



G S T

**JOURNEY
- ISSUES & WAY
FORWARD**

THE GAME CHANGER

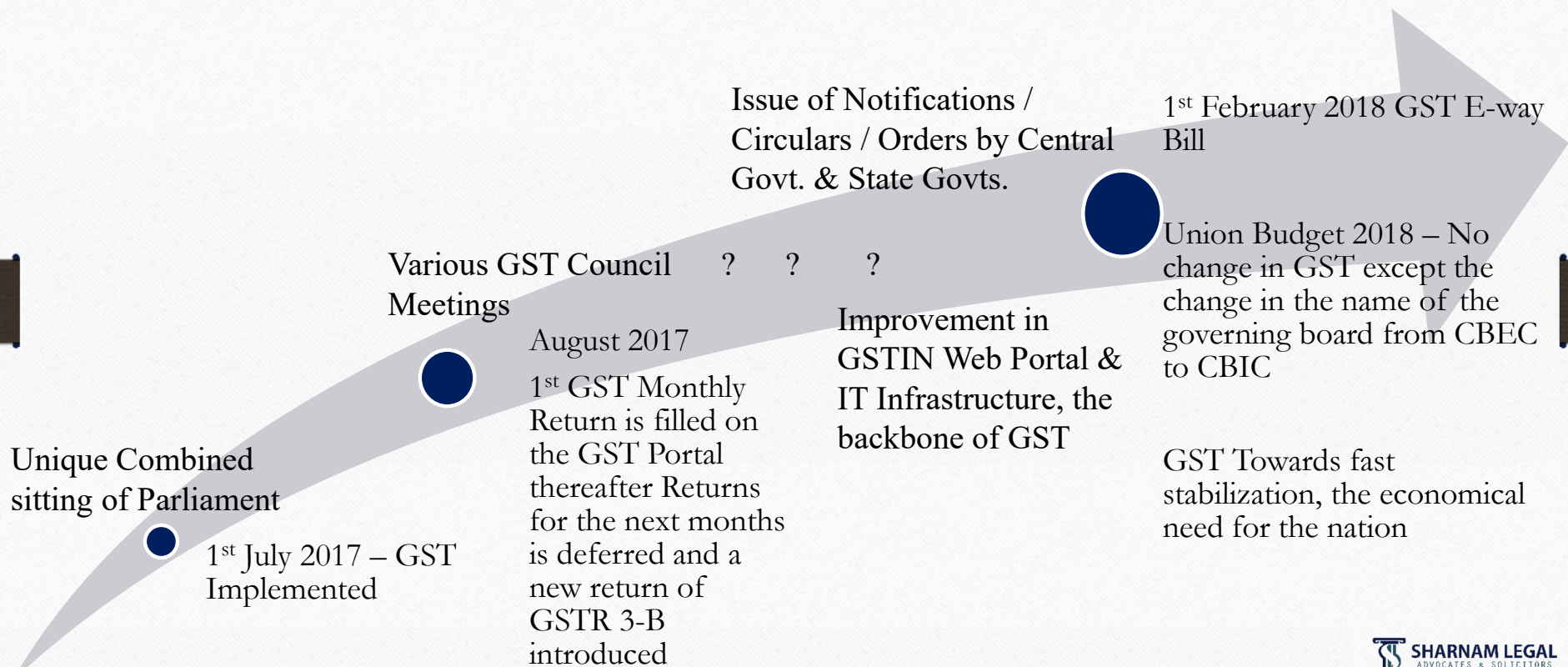


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GST JOURNEY FROM 1ST JULY 2017



GST JOURNEY - ISSUES & WAY FORWARD

S.NO.	TOPIC
1.	INDICATIONS FROM ECONOMIC SURVEY 2017-18 AS IMPACTED BY NEW CONCEPT OF GST
2.	UNION BUDGET 2018 & EFFECTS ON GST
3.	SUPPLY – TIME & PLACE – DIFFICULTY IN DECIDING PLACE OF SUPPLY INCASE OF SERVICES
4.	CREDIT MECHANISIM – ITC, RCM etc.
5.	RETURNS & COMPLIANCES – RELAXATION DETRIMENTAL FOR BUSINESS AND INDUSTRY & THE REAL CONCEPT OF GST
6.	CLASSIFICATION, HSN CODE – MULTIPLE TAX RATE FOR SAME HSN CODE
7.	E-WAY BILL – ISSUE OF RE-USE OF SAME E-WAY BILL
8.	ISSUES & CASE STUDIES

