the circumstances in which application for settlement cannot be entertained?**

*Ans. As per section 15 of the IGST Act, in the following circumstances, Settlement Commission will not accept an application for settlement:*

i. *If the case involved in the application is pending with the Appellate Tribunal or any Court;*

ii. *If the application involves determination of any question having a bearing on the rate of tax or determination of liability to pay tax on goods and/or services;*

iii. *If the fees as prescribed has not been paid.*

**Q 10. Can the applicant withdraw his settlement application once filed?**

*Ans. No. As per section 15 of IGST Act, once an application has been made, it cannot be allowed to be withdrawn by the applicant.*

**Q 11. What orders can be passed by the Settlement Commission?**

*Ans. Settlement Commission shall pass an order providing for terms of settlement which shall include:*

i. *the amount of tax, interest, fine or penalty that is payable by the applicant (if this amount is not paid within thirty days or a further extended period of three months, it shall be recovered along with interest as sums due to Central Government in accordance with section 54 of CGST Act ); (section 16)*

ii. *manner in which the sums due under the settlement shall be paid; (section 16)*

iii. *granting immunity from prosecution for any offence under the IGST Act if no proceedings*

*for prosecution were instituted on the date of receipt of the application and if the Settlement Commission is satisfied that the applicant has made a full and true disclosure of his tax liability; (section 20)*

iv. *granting immunity from imposition of penalty either in full or part under the IGST Act; (section 20)*

v. *Order provisional attachment of property of the applicant during the pendency of any proceeding before it. Such provisional attachment shall cease to have effect, once sums due to the Central Government for which attachment order was made, stands discharged and the evidence to this effect is submitted to the Settlement Commission; (Section 17)*

vi. *Send a case back to the jurisdictional IGST officer or the First Appellate Authority if it is of the opinion that the applicant has not cooperated with the Settlement Commission. In such case, the relevant adjudicating authority is entitled to use all material and information produced by taxable person before the Settlement Commission or the results of an inquiry held by the Settlement Commission; (section 21)*

vii. *Reopen any proceeding connected with the case concluded earlier and pass appropriate order. This can be done only after taking concurrence*

*of the applicant and if five years have not expired for the concluded proceeding , counting from the date of application for Settlement. ( Section 18)*

**Q 12. What are the circumstances in which order of Settlement Commission can be revoked?**

*Ans. (i) Order of Settlement Commission shall be void if it is later found that it was obtained by fraud or misrepresentation of facts. Thereafter proceedings covered by the settlement shall stand revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and shall be concluded by the relevant original or appellate authority within two years from the date of receiving such communication from the Settlement Commission. (Section 16)*

*(ii) Order of Settlement Commission granting immunity from prosecution or payment of penalty can be withdrawn where it finds later that the applicant had concealed any facts or had given any false evidence or if he has failed to pay the sum specified in the settlement order in the prescribed time. (Section 20)*

**Q 13. Who cannot use Settlement Commission?**

*Ans. The following persons cannot avail of the facility of Settlement Commission?*

i. *No person can avail the facility of settlement more than twice. (section 23)*

ii. *A person cannot apply for settlement in any other matter where after passing of a*

*settlement order, a person was convicted of any offence under the IGST Act in relation to that case or where due to lack of cooperation from the applicant, the Settlement Commission has sent back the case to the relevant adjudicating authority. (section 23)*

**Q 14. What are the powers of Settlement Commission?**

*Ans. The powers and procedures of Settlement Commission are given in sections 25 and 26 of IGST Act. It is vested with the powers of a civil court under the Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, and compelling production of books of account and other records. Settlement Commission is deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Any proceeding before it shall be deemed to be a judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The Settlement Commission also has the power to regulate its own procedure.*

*Section 193 of IPC, 1860 contains penal provision for giving false evidence during the proceedings and section 228 of IPC, 1860 contains penal provisions for intentionally insulting or interrupting the Officer sitting in settlement proceedings. Accordingly these provisions of IPC can be invoked where the person gives false evidence or interrupts the proceedings of the Settlement Commission.*

*Section 24 of the IGST Act gives power to Settlement Commission to amend its order to rectify any mistake apparent from the record within a period of three months from the date of the order. Such mistake may be noticed by the Settlement Commission on its own accord or may be brought to its notice by the applicant or the jurisdictional IGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.*

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# Inspection, Search, Seizure and Arrest

# 19. Inspection, Search, Seizure and Arrest

**Q 1. What is the meaning of the term "Search"?**

*Ans. As per law dictionary and as noted in different judicial pronouncements, the term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.*

**Q 2. What is the meaning of the term "Inspection"?**

*Ans. 'Inspection' is a new provision under the MGL. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.*

**Q 3. Who can order for carrying out "Inspection" and under what circumstances?**

*Ans. As per Section 60 of MGL, Inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following:*

i. *suppressed any transaction of supply;*

ii. *suppressed stock of goods in hand;*

iii. *claimed excess input tax credit;*

iv. *contravened any provision of the CGST/SGST Act to evade tax;*

v. *a transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.*

**Q 4. Can the proper officer authorize Inspection of any assets/premises of any person under this Section?**

*Ans. No. Authorization can be given to an officer of CGST/ SGST to carry out inspection of any of the following:*

i. *any place of business of a taxable person;*

ii. *any place of business of a person engaged in the business of transporting goods whether or not he is a registered taxable person;*

iii. *any place of business of an owner or an operator of a warehouse or godown.*

**Q 5. Who can order for Search and Seizure under the provisions of MGL?**

*Ans. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons*

*to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.*

**Q 6. What is meant by 'reasons to believe'?**

*Ans. Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.*

**Q 7. Is it mandatory that such 'reasons to believe' has to be recorded in writing by the proper officer, before issuing authorization for Inspection or Search and Seizure?**

*Ans. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, he has to disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search.*

**Q 8. What is a Search Warrant and what are its contents?**

*Ans. The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:*

*i. the violation under the Act,*

*ii. the premise to be searched,*

*iii. the name and designation of the person authorized for search,*

*iv. the name of the issuing officer with full designation along with his round seal,*

*v. date and place of issue,*

*vi. serial number of the search warrant,*

*vii. period of validity i.e. a day or two days etc.*

**Q 9. When does goods become liable to confiscation under the provisions of MGL?**

*Ans. As per section 70 of Model GST Law, goods become liable to confiscation when any person does the following:*

*(i) supplies any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;*

*(ii) does not account for any goods on which he is liable to pay tax under this Act;*

*(iii) supplies any goods liable to tax under this Act without having applied for the registration;*

*(iv) contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.*

**Q 10. What powers can be exercised by an officer during valid search?**

*Ans. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under MGL) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.*

**Q 11. What is the procedure for conducting search?**

*Ans. Section 60(8) of MGL prescribes that searches must be carried out in accordance with the provisions of Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.*

**Q 12. What are the basic requirements to be observed during Search operations?**

*Ans. The following principles should be observed during Search:*

- *No search of premises should be carried out without a valid search warrant issued by the proper officer.*
- *There should invariably be a lady officer accompanying the search team to residence.*
- *The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.*
- *The search warrant should be executed before the start of the search by showing the same to the person in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the search warrant.*
- *The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.*
- *Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of search all the officers and the*

*witnesses should again offer themselves for their personal search.*

- *A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.*
- *After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.*
- *The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.*
- *A copy of the Panchnama / Mahazar along with its annexure should be given to the person in-charge/owner of the premises being searched under acknowledgement.*

**Q 13. Can a CGST/SGST officer access business premises under any other circumstances?**

*Ans. Yes. Access can also be obtained in terms of Section 64 of MGL. This provision of law is meant to allow an audit party of CGST/SGST or C&AG or a cost accountant or chartered accountant nominated under section 50 of CGST/SGST Act, access to any business premises without issuance of a search warrant for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. However, a written authorization is to be issued by an officer of the rank of Additional/Joint Commissioner of CGST or SGST. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.*

