

## GOODS AND SERVICES TAX – CHARGEABILITY OF GST

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The Goods and Services Tax (GST) biggest reform in India's Indirect Tax Structure since Indian economy began to open up in 1991 and most significant revamp of the tax system post Independence in 1947. This in fact will turn into biggest business reform and will impact way of doing business in India.

ADA taken an initiative towards GST and have started a Knowledge sharing on Model GST Law. Purpose is to discuss most of the important provisions under Model GST Law.

In this direction our first presentation on overview of GST is available on following link:

### [GST Overview](#)

This is second presentation covering about chargeability of CGST, SGST and IGST.



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## CHARGEABILITY OF CGST, SGST AND IGST

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Chapter III of the CGST/SGST Act, 2016 provides for the levy and collection of CGST and SGST vide section 7 of the Act. Chapter III of the IGST Act, 2016 provides for the levy and collection of IGST vide section 4 of the Act.

Section 7 of the CGST/SGST Act, 2016 and Section 4 of the IGST Act, 2016 are the charging sections of the respective Act.

This note deals with the provisions of charging section 7 and section 4 of the CGST/SGST Act 2016 and IGST Act, 2016 respectively in Part A and Part B.

## PART A-Levy and Collection of CGST/SGST

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Section 7 of Chapter III of the CGST/SGST Act, 2016 provides:

### Section 7(1)

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

### Section 7(2)

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

### Section 7(3)

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

## ANALYSIS

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. Section 7 is the charging provision of the CGST/SGST Act. For the purpose of charging CGST/SGST following points are important:

- Tax to be levied called CGST and SGST: -Imposition of CGST by Parliament of India and SGST by the respective State.
- Taxable event is Supply: - Supply has been defined in section 2(92) read with section 3 of the Act. Section 3 extensively deals with meaning and scope of supply. It includes
  - Sale,
  - Transfer,
  - Barter,
  - Exchange,
  - License,
  - Rental,
  - Lease,
  - Disposal

Schedules I and II also enumerate various kinds of supplies. GST would be applicable on supply of goods as against the present system of levy of duty or tax on the manufacture or on sale of goods. The levy is therefore on supply of goods. It should be noted that even transactions of simple transfer, barter and exchange amount to supply for the purposes of GST law.

- Tax shall be payable on intra-state supplies: -The meaning of intra-State supply is contained in Section 3A of the IGST Act, 2016. A supply would be an intra-State supply if the location of the supplier and the place of supply, both are within the same State.

Thus place of supply and location of supplier are two important aspects to characterize the nature of supply as intra-state (to levy CGST and SGST) or inter-state (to levy IGST).

Section 5 and 6 of the IGST Act, 2016 provides for provisions to determine the place of supply of goods and services respectively.

Section 2(65) of the CGST/SGST Act, 2016 defines the location of supplier of service. As per this section, location of supplier of service means:

- Place of Business(Registered with GST) from where supply is made;
- Location of fixed establishment (Other than the registered place of business) from where supply is made;

As per Section 2(46) of the CGST/SGST Act, 2016 “fixed establishment” means a place (other than the place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

- In case supply is made from multiple places, the location of supplier is the place which is most directly concerned with provision of the supply;
- In the absence of any such place, the location is the usual place of residence of the supplier.

- Goods and Services:- As per Section 2(48) of the CGST/SGST Act, 2016, “goods” means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

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

As per Section 2(88) of the CGST/SGST Act, 2016, “services” means anything other than goods.

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

- Taxable Person: Meaning of ‘taxable person:Section 9 of the CGST/SGST Act, 2016 defines the term “taxable person”.A taxable person is defined as any person who carries on any business in India and who is registered or who is required to be registered.

Schedule III of the Act, lists out persons who are liable to get registered. A person who is required to be registered will be considered as a taxable person only if his aggregate turnover in a financial year exceeds Rs. 10 lacs (Rs. 5lacs in case of North Eastern States including Sikkim). In this regard, North Eastern States would mean – Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura including Sikkim.

It is also important to understand that the threshold for registration and threshold for payment of tax are different. While the threshold for payment of tax is Rs. 10 lacs and Rs. 5 lacs as indicated above, the threshold for registration is Rs. 9 lacs and Rs. 4 lacs respectively.