INDICATIONS FROM ECONOMIC SURVEY 2017-18 CONCERNING GST

Observations regarding GST mentioned in the **ECONOMIC SURVEY** presented by the Finance Minister in the Lok Sabha on 29th January 2018 as prepared by Dr. Arvind Subramanian, Chief Economic Advisor:

Main Mantra - ***Need for efforts to stabilize GST***

Salient Features about GST/ Expected Impact of GST on Govt Working-

- Economic Survey termed GST Revenue Collections as ‘**Surprisingly Robust**’, given that these are early days of a disruptive change.
- A very good news as the **number of Indirect tax payers has shot up by whopping 50%** after GST with 34 Lac businesses coming into the tax net. This increase indicates good tax compliance and revenue growth.
- Economic Survey calculates that **Demonetization-cum-GST** has produced 1.8 million additional Income Tax Payers, **both tax compliance and revenue potential for the future will certainly shoot-up.**

INDICATIONS FROM ECONOMIC SURVEY 2017-18 CONCERNING GST

- Direct Tax Collection have already risen 18% this year which is almost double the nominal GDP growth rate of 9.5%. This favorable trend further suggest improved compliance after tax reforms.
- The Economic Survey term **GST the repository of data** on the Indian Economy. As per GST data the **estimated formal non-farm economy is estimated at 53% in contrast to 31% based on earlier available Social Security Data**, thus the formal non-farm economy is actually much bigger than the earlier estimated formal non-farm economy.
- Economic Survey mentioned that the **roll-out of GST was marred by hiccups related to compliance**, prompting the GST Council to expeditiously re-visit provisions.

INDICATIONS FROM ECONOMIC SURVEY 2017-18 **CONCERNING GST - WAY FORWARD**

Ray of Hope:

Global experience suggests that a transformation like GST will take 12 to 18 months to stabilize, so the **full fruits will be reaped next year**. In India the Finance Minister's expectation is for **much faster stabilization in comparison** to the time taken in other countries for similar transformations.

Greatest Hope:

May be in **three to five years GST may have one single rate of tax** because its benefits are extremely compelling.

In short run, there is a case for **simplification and greater rationalization**.

Essential Elements of SUPPLY

In order to constitute a 'supply', following elements are required to be satisfied:-

- (i) supply should be of goods and / or services;
- (ii) supply is made in the course or furtherance of business;
- (iii) supply is primarily for a consideration or without consideration(if specified);
- (iv) supply is made in the taxable territory;
- (v) supply is a taxable supply; and
- (vi) supply is made by a taxable person.

Under certain circumstances such as importation of service {Section 7(1) (b)} or supplies made without consideration as specified under Schedule-I of CGST Act, where one or more ingredients specified above are not satisfied, the transaction or activity shall still be treated as SUPPLY under GST Law.

Sec 7 of IGST, Act - INTER-STATE SUPPLY

- (1) Subject to the provisions of section 10, **supply of goods**, where the location of the supplier and the place of supply are in—
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory,shall be treated as a supply of goods in the course of **inter-State** trade or commerce.

- (2) Supply of goods **imported into the territory of India**, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of **inter-State** trade or commerce.

- (3) Subject to the provisions of section 12, **supply of services**, where the location of the supplier and the place of supply are in—
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory,shall be treated as a supply of services in the course of **inter-State** trade or commerce.