**Q 14. When is search said to be illegal? Is evidence collected in the course of an illegal search admissible in trial proceedings?**

*Ans. Search without a valid search warrant (i.e. issued by other than a competent authority or without a search warrant) results in an illegal search without authority of law. However, due to this reason, the accused cannot get benefit. Accordingly, evidence collected even during an illegal search and seizure is considered admissible in trial and adjudication proceedings.*

**Q 15. What is meant by the term 'Seizure'?**

*Ans. The term 'seizure' has not been specifically defined in the Model GST Law. In Law Lexicon Dictionary, 'seizure'*

*is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.*

**Q 16. Does MGL have any power of detention of goods and conveyances?**

*Ans. Yes, under Section 69 of MGL, an officer has power to detain goods along with the conveyance (like a truck or other types of vehicle) transporting the goods. This can be done for such goods which are being transported or are stored in transit in violation of the provisions of MGL. Goods which are stored or are kept in stock but not accounted for can also be detained. Such goods and conveyance can be released after payment of applicable tax or upon furnishing security of equivalent amount.*

**Q 17. What is the distinction in law between 'Seizure' and 'Detention'?**

*Ans. Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.*

**Q 18. What are the safeguards provided in MGL in respect of Search or Seizure?**

*Ans. Certain safeguards are provided in section 60 of Model CGST/SGST Law in respect of the power of search or seizure. These are as follows:*

i. *Seized goods or documents should not be retained beyond the period necessary for their examination;*

ii. *Photocopies of the documents can be taken by the person from whose custody documents are seized;*

iii. *For seized goods, if a notice is not issued within sixty days of its seizure, goods shall be returned to the person from whose possession it was seized. This period of sixty days can be extended on justified grounds up to a maximum period of six months;*

iv. *An inventory of seized goods shall be made by the seizing officer;*

v. *Certain categories of goods to be specified under Model GST Rules (such as perishable, hazardous etc.) can be disposed of immediately after seizure;*

vi. *Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply. However, one important modification is in relation to sub-section (5) of section 165 of Code of Criminal Procedure – instead of sending*

*copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST/ Commissioner of SGST .*

**Q 19. Is there any special document required to be carried during transport of taxable goods?**

*Ans. Under section 61 of MGL, a person in charge of a transport vehicle may be required to carry a prescribed document in respect of such consignments whose value is more than fifty thousand rupees.*

**Q 20. What is meant by the term "arrest"?**

*Ans. The term 'arrest' has not been defined in the Model GST Law. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.*

**Q 21. When can the proper officer authorize 'arrest' of any person under MGL?**

*Ans. The Commissioner of CGST/SGST can authorize a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 73 (1)(i), 73 (1)(ii) and 73 (2) of the CGST/SGST Act. This essentially means that a person can be arrested only where the tax evasion is more than fifty lakhs rupees or where a person has earlier*

*been convicted for an offence under section 73 of the Model CGST/SGST Act.*

**Q 22. What are the safeguards provided under MGL for a person who is placed under arrest?**

*Ans. There are certain safeguards provided under section 62 for a person who is placed under arrest. These are:*

i. *If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;*

ii. *If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner of CGST/SGST can release him on bail and he will be subject to the same provisions as an officer incharge of a police station under section 436 of the Code of Criminal Procedure, 1973;*

iii. *All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.*

**Q 23. What are the precautions to be taken during arrest?**

*Ans. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore necessary that all field officers of CGST/SGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.*

*One important provision to be taken note of is section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a longer period than, under the circumstances of the case, is reasonable but this shall not exceed twenty four hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.P.C., the person making the arrest shall send the person arrested without warrant before a Magistrate having jurisdiction in the case.*

*In a landmark judgment in the case of D.K. Basu v. State of West Bengal reported in 1997 (1) SCC 416, the Hon'ble Supreme Court has laid down specific guidelines required to be followed while making arrests. While this is in relation to police, it needs to be followed by all departments having power of arrest. These are as under:*

i. *The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*

ii. *The police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It*

*shall also be counter signed by the arrestee and shall contain the time and date of arrest.*

iii. *A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*

iv. *The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*

v. *An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*

vi. *The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on*

*his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*

vii. *The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.*

viii. *Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.*

ix. *The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.*

x. *A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.*

**Q 24. What are the broad guidelines for arrest followed in CBEC?**

*Ans. Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. Power to arrest has to be exercised after careful consideration of the facts of the case which may include:*

i. *to ensure proper investigation of the offence;*
ii. *to prevent such person from absconding;*
iii. *cases involving organized smuggling of goods or evasion of customs duty by way of concealment;*
iv. *master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc;*
v. *where the intent to evade duty is evident and element of mensrea/guilty mind is palpable;*
vi. *prevention of the possibility of tampering with evidence;*
vii. *intimidating or influencing witnesses; and*
viii. *large amounts of evasion of duty or service tax at least exceeding one crore rupees.*

**Q 25. What is a cognizable offence?**

*Ans. Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.*

**Q 26. What is a non-cognizable offence?**

*Ans. Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.*

**Q 27. What are cognizable and non-cognizable offences under MGL?**

*Ans. In section 73 (4) of MGL, it is provided that the offences relating to taxable goods and /or services where the amount of tax evaded exceeds Rs. 2.5 crores, shall be cognizable and non-bailable. Other offences under the act are non-cognizable and bailable.*

**Q 28. When can the proper officer issue summons under MGL?**

*Ans. Section 63 of MGL gives powers to a duly authorized CGST/SGST officer to call upon a person by issuing a summon to present himself before the officer issuing the summon to either give evidence or produce a document or any other thing in any inquiry which an officer is making. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.*

**Q 29. What are the responsibilities of the person so summoned?**

*Ans. A person who is issued summon is legally bound to*

*attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.*

**Q 30. What can be the consequences of non-appearance to summons?**

*A. The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty upto twenty five thousand rupees under section 66(3)(d) of MGL.*

**Q 31. What are the guidelines for issue of summons?**

*Ans. The Central Board of Excise and Customs (CBEC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some*

*of the important highlights of these guidelines are given below:*

i. *summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;*

ii. *the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;*

iii. *summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;*

iv. *where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;*

v. *in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;*

vi. *senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should*

*be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.*

**Q 32. What are the precautions to be observed while issuing summons?**

*Ans. The following precautions should generally be observed when summoning a person:-*

*(i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.*

*(ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.*

*(iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.*

*(iv) Preferably, statements should be recorded during office hours; however an exception could be made regarding time and place of recording statement having regard to the facts in the case.*

**Q 33. Are there any class of officers who are required to assist CGST/SGST officers?**

*Ans. Under section 65 of MGL, the following officers have been empowered and are required to assist CGST/SGST officers in the execution of MGL. The categories specified in MGL are as follows:*

i. *Police;*

ii. *Customs;*

iii. *Officers of State/Central Government engaged in collection of GST;*

iv. *Officers of State/Central Government engaged in collection of land revenue;*

v. *All village officers;*

vi. *Any other class of officers as may be notified by the Central/State Government.*

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# Offences and Penalties, Prosecution and Compounding

# 20. Offences and Penalties, Prosecution and Compounding

**Q 1. What are the prescribed offences under MGL?**

*Ans. The Model GST Law codifies the offences and penalties in Chapter XVI. The Act lists 21 offences in section 66, apart from the penalty prescribed under section 8 for availing compounding by a taxable person who is not eligible for it. The said offences are as follows:-*

1) *Making a supply without invoice or with false/ incorrect invoice;*
2) *Issuing an invoice without making supply;*
3) *Not paying tax collected for a period exceeding three months;*
4) *Not paying tax collected in contravention of the MGL for a period exceeding 3 months;*
5) *Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 37;*
6) *Non collection or lower collection of or non-payment of tax collectible at source under section 43C;*
7) *Availing/utilizing input tax credit without actual receipt of goods and/or services;*
8) *Fraudulently obtaining any refund;*
9) *Availing/distributing input tax credit by an Input Service Distributor in violation of Section 17;*