- i. As per Para 5 of Schedule III, following persons shall be taxable persons irrespective of the threshold /value of aggregate turnover:
  - a. Person effecting an inter-State supply;
  - b. Person required to pay tax under reverse charge mechanism;
  - c. Casual taxable persons in terms of Section 2(21) - a casual taxable person means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business.
  - d. Non-resident taxable person in terms of Section 2(69) - a non-resident taxable person means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India.
  - e. Any person who is required to deduct tax under Section 37. This would include the following:
    - Department or establishment of a Central or State Government; or
    - Local authority; or
    - Governmental agency; or
    - Such other person or category of persons, as may be notified by the Central or State Government on recommendation of the Council
  - f. Person who supplies goods and / or services on behalf of another registered taxable person.
  - g. Input service distributor in terms of Section 2(56). An Input service distributor means an office of the supplier of goods and / or services receiving or issuing tax invoices including debit / credit notes for the purposes of distributing SGST / CGST / IGST to the supplier of goods and / or services having the same PAN.
  - h. Person supplying goods and / or services (other than branded services) through an electronic commerce operator.
  - i. Electronic commerce operators: In terms of Section 43B(e) of the Act, an electronic commerce operator means any person who directly or indirectly owns or operates or manages an e-platform that is engaged in enabling the supply of goods and / or services or information. It would however, not include person supplying goods and / or services on their own behalf.
  - j. An aggregator who supplies services under his brand name / trade name. In terms of Section 43B(a) of the Act, an aggregator is defined to mean a person, who owns and manages an electronic platform, and by means of the application and a 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.
- k. Job worker, in respect of goods supplied by the job worker after completion of job work (refer Section 43A).
  - l. Such other persons or class of person as the Central Government or State Government may notify on recommendations from the Council.
- ii. The following are specifically excluded from the meaning of 'taxable person':
- a. Agriculturist as per Section 2(8) read with Section 2(103).
  - b. Person registered but where the aggregate turnover is less than the thresholds indicated above [Rs. 10 Lakhs/ Rs. 5 Lakhs].
  - c. Employees providing any services under an employer-employee relationship or workers covered under Contract Labour Abolition Act, 1971.
  - d. Persons engaged wholly in supply of goods and / or services which are not liable to tax under this Act. This exclusion will not apply to a person supplying exempt goods and / or services.
  - e. Where any person is liable to pay tax on services under reverse charge mechanism, if the value of services received is less than a specified amount during the year and if the said services are received for personal use (other than in the course of or furtherance of business).

Note: The above exemption of services received upto a specified value will be applicable only if such services are meant for personal use. Where any services are received in the course of, or furtherance of business, the threshold will not be applicable- viz., will be liable to tax, irrespective of the threshold.

## PART B-Levy and Collection of IGST

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Section 4 of Chapter III of the IGST Act, 2016 provides:

### Section 4(1)

- There shall be levied a tax called the Integrated Goods and Services Tax
- on all supplies of goods and/or services
- made in the course of inter-State trade or commerce
- at the rate specified in the Schedule to this Act and
- collected in such manner as may be prescribed.

### Section 4(2)

- The Integrated Goods and Services Tax
- shall be paid by every taxable person
- in accordance with the provisions of this Act

### Section 4(3)

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

### Section 4(4)

Notwithstanding anything contained in sub-section (1) but subject to such conditions as may be notified in this behalf, no tax under this Act shall be payable by any taxable person in respect of such supplies of goods and/or services as are specified in Schedule to the Act.



## ANALYSIS

As per section 2(2) of IGST Act, 2016, any words or expressions which are used in this Act, but are not defined should be assigned the meaning as given to such words or expressions in CGST Act, 2016. Thus meaning of Goods/Services, Supply, Taxable person and Location of supplier can be referred as per part A supra.

- Tax to be levied called IGST: - Every inter-state supply will attract IGST.
- Tax shall be payable on inter-state supplies: - The meaning of inter-state supply is defined in section 3 of the IGST Act, 2016. A supply would be an inter-State supply if the location of the supplier and the place of supply, both are in different States.

Thus place of supply and location of supplier are two important aspects to characterize the nature of supply as intra-state (to levy CGST and SGST) or inter-state (to levy IGST).

Section 5 and 6 of the IGST Act, 2016 provides for provisions to determine the place of supply of goods and services respectively.

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