Sec 7 of IGST, Act - INTER-STATE SUPPLY

- (4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
- (5) Supply of goods or services or both,—
- (a) when the supplier is located in India and the place of supply is outside India;
 - (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
 - (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Sec 8 of IGST, Act - INTRA-STATE SUPPLY

(1) Subject to the provisions of section 10, *supply of goods* where the location of the supplier and the place of supply of goods are in the **same State** or same Union territory shall be treated as **intra-State supply**:

Provided that the following supply of goods shall **not be treated as intra-State supply**, namely:—

- (i) supply of goods **to or by a Special Economic Zone** developer or a Special Economic Zone unit;
- (ii) **goods imported into the territory of India** till they cross the customs frontiers of India;
or
- (iii) **supplies made to a tourist referred to in section 15.**

Sec 8 of IGST, Act - INTRA-STATE SUPPLY

(2) Subject to the provisions of section 12, *supply of services* where the **location of the supplier** and **the place of supply of services** are in the **same State** or same Union territory shall be treated as **intra-State supply**:

Provided that the intra-State supply of services shall **not include** supply of services **to or by a Special Economic Zone** developer or a Special Economic Zone unit.

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) an **establishment in India** and **any other establishment outside India**;
 - (ii) an **establishment in a State** or Union territory and **any other establishment outside that State** or Union territory; or
 - (iii) an **establishment in a State** or Union territory and **any other establishment being a business vertical registered within that State** or Union territory, then such establishments **shall be treated as establishments of distinct persons.**
- Explanation 2.—A person carrying on a **business through a branch or an agency or a representational office in any territory** shall be treated as having an establishment in that Territory.

Sec 11 of IGST, Act - PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA

The place of supply of goods,—

- (a) **imported into India** shall be the **location of the importer**;
- (b) **exported from India** shall be the **location outside India**.

Sec 12 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA

- (1) The provisions of this section shall apply to determine the **place of supply of services** where the location of **supplier** of services and the location of the **recipient** of services is **in India**.
- (2) The place of supply of services, **except the services specified** in sub-sections (3) to (14),—(a) made to a **registered person** shall be the **location of such person**;
 - (b) made to **any person other than a registered person** shall be,—
 - (i) the **location of the recipient where the address on record exists**; and
 - (ii) the **location of the supplier of services in other cases**.

Sec 12 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA

(3) The place of supply of services,—

(a) directly in relation to **an immovable property**, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of **lodging accommodation by a hotel**, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(c) by way of **accommodation in any immovable property** for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

Sec 12 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA

(3) The place of supply of services,—

.....

(d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, 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 or agreement, on such other basis as may be prescribed.

Sec 12 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA

Place of supply of accommodation services

As per section 12(3)(b) of the IGST Act, 2017, the place of supply for services by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or services by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property shall be the location at which the immovable property or boat or vessel, as the case may be is located. Therefore, the place of supply of accommodation services is the location of the immovable property and accordingly the supply is classified as intra-state supply leviable to CGST and SGST. Most corporates are not likely to be registered across all the states in India. Further, as per input tax credit utilization rules, the input tax credit of Centre and State tax cannot be cross utilized, thus the GST paid in the State becomes cost to the business and discourages businesses to go and held seminars, conferences in the other States.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.
- (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be 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 or agreement, on such other basis as may be prescribed.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

- (8) The place of supply of the following services shall be the location of the supplier of services, namely:—
- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
 - (b) intermediary services;
 - (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.—For the purposes of this sub-section, the expression,—

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;
- (c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;
- (d) “non-banking financial company” means,—
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

Sec 13 of IGST, Act - PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA

Place of supply of services by an Intermediary

As per sub-section (8) of section 13 of the IGST law, the place of supply of intermediary services shall be the location of supplier of service.

The said provision shall negatively impact the intermediary in India who arranges or facilitates the supply of service to the foreign principal. Such Indenting Agents provide valuable services to the country by virtue of their expertise in procurement from overseas market by acting as agent of overseas suppliers. They facilitate supply of quality raw material and other goods as required by Indian manufacturers/customers. The services are ultimately provided outside India to a foreign principal. However, as per the aforesaid provision the services provided by an intermediary to any person outside India shall not classify as export and the same shall be taxable in India. The levy of GST on such services shall negatively impact the said sector by making the services more expensive due to GST of 18% on such services. The Indenting Agents, who are working on a very thin commission margin have to absorb GST @ 18% making their business unviable. Also the service consideration charged by Indian Intermediary is included in principal supply of goods or services by foreign supplier on which applicable customs duty/GST shall be payable. Levy of GST on intermediary services would lead to double taxation for the foreign principal as in certain countries recipient of service is required to pay tax in their home county on reverse charge basis.