10) *Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;*

11) *Failure to register despite being liable to pay tax;*

12) *Furnishing false information regarding mandatory fields for registration;*

13) *Obstructing or preventing any official in discharge of his duty;*

14) *Transporting goods without prescribed documents;*

15) *Suppressing turnover leading to tax evasion;*

16) *Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;*

17) *Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;*

18) *Supplying/transporting/storing any goods liable to confiscation;*

19) *Issuing invoice or document using GSTIN of another person;*

20) *Tampering/destroying any material evidence;*

21) *Disposing of /tampering with goods detained/ seized/attached under the Act.*

**Q 2. What is meant by the term penalty?**

*Ans. The word "penalty" has not been defined in the MGL but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:*

- *a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;*
- *a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.*

**Q 3. What are the general disciplines to be followed while imposing penalties?**

*Ans. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 68 of the Act. Accordingly—*

- *no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,*
- *the penalty is to depend on the totality of the facts and circumstances of the case,*
- *the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,*

- *the nature of the breach is to be specified clearly in the order imposing the penalty,*
- *the provisions of the law under which the penalty has been imposed is to be specified.*

*Section 68 further specifies that, in particular, no substantial penalty is to be imposed for —*

- *any minor breach (minor breach has been defined as a violation of the provisions in a case where the tax involved is less than Rs.5000), or*
- *a procedural requirement of the law, or*
- *an easily rectifiable mistake/omission in documents (explained in the law as an error apparent on record) that has been made without fraudulent intent or gross negligence.*

*Further, wherever penalty of a fixed amount or a fixed percentage has been provided in the MGL, the same shall apply.*

**Q 4. What is the quantum of penalty provided for in the MGL?**

*Ans. Section 66(1) provides that any taxable person who has committed any of the offences mentioned in section 66 shall be punished with a penalty that shall be higher of the following amounts:*

- *The amount of tax evaded, fraudulently obtained as refund, availed as credit, or not deducted or collected or short deducted or short collected, or*

- *A sum of Rs.10,000/-.*

*Further Section 66(2) provides that any registered taxable person who repeatedly makes a short payment of tax shall be a liable to penalty which will be the higher of :*

- *10% of the tax short paid, or*
- *Rs.10,000.*

**Q 5. What will be considered as 'repeated short payments' for the purpose of levy of penalty?**

*Ans. Section 66(2) explains that three short payment in respect of three returns during any six consecutive tax periods shall be considered as repeated short payment for the purpose of levy of penalty.*

**Q 6. Is any penalty prescribed for any person other than the taxable person?**

*Ans. Yes. Section 66(3) provides for levy of penalty extending to Rs.25,000/- for any person who-*

- *aids or abets any of the 21 offences,*
- *deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,*
- *receives or deals with supply of services in contravention of the Act,*
- *fails to appear before an authority who has issued a summon,*
- *fails to issue any invoice for a supply or account for any invoice required to be issued under law.*

**Q 7. What is the penalty provided for any contravention for which no separate penalty has been prescribed under MGL?**

*Ans. Section 67 of the MGL provides that any person who contravenes any provision of the Act or the rules made under this Act for which no separate penalty has been prescribed shall be punishable with a penalty that may extend to Rs.25,000/-*

**Q 8. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?**

*Ans. If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported. Such goods may be released only after payment of the applicable tax, interest and penalty or upon furnishing of security equivalent to the said amount.*

**Q 9. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?**

*Ans. Section 8(3) provides that if a person who has opted for composition of his tax liability is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by*

*him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him.*

**Q 10. What is meant by confiscation?**

*Ans. The word 'confiscation' has not been defined in the Act. The concept is derived from Roman Law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."*

**Q 11. Under which circumstances can goods be confiscated under MGL?**

*Ans. Under Section 70 of the MGL, goods shall be liable to confiscation if any person:*

- *supplies any goods in contravention of any provision of this Act and such contravention results in evasion of tax payable under the Act, or*
- *does not account for any goods in the manner required under the Act, or*
- *supplies goods that are liable to tax under the Act without applying for registration, or*
- *contravenes any provision of the Act/Rules with the intention of evading payment of tax.*

**Q 12. What happens to the goods upon confiscation of goods by the proper officer?**

*Ans. Upon confiscation, the title in the confiscated goods shall vest in the Government and every Police officer to whom the proper officer makes a request in this behalf, shall assist in taking possession of the goods.*

**Q 13. After confiscation, is it required to give option to the person to redeem the goods?**

*Ans. Yes. In terms of section 70(6), the Owner or the person in-charge of the goods liable to confiscation is to be given the option for fine (not exceeding market price of confiscated goods) in lieu of confiscation. This fine shall be in addition to the tax and other charges payable in respect of such goods.*

**Q 14. Can any conveyance carrying goods without cover of prescribed documents be subject to confiscation?**

*Ans. Yes. Section 71 provides that any conveyance carrying goods without the cover of any documents or declaration prescribed under the Act shall be liable to confiscation. However, if the owner of the conveyance proves that the goods were being transported without cover of the required documents/declarations without his knowledge or connivance or without the knowledge or connivance of his agent then the conveyance shall not be liable to confiscation as aforesaid. If the conveyance is being used for carrying goods or passengers for hire then the owner of such a conveyance may be provided an option to pay a fine equivalent to the tax payable on*

*the goods, in lieu of confiscation. Section 72 provides that the confiscation or penalty under section 70 or 71 shall be without prejudice to any other punishment/action provided in the Act for the offence of carrying goods without cover of the required documents/declaration.*

**Q 15. What is Prosecution?**

*Ans. Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person.*

**Q 16. Which are the offences which warrant prosecution under the MGL?**

*Ans. Section 73 of the MGL codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. 12 such major offences have been listed as follows:*

1) *Making a supply without issuing an invoice or upon issuance of a false/incorrect invoice;*
2) *Issuing an invoice without making supply;*
3) *Not paying tax collected for a period exceeding 3 months;*
4) *Not depositing any tax that has been collected in contravention of the Act for a period exceeding 3 months;*
5) *Availing or utilizing credit of input tax without actual receipt of goods and/or services;*
6) *Obtaining any fraudulent refund;*

7) *Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;*

8) *Obstructing or preventing any official in the discharge of his duty;*

9) *Dealing with goods liable to confiscation i.e. receipt, supply, storage or transportation of goods liable to confiscation;*

10) *Receiving/dealing with supply of services in contravention of the Act;*

11) *Failing to supply any information required of him under the Act/Rules or supplying false information;*

12) *Attempting to commit or abetting the commission of any of the above 11 offences.*

**Q 17. What is the punishment prescribed on conviction of any offence under the MGL?**

*Ans. The scheme of punishment provided in section 73(1) is as follows:*

| ***Offence involving--*** | ***Punishment (Imprisonment extending to--)*** |
|---|---|
| *Tax evaded exceeding Rs.250 lakh* | *5 years and fine* |
| *Tax evaded between Rs.50 lakh and Rs.250 lakh* | *3 years and fine* |
| *Tax evaded between Rs.25 lakh and Rs.50 lakh* | *1 years and fine* |

*Section 73(2) provides that a second or any subsequent conviction for an offence in this section shall be punishable with imprisonment for a term that may extend to 5 years and a fine. However, no imprisonment for any of the offences shall be for a period less than six months.*

**Q 18. What are cognizable and non-cognizable offences under MGL?**

*Ans. In terms of Section 73(3) and 73(4) of MGL*

- *all offences where the evasion of tax is less than Rs.250 lakh shall be non-cognizable and bailable,*
- *all offences where the evasion of tax exceeds Rs.250 lakh shall be cognizable and non-bailable.*

**Q 19. Is prior sanction of competent authority mandatory for initiating prosecution?**

*Ans. Yes. No person shall be prosecuted for any offence without the prior sanction of the designated authority.*