It is suggested that the place of supply of service provided by Intermediary should be considered as the location of recipient of service.

TIME OF SUPPLY

Sec 12 of CGST, Act - Time of supply of goods.

(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the **earlier of the following dates**, namely:—

(a) the **date of issue of invoice** by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the **date on which the supplier receives the payment** with respect to the supply: Provided that where the supplier of taxable goods receives an amount upto one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

TIME OF SUPPLY OF GOODS

Explanation 1.—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

TIME OF SUPPLY OF GOODS

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

TIME OF SUPPLY OF GOODS

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

TIME OF SUPPLY OF SERVICES

Sec 13 of CGST, Act - Time of supply of services

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

TIME OF SUPPLY OF SERVICES

Provided that where the supplier of taxable service receives an amount upto one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- (ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

TIME OF SUPPLY OF SERVICES

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

TIME OF SUPPLY OF SERVICES

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
- (a) the date of issue of voucher, if the supply is identifiable at that point; or
 - (b) the date of redemption of voucher, in all other cases.
- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

RETURNS UNDER GST

So many types of GST Returns
Multiple Returns to be filled every month

GST Returns as per Nature of Assessee

Sl. No.	Nature of Assessee	GST Return
1.	Normal Assessee & Casual Taxpayer	GSTR-1, GSTR-2, GSTR-3, GSTR-9 & GSTR-3B
2.	Composition Dealer	GSTR-4, GSTR-4A, GSTR-9A
3.	Non-resident Taxpayer	GSTR-5
4.	Input Service Distributor	GSTR-6, GSTR-6A
5.	TDS Deductor	GSTR-7, GSTR-7A
6.	E-Commerce Operator	GSTR-8
7.	UIN Holder	GSTR-11

Summary of GST Returns

Monthly
Returns

Annual
Returns

Miscellaneous
Returns

Summary of GST Returns

Monthly Return

Normal Assessee

GSTR-1 (10th of Next Month)

GSTR-2 (15th of Next Month)

GSTR-3 (20th of Next Month)

Other Assessee

Composition Dealer

GSTR-4 & 4A (18th of Next Quarter)

ISD

GSTR-6 & 6A (13th of Next Month)

Non-resident

GSTR-5 (20th of Next Month & within 7 Days of Expiry of RC)