**Q 20. Is 'mensrea' or culpable mental state necessary for prosecution under MGL?**

*Ans. Yes. However, Section 75 presumes the existence of a state of mind (i.e. "culpable mental state" or mensrea) required to commit an offence if it cannot be committed without such a state of mind*

**Q 21. What is a culpable state of mind?**

*Ans. While committing an act, a "culpable mental state" is a state of mind wherein-*

- *the act is intentional;*
- *the act and its implications are understood and controllable;*
- *the person committing the act was not coerced and even overcomes hurdles to the act committed;*
- *the person believes or has reasons to believe that the act is contrary to law.*

**Q 22. Can a company be proceeded against or prosecuted for any offence under the MGL?**

*Ans. Yes. Section 77 of the MGL provides that every person who was in-charge of or responsible to a company for the conduct of its business shall, along-with the company itself, be liable to be proceeded against and punished for an offence committed by the company while such person was in-charge of the affairs of the company. If any offence committed by the company—*

- *has been committed with the consent/ connivance of, or*
- *is attributable to negligence of—*

*any officer of the company then such officer shall be deemed to be guilty of the said offence and liable to be proceeded against and punished accordingly.*

**Q 23. What is meant by compounding of offences?**

*Ans. Section 320 of the Code of Criminal Procedure defines "compounding" as to forbear from prosecution for consideration or any private motive.*

**Q 24. Can offences under MGL be compounded?**

*Ans. Yes. As per section 78 of the MGL, any offence, other than the following, may upon payment of the prescribed (compounding) amount be compounded and such compounding is permissible either before or after the institution of prosecution:*

- *Offences numbered 1 to 7 of the 12 major offences (outlined in Q. 16 above), if the person charged with the offence had compounded earlier in respect of any of the said offences;*
- *Aiding/abetting offences numbered 1 to 7 of the 12 major offences, if the person charged with the offence had compounded earlier in respect of any of the said offences;*
- *Any offence (other than the above offences) under any SGST Act/IGST Act in respect of a supply with value exceeding Rs.1 crore, if the person charged with the offence had compounded earlier in respect of any of the said offences;*
- *Any offence which is also an offence under NDPSA or FEMA or any other Act other than CGST/SGST;*

- *Any other class of offences or persons that may be prescribed in this behalf.*

*Compounding is to be permitted only after payment of tax, interest and penalty and compounding shall not affect any proceeding already instituted under any other law.*

**Q 25. Are there any monetary limits prescribed for compounding of offence?**

*Ans. Yes. The lower limit for compounding amount is to be the greater of the following amounts:-*

- *50% of tax involved, or*
- *Rs.10,000.*

*The upper limit for compounding amount is to be greater of the following amounts:-*

- *150% of tax involved or*
- *Rs.30,000.*

**Q 26. What is the consequence of compounding of an offence under MGL?**

*Ans. Sub-section (3) of section 77 provides that on payment of compounding amount no further proceeding to be initiated under this Act and criminal proceeding already initiated shall stand abated.*

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# Overview of the IGST Act

# 21. Overview of the IGST Act

**Q 1. What is IGST?**

*Ans. "Integrated Goods and Services Tax" (IGST) means tax levied under the IGST Act on the supply of any goods and/or services in the course of inter-State trade or commerce.*

**Q 2. What are inter-state supplies?**

*Ans. A supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States. (Section 3(1) and 3(2) of the IGST Act)*

**Q 3. How will the Inter-State supplies of Goods and Services be taxed under GST?**

*Ans. IGST shall be levied and collected by Centre on inter-state supplies. IGST would be broadly CGST plus SGST and shall be levied on all inter-State taxable supplies of goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.*

**Q 4. What are the salient features of the draft IGST Law?**

*Ans. The draft IGST law contains 33 sections divided into 11 Chapters. The draft, inter alia, sets out the rules for determination of the place of supply of goods. Where the supply involves movement of goods, the place of supply shall be the location of goods at the time at which the movement of goods terminates for delivery to the recipient. Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of delivery to the recipient. In the case of goods assembled or installed at site, the place of supply shall be the place of such installation or assembly. Finally, where the goods are supplied on board a conveyance, the place of supply shall be the location at which such goods are taken on board.*

**Q 5. What are the advantages of IGST Model?**

*Ans. The major advantages of IGST Model are:*

a. *Maintenance of uninterrupted ITC chain on inter-State transactions;*

b. *No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer;*

c. *No refund claim in exporting State, as ITC is used up while paying the tax;*

d. *Self-monitoring model;*

e. *Ensures tax neutrality while keeping the tax regime simple;*

*f. Simple accounting with no additional compliance burden on the taxpayer;*

*g. Would facilitate in ensuring high level of compliance and thus higher collection efficiency. Model can handle 'Business to Business' as well as 'Business to Consumer' transactions.*

**Q 6. How will imports/exports be taxed under GST?**

*Ans. All imports/exports will be deemed as inter-state supplies for the purposes of levy of GST (IGST). The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available as ITC of the IGST paid on import on goods and services. (Section 2(c) of the IGST Act).*

**Q 7. IGST Act is very small with very few definitions and major part catering to settlement commissioner. Whether provisions in CGST or SGST Act will apply to IGST Act?**

*Ans. Yes, Section 27 of the IGST Act provides that various provisions as mentioned therein shall apply under IGST Act as they apply in relation to levy under the CGST Act.*

**Q 8. How will the IGST be paid?**

*Ans. The IGST payment can be done utilizing ITC or by cash. However, the use of ITC for payment of IGST will be done using the following hierarchy,-*

- *First available ITC of IGST shall be used for payment of IGST;*
- *Once ITC of IGST is exhausted, the ITC of CGST shall be used for payment of IGST;*
- *If both ITC of IGST and ITC of CGST are exhausted, then only the dealer would be permitted to use ITC of SGST for payment of IGST.*

*Remaining IGST liability, if any, shall be discharged using payment in cash. GST System will ensure maintenance of this hierarchy for payment of IGST using the credit.*

**Q 9. How will the settlement between Centre, exporting state and importing state be done?**

*Ans. There would be settlement of account between the centre and the states on two counts, which are as follows-*

- ***Centre and the exporting state:*** *The exporting state shall pay the amount equal to the ITC of SGST used by the supplier in the exporting state to the Centre.*
- ***Centre and the importing state:*** *The centre shall pay the amount equal to the ITC of IGST used by a dealer for payment of SGST on intra- state supplies.*

*The settlement would be on cumulative basis for a state taking into account the details furnished by all the dealer in the settlement period. Similar settlement of amount would also be undertaken between CGST and IGST account.*

# Place of Supply of Goods and Service

# 22. Place of Supply of Goods and Service

**Q 1. What is the need for the Place of Supply of Goods and Services under GST?**

*Ans. The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may at the point of consumption. So place of supply provision determine the place i.e. taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-state or inter-state. In other words, the place of Supply of Goods is required to determine whether a supply is subject to SGST plus CGSTin a given State or else would attract IGST if it is an inter-state supply.*

**Q 2. Why are place of supply provisions different in respect of goods and services?**

*Ans. Goods being tangible do not pose any significant problems for determination of their place of consumption. Services being intangible pose problems w.r.t determination of place of supply mainly due to following factors:*

*(i) The manner of delivery of service could be altered easily. For example telecom service could change from mostly post-paid to mostly pre-paid; billing address could be changed, billers address could be changed, repair or maintenance of software could be changed from onsite to online; banking services were earlier required customer to go to the bank, now the customer could avail service from anywhere;*

*(ii) Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be a trail;*

*(iii) For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The location of billing could be changed overnight;*

*(iv) Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one state and end in the other state. Similarly a copy right for distribution and exhibition of film could be assigned for many states in single transaction or an advertisement or a programme is broadcasted across the country at the same time. An airline may issue seasonal tickets, containing say 10 leafs which could be used for travel between any two location in the country. The card issued by Delhi metro could be used by a person located in Noida, or Delhi or Faridabad, without the Delhi metro being able to distinguish the location or journeys at the time of receipt of payment;*

*(v) Services are continuously evolving and would thus continue to pose newer challenges. For example 15-20 years back no one could have*

*thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.*

**Q 3. What proxies or assumptions in a transaction can be used to determine the place of supply?**

*Ans. The various element involved in a transaction in services can be used as proxies to determine the place of supply. An assumption or proxy which gives more appropriate result than others for determining the place of supply, could be used for determining the place of supply. The same are discussed below:*

*(a) location of service provider;*

*(b) the location of service receiver;*

*(c) the place where the activity takes place/ place of performance;*

*(d) the place where it is consumed; and*

*(e) the place/person to which actual benefit flows*

**Q 4. What is the need to have separate rules for place of supply in respect of B2B (supplies to registered persons) and B2C (supplies to unregistered persons) transactions?**

*Ans. In respect of B2B transactions, the taxes paid are taken as credit by the recipient so such transactions are just pass through. GST collected on B2 B supplies effectively create a liability for the government and an asset for the recipient of such supplies in as much as the recipient is entitled to use*

*the input tax credit for payment of future taxes. For B2B transactions the location of recipient takes care in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer. The supply is consumed only when a B2B transaction is further converted into B2C transaction. In respect of B2C transactions, the supply is finally consumed and the taxes paid actually come to the government.*

**Q 5. What would be the place of supply where goods are removed?**

*Ans. The place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. (Section 5(2) of IGST Act)*

**Q 6. What will be the place of supply if the goods are delivered by the supplier to a person on the direction of a third person?**

*Ans. It would be deemed that the third person has received the goods and the place of supply of such goods shall be the principal place of business of such person. (Section 5(2A) of IGST Act)*

**Q 7. What will be the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?**

*Ans. In respect of goods, the place of supply shall be the location at which such goods are taken on board. (Section 5(5)of IGST Act)*

*However, in respect of services, the place of supply shall be the location of the first scheduled point of departure of that conveyance for the journey. (Section 6(11)of IGST Act)*

**Q 8. What is the default presumption for place of supply in respect of B2B supply of services?**

*Ans. The terms used in the IGST Act are registered taxpayers and non-registered taxpayers. The presumption in case of supplies to registered person is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.*

**Q 9. What is the default presumption for place of supply in respect of unregistered recipients?**

*Ans. In respect of unregistered recipients, the usual place of supply is location of recipient. However in many cases, the address of recipient is not available, in such cases, location of the supplier of services is taken as proxy for place of supply.*

**Q 10. The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states. What will be the place of supply?**

*Ans. Where the immovable property is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract oragreement, on such other*

*reasonable basis as may be prescribed in this behalf. (The Explanation clause to section 6(5) of the IGST Act)*

**Q 11. What would be the place of supply of services provided for organizing an event, say, IPL cricket series which is held in multiple states?**

*Ans. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event shall be the location of such person.*

*However, if the recipient is not registered, the place of supply shall be the place where event is held. Since the event is being held in multiple states and a consolidated amount is charges for such services, the place of supply shall be taken as being in each state in proportion to the value of services so provided in each state. (The Explanation clause to section 6(8) of the IGST Act)*

**Q 12. What will be the place of supply of goods in respect of transport of goods by courier?**

*Ans. In case the recipient is registered, the location of such person shall be the place of supply.*

*However, if the recipient is not registered, the place of supply shall be the place where the goods are handed over for transportation.*

**Q 13. What will be the place of supply if a person travels from Mumbai to Delhi and back to Mumbai?**

*Ans. If the person is registered, the place of supply shall be the location of recipient.*

*If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi shall be Mumbai, the place where he embarks.*

*However, for the return journey, the place of supply shall be Delhi as the return journey has to be treated as separate journey. (The Explanation clause to section 6(11) of the IGST Act)*

**Q 14. Suppose a ticket/ pass for anywhere travel in India is issued by M/s Air India to a person. What will be the place of supply?**

*Ans. In the above case, the place of embarkation will not be available at the time of issue of invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such cases, the default rule shall apply. (The proviso clause to section 6(10) (b) of the IGST Act)*

**Q 15. What will be the place of supply for mobile connection? Can it be the location of supplier?**

*Ans. The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.*

*The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis.*

*In case of postpaid connections, the place of supply shall be the location of billing address of the recipient of service.*

*In case of pre-paid connections, the place of supply shall be the place where payment for such connection is received or such pre-paid vouchers are sold. However if the recharge is done through internet/e-payment, the location of recipient of service on record shall be the taken as the place of service.*

**Q 16. A person in Goa buys shares from a broker in Delhi on NSE (in Mumbai). What will be the place of supply?**

*Ans. The place of supply shall be the location of the recipient of services on the records of the supplier of services. So Goa shall be the place of supply.*

**Q 17. A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What will be the place of supply?**

*Ans. If the service is not linked to the account of person, place of supply shall be Kullu i.e. the location of the supplier of services. However if the service is linked to the account of the person, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.*

**Q 18. A person from Gurgaon travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What will be the place of supply?**

*Ans. The location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply. (proviso clause to section 6(14) of the IGST Act)*

# Frontend Business Process on GST Portal

# 23. Frontend Business Process on GST Portal

**Q 1. What is GSTN?**

*Ans. Goods and Services Tax Network (GSTN) is a non-profit non-government company, which will provide shared IT infrastructure and service to both central and state governments including tax payers and other stakeholders. The Frontend services of registration, Returns and payments to all taxpayers will be provided by GSTN. It will be the interface between the government and the taxpayers.*

**Q 2. What is the genesis of GSTN?**

*Ans. The GST System Project is a unique and complex IT initiative. It is unique as it seeks, for the first time to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States. Currently, the Centre and State indirect tax administrations work under different laws, regulations, procedures and formats and consequently the IT systems work as independent sites. Integrating them for GST implementation would be complex since it would involve integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders. Besides, GST being a destination based tax, the inter- state trade of goods and services (IGST) would*

*need a robust settlement mechanism amongst the States and the Centre. This is possible only when there is a strong IT Infrastructure and Service back bone which enables capture, processing and exchange of information amongst the stakeholders (including taxpayers, States and Central Government, Bank and RBI)*

*This aspect was discussed in the 4th meeting of 2010 of the Empowered Committee of State Finance Ministers held on 21/7/2010. In the said meeting the EC approved creation of an 'Empowered Group on IT Infrastructure for GST' (referred as EG) under the chairmanship of Dr. Nandan Nilekani along with Additional Secretary (Rev), Member (B&C) CBEC, DG (Systems), CBEC, FA Ministry of Finance, Member Secretary EC and five state commissioners of Trade Taxes (Maharashtra, Assam, Karnataka, West Bengal and Gujarat). The Group was mandated to suggest, inter alia, the modalities for setting up a National Information Utility (NIU/ SPV) for implementing the Common Portal to be called GST Network (GSTN) and recommend the structure and terms of reference for the NIU/ SPV, detailed implementation strategy and the road map for its creation in addition to other items like training, outreach etc.*

*In March 2010, TAGUP constituted by the Ministry of Finance had recommended that National Information Utilities should be set up as private companies with a public purpose for implementation of large and complex Government IT projects including GST. Mandate of TAGUP was to examine the technological and systemic issues*

*relating to the various IT projects such as GST, TIN, NPS, etc.*

*The EG had seven meetings between 2nd August 2010 and 8th August 2011 to discuss the modalities. After due deliberations, the EG recommended creation of a Special Purpose Vehicle for implementing the GST System Project. To enable efficient and reliable provision of services in a demanding environment, the EG recommended a non-Government structure for the GSTN SPV with Government equity of 49% (Centre – 24.5% and States – 24.5%) after considering key parameters such as independence of management, strategic control of Government, flexibility in organizational structure, agility in decision making and ability to hire and retain competent human resources.*