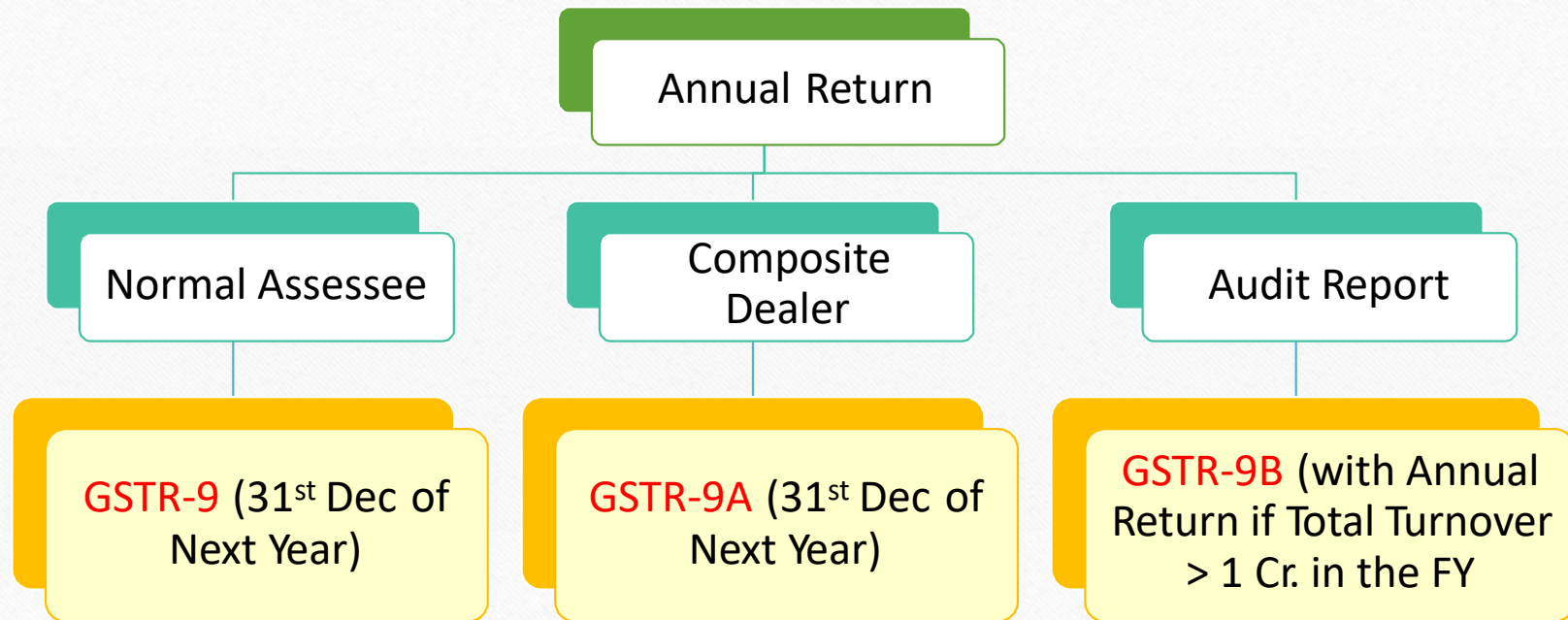
TDS Deductor

GSTR-7 & 7A (10th of Next Month)

E-Commerce Operator

GSTR-8 (10th of Next Month)

Summary of GST Returns



Annual Return Penalties: INR 100 Per Day subject to a maximum of 0.25% of Turnover in State

PERIODICITY OF GST RETURNS

It has been observed that filing of monthly return under the GST regime coupled with monthly uploading of details of outward and inward supplies has added much to the compliance burden of the taxpayers. A lot of time and resources have been spent by the businesses in order to ensure compliance with the return filing deadlines under the GST regime which included filling of plethora of details, dealing with server issues, transitional credit claim issues and tracing of utilities on the GSTN portal etc.

The Government decision requiring quarterly filing of returns by the small and medium businesses with annual aggregate turnover upto ₹ 1.5 crore in Form GSTR 1, 2 and 3 and also to discharge the tax liability on quarterly basis is welcome and would ease the compliance burden for the small taxpayers. The periodicity of filing of returns is a big issue, it may be made quarterly instead of monthly for all the taxpayers though payment of tax can be made monthly for taxpayers having annual aggregate turnover above ₹ 1.5 crores. This will simplify the compliance and will go a long way to boost the confidence of the taxpayers and encourage them to comply under the GST regime.

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Section 17 (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Section 17 (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, **the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.**

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Considering the provisions of Section 17 (1) & (2), the mechanism of apportionment of credit built in the GST law is extremely onerous to follow. Further, under the erstwhile regime, as per CENVAT Credit Rules, if the capital goods are used partly for effecting taxable supplies and partly for effecting exempt supplies no reversal of ITC is required.

Suitable amendment is needed in the provisions of Section 17 of the CGST Act, 2017 to provide that goods would exclude capital goods for the purpose of reversal of ITC. It is suggested that entire input tax credit on capital goods should be allowed unless it is exclusively used for exempted supply of goods or services.

INTRICATE ISSUES CONCERNING ITC – SECTION 17 (5)

Apportionment of credit and blocked credits

Section 17 (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely: —

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely: —

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

There is no reason why credit on Motor vehicles used for business purposes, or cab services is disallowed when such expenditure is incurred in the course or furtherance of business and even allowed under the Income Tax Act.

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Section 17 (5) (b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Restrictions on input tax credit

GST paid on supply of food and beverages, outdoor catering is restricted for input tax credit. However, in respect of rent-a-cab and employee related insurance, the law provides that the credit shall be allowed if it is obligatory for an employer to provide the same to its employees under any law in force. With these provisions, expenses incurred on food and beverage for any purpose will be disallowed including for the purpose of business conference, corporate events, seminars etc.

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Section 17 (5) (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Section 17 (5) (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Restrictions on input tax credit

GST paid on supply of works contract services when supplied for construction of immovable property (other than plant and machinery) is restricted except to a works contractor who is engaged in providing such services.