*In view of the sensitivity of the role of GSTN and the information that would be available with it, the EG also considered the issue of strategic control of Government over GSTN. The Group recommended that strategic control of the Government over the SPV should be ensured through measures such as composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, induction of Government officers on deputation, and agreements between GSTN SPV and Governments. Also, the shareholding pattern would ensure that the Centre individually and States collectively are the largest stakeholders at 24.5% each. In combination, the Government shareholding at 49% would far exceed that of any single private institution.*

*EG also brought out the need to have technology specification to run this company so that there is 100 percent*

*matching of returns. The business knowledge resides with the officials of Government of India and States. However, professionals with sophisticated technology knowledge will be required to run this company independently, similar to NSDL which is working professionally and independently. EG also recommended a non-government company as that will have operational freedom.*

*These recommendations were presented before the Empowered Committee of State Finance Ministers in its 3rd meeting of 2011 held on 19th August 2011 and in the 4th meeting of 2011 of the EC held on 14th Oct 2011. The proposal of the EG on IT infrastructure for GST regarding GSTN and formation of a non-profit section 25 company with the strategic control with the Government were approved by the Empowered Committee of State Finance Ministers (EC) in its meeting held on14.10.11.*

*The note of Department of Revenue for setting up a Special Purpose Vehicle to be called Goods and Services Tax Network on the lines mentioned above was considered by the Union Cabinet on 12th April 2012 and approved. The Union cabinet also approved the following:*

i. *Suitable and willing non-government institutions will be identified and firmed up by the Ministry of Finance to invest in GSTN-SPV prior to its incorporation.*

ii. *The strategic control of the Government over the SPV would be ensured through measures such as composition of the Board, mechanisms of Special Resolution and Shareholders*

*Agreement, induction of Government officers on deputation, and agreements between GSTN SPV and Governments.*

iii. *The Board of Directors of GSTN SPV would comprise 14 Directors with 3 Directors from the Centre, 3 from the States, a Chairman of the Board of Directors appointed through a joint approval mechanism of Centre and States, 3 Directors from private equity stake holders, 3 independent Directors who would be persons of eminence and a CEO of the GSTN SPV selected through an open selection process.*

iv. *Relaxation in relevant rules to enable deputation of Government officers to the GSTN SPV for exercise of strategic control and for bringing in necessary domain expertise.*

v. *GSTN SPV would have a self- sustaining revenue model, where it would be able to levy user charges on the tax payers and the tax authorities availing services.*

vi. *GSTN SPV to be the exclusive national agency responsible for delivering integrated indirect Tax related services involving multiple tax authorities. Accordingly, any other service provider seeking to deliver similar integrated services would be required to enter into a formal arrangement with GSTN SPV for the services.*

vii. *A one- time non- recurring Grant- in aid of Rs. 315 crore from the Central Government towards*

*expenditure for the initial setting up and functioning of the SPV for a three year period after incorporation.*

*In compliance of the Cabinet decision, GST Network was registered as a not-for-profit, private limited company under section 25 of the Companies Act, 1956 with the following equity structure:*

| | |
|---|---|
| *Central Govt* | *24.5%* |
| *State Govts* | *24.5%* |
| *HDFC* | *10%* |
| *HDFC Bank* | *10%* |
| *ICICI Bank* | *10%* |
| *NSE Strategic Investment Co* | *10%* |
| *LIC Housing Finance Ltd* | *11%* |

*The GSTN in its current form was created after taking after approval of Empowered Committee of State Finance Ministers and Union Government after due deliberations over a long period of time.*

**Q 3. What services will be rendered by GSTN?**

*Ans. GSTN will render the following services through the Common GST Portal:*

*(a) Registration (including existing taxpayer master migration and issue of PAN based registration number);*

*(b) Payment management including payment gateways and integration with banking systems;*

*(c) Return filing and processing;*

*(d) Taxpayer management, including account management, notifications, information, and status tracking;*

*(e) Tax authority account and ledger Management;*

*(f) Computation of settlement (including IGST settlement) between the Centre and States; Clearing house for IGST;*

*(g) Processing and reconciliation of GST on import and integration with EDI systems of Customs;*

*(h) MIS including need based information and business intelligence;*

*(i) Maintenance of interfaces between the Common GST Portal and tax administration systems;*

*(j) Provide training to stakeholders;*

*(k) Provide Analytics and Business Intelligence to tax authorities; and*

*(l) Carry out research, study best practices and provide training to the stakeholders.*

**Q 4. What is the interface system between GSTN and the states/CBEC?**

*Ans. In GST regime, while taxpayer facing core services of applying for registration, uploading of invoices, filing of return, making tax payments shall be hosted by GST System, all the statutory functions (such as approval of registration,*

*assessment of return, conducting investigation and audit etc.) shall be conducted by the tax authorities of States and Central governments.*

*Thus, the frontend shall be provided by GSTN and the backend modules shall be developed by states and Central Government themselves. However 24 states (termed as Model 2 states) have asked GSTN to develop their backend modules also. The CBEC and rest of the states (Model 1) have decided to develop and host the back-end modules themselves.*

**Q 5. What will be the role of GSTN in registration?**

*Ans. The application for Registration will be made Online on GST Portal.*

*Some of the key data like PAN, Business Constitution, Aadhaar, CIN/DIN etc. (as applicable) will be validated online against respective agency i.e. CBDT, UID, MCA etc, thereby ensuring minimum documentation.*

*The application data, supporting scanned documents shall be sent by GSTN to states/ Centre which in turn shall send the query, if any, approval or rejection intimation and digitally signed registration to GSTN for eventual download by the taxpayer.*

**Q 6. What is the role of Infosys in GSTN?**

*Ans. GSTN has engaged M/S Infosys as a single Managed Service Provider (MSP) for the design, development, deployment of GST system, including all application software, tools and Infrastructure and operate & maintain the same for a period of 5 years from Go-Live.*

**Q 7. What are the basic features of GST common portal?**

*Ans. The GST portal shall be accessible over Internet (by Taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal shall be one single common portal for all GST related services e.g.–*

i. *Tax payer registration (New, surrender, cancelation, etc.);*

ii. *Invoices upload, auto-drafting of Purchase register of buyer Periodic GST Returns filing;*

iii. *Tax payment including integration with agency banks;*

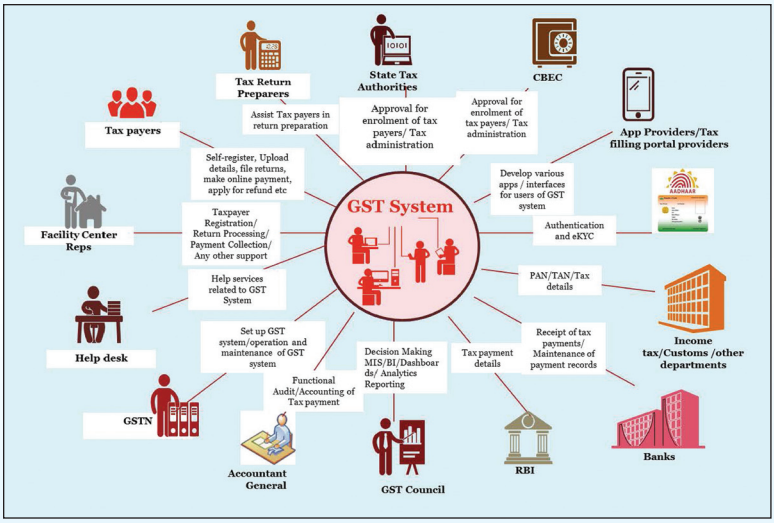
iv. *ITC and Cash Ledger and Liability Register;*

v. *MIS reporting for tax payers, tax officials and other stakeholders;*

vi. *BI/Analytics for Tax officials.*

**Q 8. What is the concept of GST Eco-system?**

*Ans. A common GST system will provide linkage to all State/UT Commercial Tax departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities. The diagram given below depicts the whole GST eco-system.*