Section 17(5)(d) of the CGST Act 2017 restricts credit in respect of goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business.

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

Section 17 (5) (e) goods or services or both on which tax has been paid under section 10;

Section 17 (5) (f) goods or services or both received by a non-resident taxable person except on goods imported by him;

Section 17 (5) (g) goods or services or both used for personal consumption;

Section 17 (5) (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

Section 17 (6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i)** land, building or any other civil structures;
- (ii)** telecommunication towers; and
- (iii)** pipelines laid outside the factory premises.

INTRICATE ISSUES CONCERNING ITC – SECTION 17 (5)

Apportionment of credit and blocked credits

As per Section 17 (5) (h) no input tax credit is available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. The goods distributed by way of gifts/free samples or writing off of stock etc. take place in a normal business scenario and expense on these account are inbuilt in the sale price, which is subject to GST.

- This is typically true in case of promotional materials.
- Identifying the amount for reversal of ITC pertaining to such goods would involve a lot of unwarranted paper work.
- Similarly, ITC in respect of lost, stolen or destroyed goods should be allowed subject to a permissible limit in accordance to the normal business practices and the way in which the business is being carried.
- These restrictions on availment of ITC on genuine business expenditure have adversely affected the businesses to a large extent.

INTRICATE ISSUES CONCERNING ITC – SECTION 17

Apportionment of credit and blocked credits

It has been further provided in the Explanation to section 17(5) of the CGST Act, 2017 that pipelines laid outside the factory premises are not 'plant and machinery'. In a large manufacturing company huge pipelines are commissioned for various purposes i.e. for taking water from river for being directly used in the manufacturing purpose. In such cases part of the entire pipeline system is inside the factory and part remain outside the factory. However, it is a part of entire pipeline system which is used for furtherance of business only.

**DOCUMENTARY
REQUIREMENTS &
CONDITIONS FOR
CLAIMING INPUT TAX
CREDIT**

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made there-under for assessment of integrated tax on imports;

(e) an ISD invoice or ISD credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in (*Invoice Rules*) are contained in the said document, and the relevant information, as contained in the said document, is furnished in **FORM GSTR-2** by such person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

DENIAL OF GST CREDIT TO CUSTOMER, IF SUPPLIER HAS DEFAULTED IN FILING RETURN AND DEPOSIT OF TAX

As per the provisions of the GST law, one of the conditions for availability of ITC is that the tax charged in respect of the supply has been actually paid to the Government by the supplier of goods and services. Further, if the supplier has defaulted in furnishing the details of outward supplies and the tax paid thereon, the customer will not be able to take the ITC in respect of such supplies.

The basic premise of introduction of GST is to allow seamless flow of credit which seems to be defeated with the concept of recipient being made to suffer for the default of the supplier.

The GST law must allow ITC to the customer in case he has made the payment of invoice along with tax to the supplier. Further, in such cases the supplier should be made liable to pay tax along with interest. This will protect the interest of the buyer and would also encourage the customers to do business with small and medium business units.

CREDIT MECHANISIM – ITC

- Un-availed ITC from previous regime which is carried forward in the GST regime may be subject to re-verification by GST authority, the dealer might face both the administrative authorities i.e. Previous Tax Regime Authorities as well as new GST Authorities for verification of the transit input tax credit.
- Issue of wrong availment of ITC by a dealer, no clarity on reversal of such wrong availment of ITC. Incase of ITC availed on advance booking of flight tickets but later no travel has actually performed on such subsequently canceled tickets, ITC needs to be reversed. No clarity to the dealer on how to sou-motto reverse such wrong claims.
- Manufacturing Companies getting job work done through unregistered person is having problem in re-possessing the goods within the prescribed time period and availing ITC on such goods as well as scrap sold to such job workers after the job is complete.

REVERSE CHARGE MECHANISM – PURCHASES FROM UNREGISTERED DEALERS

The provisions of section 9(4) of the Central Goods and Services Tax Act, 2017 and section 5(4) of the Integrated Goods and Services Tax Act, 2017 provide for **payment of GST by the recipient of goods and services, being a registered person, on reverse charge basis on purchases from unregistered persons.**

Further, the Government vide Notification No. 8/2017, central tax (rate) dated June 28, 2017 has granted exemption from CGST in respect of such supplies of goods or services provided such supplies does not exceed ₹ 5000 in a day, the implementation has been presently suspended till 31st March 2018.