## Q 9. What is GSP (GST Suvidha Provider)?

*Ans. The GST System is being developed by Infosys, the Managed Service Provider (MSP). The work consists of development of GST Core System, provisioning of required IT infrastructure to host the GST System and running and operating the system for five years.*

*The proposed GST envisages all filings by taxpayers electronically. To achieve this, the taxpayer will need tools for uploading invoice information, matching of input tax credit (ITC) claims, creation of party-wise ledgers, uploading of returns, payment of taxes, signing of such document with digital signature etc.*

*The GST System will have a G2B portal for taxpayers to access the GST Systems, however, that would not be the only way for interacting with the GST system as the taxpayer via his choice of third party applications, which*

*will provide all user interfaces and convenience via desktop, mobile, other interfaces, will be able to interact with the GST system. The third party applications will connect with GST system via secure GST system APIs. All such applications are expected to be developed by third party service providers who have been given a generic name, GST Suvidha Provider or GSP.*

*Taxpayers will interface with GST System via GST system portal or via GSP ecosystem provided by way of applications for activities such as Registration, Tax payments, Returns filing and other information exchange with GST core system. The GSPs will become the user agencies of the GST system APIs and build applications and web portals as alternate interface for the taxpayers.*

**Q 10. What will be the role of GST Suvidha Providers?**

*Ans. The GSP developed Apps will connect with the GST system via secure GST system APIs. Some of the functions of GSP are:*

- *Development of various apps / interfaces for taxpayer, TRPs of GST system*
- *Providing other value added services to the taxpayers*

*The GST Suvidha Providers (GSPs) are envisaged to provide innovative and convenient methods to taxpayers and other stakeholders in interacting with the GST Systems from registration of entity to uploading of invoice details to filing of returns. Thus there will be two sets of interactions, one*

*between the App user and the GSP and the second between the GSP and the GST System.*

**Q 11. What are the benefits to taxpayers in using the GSPs?**

*Ans. A GSP providing tax accounting software will have the advantage of already providing the tax payer with a vast majority of the taxation functionality. It will help the tax payer if the delta process of upload of the invoice/ return and reconciliation of the same is also provided by the GSP. Whereas in case of GST portal, another set of exercise manually or otherwise will have to be done to upload the invoice data or the return. The interface and features exposed by GST portal will be uniform for all taxpayers and might be basic in form and design. On the other hand GSPs are expected to have richer interfaces and features required by specific group (large taxpayers with completely automated financial system,SME with semi-automated system and small size with no system) of taxpayers. Also, by sheer size the GST portal will not be as nimble as that provided by a GSP.*

*GSPs can come up with application to provide GST filing facility in existing software or develop end-to-end solution for SME and small taxpayer to manage their sale/purchase and GST filing e.g. an offline utility like spread sheet, which taxpayer can fill their invoice details and then upload on GST portal for processing. Similarly, for Tax Consultants (TC), GSPs can provide dashboard to display list of his/her all clients and clicking on a particular client can give TC the snapshot of the actions/ pending actions by client.*

*GSPs can provide innovative/value added features, which would distinguish them with other GSPs in the market.*

*Source: http://www.gstn.org/ecosystem/faq_question.php*

**Q 12. What will be the role of taxpayers w.r.t GST Common Portal being developed and maintained by GSTN?**

*Ans. Some of the functions which will be performed by taxpayers through GSTN are:*

- *Application for registration as taxpayer, and profile management;*
- *Payment of taxes, including penalties and interest;*
- *Uploading of Invoice data & filing returns / annual statements;*
- *Status review of return/tax ledger/cash ledger.*

**Q 13. What will be the role of tax officers from State and Central Govt in respect of the GST system being developed by GSTN?**

*Ans. The officers will be required to use GSTN information at the backend for following functions:*

- *Approval/rejection for enrollment/registration of taxpayers;*
- *Tax administration of state tax(Assessment / Audit /Refund / Appeal/ Investigation);*
- *MIS and other functions.*

**Q 14. Will GSTN generate a unique identification for each invoice line in GSTN system?**

*Ans. No, GSTN will not generate any new identification. The combination of Supplier's GSTIN, Invoice no and Financial year with HSN/SAC Code will make each line unique.*

**Q 15. Can invoice data be uploaded on day to day basis?**

*Ans. Yes, GST Portal will have functionality to take invoice data on any time basis. Earlier one uploads better it is as it will get reflected to the receiver who can see the same in his/her purchase register.*

**Q 16. Will GSTN provide tools for uploading invoice data on GST portal?**

*Ans. Yes, GSTN will provide spreadsheet (like Microsoft Excel) like tools free of cost to taxpayers to enable them to compile invoice data in the same and upload invoice data in one go. This will be an offline tool which can be used to inputs invoice data without being online and then upload the invoice data in one go for few hundred invoices.*

**Q 17. Will GSTN be providing mobile based Apps to view ledgers and other accounts?**

*Ans. Yes, the GST portal is being designed in such a way that it can be seen on any smart phone. Thus ledgers like cash ledger, liability ledger, ITC ledger etc. can be seen on a mobile phone.*

**Q 18. Will GSTN provide separate user ID and password for Tax Professional to enable them to work on behalf of their customers (Taxpayers) without requiring user ID and password of taxpayers, as happens today?**

*Ans. Yes, GSTN will be providing separate user ID and Password to Tax Professional to enable them to work on behalf of their clients without asking for their user ID and passwords. The tax professional will be able to do all the work on behalf of taxpayers as allowed under GST Law except final submission, which will be done by the taxpayers using e-sign (OTP) or Digital Signature Certificate.*

**Q 19. Will tax payer be able to change the tax professional once chosen in above mentioned facility?**

*Ans. Yes, a taxpayer may choose a different tax professional by simply unselecting it at GSTN portal and delegating to a new tax professional.*

**Q 20. Will existing taxpayers under Central Excise or Service Tax or State VAT have to apply for fresh registration under GST?**

*Ans. No, the existing taxpayers whose PAN have been validated from CBDT database will not be required to apply afresh. They will be issued provisional GSTIN by GST portal, which will be valid for six months for providing relevant data as per GST registration form. On completion of data filing provisional registration will get converted into regular Registration. Further notification giving timelines will be issued by respective tax authorities.*

**Q 21. Will GSTN put training videos on various aspects of working on GST portal for the benefit of taxpayers?**

*Ans. Yes, GSTN is preparing Computer Based Training materials which have videos embedded into them for each process to be performed on the GST portal. These will be put on the GST portal as well as on the website of all tax authorities.*

**Q 22. Will the return and registration data furnished by the taxpayers on the GST Common Portal will remain Confidential?**

*Ans. Yes, all steps are being taken by GSTN to ensure the confidentiality of personal and business information furnished by the taxpayers on GST Common Portal. This will be done by ensuring Role Based Access Control (RBAC) and encryption of critical data of taxpayers both during transit and in storage. Only the authorized tax authorities will be able to see and read the data.*

**Q 23. What are the security measures being taken by GSTN to ensure security of the GST system?**

*Ans. GST Systems project has incorporated state of art security framework for data and service security. Besides high end firewalls, intrusion detection, data encryption at rest as well as in motion, complete audit trail, tamper proofing using consistent hashing algorithms, OS and host hardening etc., GSTN is also establishing a primary and secondary Security Operations Command & Control center, which will proactively monitor and protect malicious attack in real time. GSTN is also ensuring secure coding practices through continuous scanning of source code to protect against commonly known and unknown threats.*

# Transitional Provisions

# 24. Transitional Provisions

**Q 1. Will the CENVAT/ITC carried forward in the last return prior to GST under earlier law be available as ITC under GST?**

*Ans. Yes, the registered taxable person shall be entitled to such credit and it will get credited to his electronic credit ledger – section 143.*

**Q 2. A registered taxable person say, purchases capital goods in the last quarter of 2016-17. Though the invoice is received within 31st March but the capital goods are received on 5th April, 2017 (i.e. in GST regime). Will such a person get full credit of CENVAT in 2017-18?**

*Ans. Yes, he will be entitled to full credit in 2017-18 - explanation to section 144 (1).*

**Q 3. VAT credit was not available on items 'X' & 'Y' as capital goods in the earlier law. Since they are covered in GST, can the registered taxable person claim it now?**

*Ans. He shall be entitled to credit only when ITC on such goods were admissible under the earlier law and is also admissible in GST. Since on the two items credit was not available under the earlier law, the said person cannot claim it in GST – proviso to section 144(1).*

**Q 4. Assuming such a person wrongly enjoyed the credit, will the recovery be done in GST or earlier law?**

*Ans. The recovery relating to ITC wrongfully enjoyed will be done under GST only - section 143 to 146.*

**Q 5. Give two examples of registered taxable persons who were not liable to be registered under the earlier law but are required to be registered under GST?**

*Ans. A manufacturer having a turnover of say Rs 60 lakhs was enjoying SSI exemption earlier, will have to be registered in GST as the said turnover exceeds the basic threshold of Rs 10 lakhs - section 9.*

*A trader having turnover below the threshold under VAT making sales through e-commerce operator will be required to be registered in GST. There will no threshold for such persons – section 145 read with section 9 and Schedule III.*

**Q 6. Will ITC be allowed to a service provider on VAT paid inputs held as stock on the appointed day?**

*Ans. No, VAT does not cover services. Under it, only goods are covered.*

**Q 7. A registered taxable person has Rs 1000 ITC credited to his electronic credit ledger from the last return under the earlier law. Now, he switches over to composition scheme in GST, will he get refund of that ITC?**

*Ans. No. He shall have to pay an amount equivalent to the credit of input tax on inputs held in stock on the day immediately preceding the date of switchover. The amount*

*can be paid either through the electronic credit ledger or the electronic cash ledger. Where payment is made through the electronic credit ledger, excess ITC balance lying, if any, will lapse.*

*The relevant section is section 147.*

**Q 8. Sales return under CST (i.e. Central Sales Tax Act) is allowable as deduction from the turnover within 6 months? If, say, goods are returned in GST by a buyer after 6 months of sales, will it become taxable in CST or GST?**

*Ans. First, find out whether the goods are taxable in GST or not. Secondly check whether the goods were returned after 6 months from the appointed day. If the answer to both happens to be 'yes' then the person returning the goods will have to pay tax in GST.*

*However, where the goods are returned within 6 months from the appointed day, no tax will be payable by the person returning them if the goods are identifiable and tax was paid under the earlier law at the time of its sale, made not earlier than 6 months from the appointed day.*

*The relevant section is section 149.*

**Q 9. Shall a manufacturer or a job worker become liable to pay tax if the inputs or semi-finished goods sent for job work under the earlier law are returned after completion of job work after the appointed day?**

*Ans. No tax shall be payable by the manufacturer or the job worker under the following circumstances:*

- *Inputs/ semi-finished goods are sent to the job worker in accordance with the provisions of the earlier law before the appointed day.*
- *The job worker returns the same within six months from the appointed day (or extended period of 02 months).*
- *Both the manufacturer and the job worker declare the details of inputs held in stock by the job worker on the appointed day in the prescribed form.*

*The relevant sections being section 150 and section 151.*

**Q 10. What happens if the job worker does not return the goods within the specified time?**

*Ans. Tax would be payable by the job worker. Further, the manufacturer will also be liable to pay tax on expiry of the specified time limit – section 150 (1) & section 151(1).*

**Q 11. Can a manufacturer transfer finished goods sent for testing purpose to the premises of any other taxable person?**

*Ans. Yes, a manufacturer can as per the provisions of the earlier law transfer the said goods to the premises of any registered taxable person on payment of tax or without payment of tax for exports within 6 months or extended period from the appointed day – section 152.*

**Q 12. If finished goods removed from a factory for carrying out certain processes under earlier law are returned on or after the appointed day, whether GST would be payable?**

*Ans. No tax will be payable in GST by the manufacturer or by the Job worker where the goods removed prior to the appointed day for carrying out process not amounting to manufacture are returned within 6 months from the appointed day (or extended period of 02 months) – section 152.*

**Q 13. When tax shall become payable in GST on manufactured goods sent to a Job worker under the earlier law?**

*Ans. The person returning the goods shall become liable to pay tax if the said goods are liable to tax in GST and are returned after 6 months from the appointed day – proviso to section 152.*

**Q 14. Is extension of two months as discussed in section 150, section 151 and section 152 automatic?**

*Ans. No, it is not automatic. It shall be extended by the competent authority only on sufficient cause being shown.*

**Q 15. What is the time limit for issue of debit/credit note(s) for revision of prices?**

*Ans. The taxable person may issue the debit/credit note(s) or a supplementary invoice within 30 days of the price revision.*

*In case where the price is revised downwards the taxable person shall be allowed to reduce his tax liability only if the recipient of the invoice or credit note has reduced his ITC corresponding to such reduction of tax liability – section 153.*

**Q 16. What will be the fate of pending refund of tax/ interest under the earlier law?**

*Ans. The pending refund claims shall be disposed of in accordance with the provisions of the earlier law – section 154.*

**Q 17. What will be fate of any appeal or revision relating to a claim of CENVAT/ITC which is pending under the earlier law? If say, it relates to output liability then?**

*Ans. It shall be disposed of in accordance with the provisions of the earlier law only in both the cases –section 155/156.*

**Q 18. If the appellate or revisional order goes in favour of the assessee, whether refund will be made in GST? What will happen if the decision goes against the assessee?**

*Ans. The refund shall be made in accordance with the provisions of the earlier law only. In case any recovery is to be made then it will be made as an arrear of tax under GST.*

**Q 19. How shall the refund arising from revision of return(s) furnished under the earlier law be dealt in GST?**

*Ans. The same shall be refunded in accordance with the provisions of the earlier law – section 158.*

**Q 20. If any goods or services are supplied in GST, in pursuance of contract entered under earlier law, which tax will be payable?**

*Ans. On such supplies GST will be payable – section 159.*

**Q 21. If consideration for a particular supply of services was received under the earlier law and tax on it was paid, will GST also become payable where such supply is made in GST regime?**

*Ans. No tax shall be payable on supply of goods/services on or after the appointed day if the consideration for it has been received prior to the appointed day and the duty/ tax thereon has already been paid under the earlier law – section 160.*

**Q 22. The supply of goods/services was made under the earlier law but a part of the consideration (say the retention money) is received in GST regime, will tax be payable in GST?**

*Ans. No, provided the full duty/tax on such supply has already been paid under the earlier law – section 161.*

**Q 23. If services are received by ISD under the earlier law, can the ITC relating to it be distributed in GST regime?**

*Ans. Yes, irrespective of whether the invoice(s) relating to such services is received on or after the appointed day – section 162.*

**Q 24. Where goods (including capital goods) belonging to the principal are lying with the agents on the appointed day, will the agent be able to take ITC on the same?**

*Ans. The agent can take such credit on fulfilment of the following conditions:-*

- *The agent is a registered taxable person in GST;*
- *Both the principal and the agents declare the details of stock lying with the agents on the date immediately preceding the appointed day;*
- *The invoices for such goods had been issued not earlier than 12 months immediately preceding the appointed day;*
- *The principal has either reversed or not availed of the ITC in respect of such goods.*

*This provision is applicable to SGST law only – section 162A and section 162 B*

**Q 25. Goods were sent on approval before the appointed day but are returned to the seller after 6 months from the appointed day, will tax be payable in GST?**

*Ans. Yes, if such goods are liable to tax in GST and the person who rejected or not approved the goods returns it after 6 months (may be extended by 2 months) from the appointed day.*

*This provision is applicable to SGST law only – section 162D*

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