Various difficulties were observed in complying with the aforesaid provision as in an industry, there are various types of small value supplies received from various unregistered suppliers for example supply of stationery, books and periodicals, food items etc. The provision when implemented had cast an onerous task on the company to identify each and every line item of small purchases made, identify the tariff code, pay applicable taxes for each such purchase, claim credit based on conditions prescribed under the law, issuance of invoice for a huge number of small transactions etc.

The RCM provision is working against the small vendor or dealer as they are not being entertained by large business and industry just to avoid RCM compliance burden.

CLASSIFICATION ISSUES- HSN CODE

There is a **lot of ambiguity around classification** of commodities under the GST regime. A particular item needs to be classified under 'Harmonised System Nomenclature (HSN) Code' on **similar lines with Customs tariff** for determination of applicable GST rate.

Different interpretations on classification of items under HSN Codes **are likely which is creating confusion** for the taxpayers and the business operations of various industries are adversely affected.

Clarity on classification of items and consequently the applicable GST rate is critical to ensure that the basic concept of GST being "one nation one tax" is achieved.

DO AWAY WITH THE REQUIREMENT OF E-WAY BILL

The Business & Industry is quite concerned about the parallel documentation in the form of E-way bill. It is strongly believed that the present documentation under GST could be used to track supplies without additional documentation in the form of E-way bill.

The deficiency of the GST IT system which has not yet stabilized as matching of Tax Invoice in GST as the required compliance could not be presently possible, is forcing the Govt to introduce this system of E-way Bill, this will adversely affect the other business operations of an entity.

ISSUES

Supply of Service	Status of Freight on International Export under GST as the same was exempt under POPS Rules. It is zero rated in most countries.
	Freight on Transportation of Goods for export is dealt under IGST Law. As per Section 12(8) (b) of IGST Act, when the supply of Goods /Service is provided to an unregistered dealer then the location at which such goods are handed-over for their transportation is the place of supply of service. Since, the importer outside India is an un-registered dealer under GST, to the place of supply shall be deemed to be the place when such goods are handed-over for their transportation.
RCM	How to comply with Section 9(4) of CGST if Place of Supply is in another state from an unregistered supplier?
	Although the provision U/s 9(4) creating deemed liability on the recipient registered dealer has been suspended till 31.3.2018, but the location of registered dealer is the Place of Supply in-accordance to Section 12(2)(a) of IGST Act, so the liability of GST has to be accordingly determined either under CGST + SGST or under IGST.

ISSUES

Place of Supply	Generally 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?
	In-accordance to Section 12 Sub-Section (3) & Section 13 Sub-Section (7) of IGST Act, the constructions service for road from Delhi to Mumbai would be liable to GST for the portion falling in the respective State in-accordance to the terms of contract.
Input Tax Credit	What would be Input Tax eligibility in cases where there is a change in the constitution of a registered taxable person?
	Wherever there is a change in the Constitution of a registered person with the specific provision for transfer of liabilities, the Input Tax Credit available in his Electronic Credit Ledger shall be transferred to the new business in-accordance to Section 18(3) of CGST Act read with Rule 41 Transfer of Credit on sale, merger etc. The necessary declarations for change in ownership are to be made in Form GST ITC-02.

ISSUES

Levy	Whether Banquet Service is eligible for 5% tax when charged separately for banquet and food & drink ? In a restaurant there is no separate conference hall, but in the afternoon it allows to hold kitty party or birthday party and serve food and drinks and do not charge anything separately for premises. Whether such service is of food and taxable at 5%.
	<p>As per Notification No. 11/2017 rate of tax on Banquet Service providing space is 9% and there is no change in Notification No. 46/2017 dated 14.11.2017 as far as Banquet Service under Service Code 9963 (vii) are concerned.</p> <p>Providing Food by the Restaurant is a Service attracting 5% liability where declared Tariff rate of accommodation is not more than Rs. 7,500/- as well as no Input Tax Credit on Goods & Services is availed by the Restaurant.</p>

THANK YOU

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