

**MEMORANDUM ON MODEL GST LAW**

Sl. No.	Section Reference	Issue
	<b>Chapter 1 – Preliminary</b>	
1.	<p><b>Consideration [Section 2(28)]</b></p> <p><i>“consideration in relation to the supply of goods and/or services to any person, includes</i></p> <p><i>(a) .....</i>;</p> <p><b><i>(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person:</i></b></p> <p><i>Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;”</i></p>	<p>Part (b) of the definition says that consideration includes the monetary value of any act or forbearance, whether or not voluntary. This part of the definition is open to different interpretations by different section. Non-monetary consideration needs to have a clearly independent identity in relation to supply of goods or services. Any act or forbearance which is essentially another way of describing the consideration does not have a separate existence. For example, where a supply is made for a lower price if a customer uses a credit card, the use of the credit card cannot be called a non-monetary consideration.</p> <p>Further, consideration means something that induces both parties to enter into the agreement to exchange mutual performances. Hence, it is voluntary. Anything done under compulsion goes against the meaning of consideration. Hence, inclusion of non-voluntary act or forbearance would make it an open field for all different kinds of interpretations and confusion.</p> <p><b>Further how, non-refundable deposit can be considered outside the purview of consideration. There could be lot of evasion if this provision is maintained.</b></p> <p>The proposed definition expands the scope of ‘consideration’ beyond its</p>

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		<p>generally understood meaning. The definition should be precise and specific by providing that <b>the monetary value of any act or forbearance</b> should have an economic value &amp; independent identity having bearing on the supply of goods or services. Further, non-voluntary act or forbearance should be kept outside the ambit of this definition. Ideally the act of forbearance should be an act of the service provider and not against the service recipient</p>
2.	<p>Section 3(1) – Definition of Supply – Branch Transfer between two premises of the same Registered person</p> <p>Meaning and scope of supply - Supply includes (a) all forms of supply of goods and/or services such as sale, <b>transfer</b>, barter, exchange, license, rental, lease or disposal made or agreed to be made <b>for a consideration</b> by a person in the course or furtherance of business, (c) a supply specified in Schedule I, made or agreed to be made <b>without a consideration</b>;</p> <p><b>Schedule – I – Para no. 5 – Supply of goods and / or services by a taxable person to another taxable or non-taxable person</b> in the course or furtherance of business</p>	<p>It is not clear whether ‘supply’ includes branch transfer between two premises of the same registered person e.g. between a factory and branch within the same state. It needs to be clarified whether ‘supply’ from one branch to another can be termed as with or without consideration and will the ‘person’ be liable to GST if the person has a single Registration in the State. Procedure for removal of goods also needs to be specified i.e. whether an Invoice will be required (if GST is applicable) or a Stock Transfer Note/ Road Challan will suffice (if GST is not applicable).</p> <p><b>As per existing provision “Branch Transfer does not come under the purview of Supply.</b></p>
3.	<p>Section 3(2) – Transfer of stock</p> <p>As per sub-section (2) of section 3, <b>Schedule II shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.</b></p> <p>This Schedule II, Clause 1(2) states, inter alia, that any <b>transfer of goods without the transfer of title thereof, is a supply of</b></p>	<p>Schedule II should specifically mention that for the purpose of so determining, there has to be a ‘supply’ first.</p>

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	<p><b>service.</b></p> <p>Thus, the clause may also be read to mean that <b>transfer</b> [from one place to another] <b>of goods</b> to another branch/depot etc. of the same person (supplier) <b>would also be treated as a supply of service.</b> This may lead to litigation. In case the stock transfer [otherwise than by way of a sale] is sought to be taxed at all, it should have been included in section 3(1) together with Schedule I itself, which is not done. Schedule II is only for determining whether it shall be treated as a supply of goods or a supply of service. But for that, first of all the matter has to qualify as a 'supply'.</p>	
	<p><b>Chapter III - Levy of, and exemption from, tax</b></p>	
4.	<p>Composition levy</p>	<p>For the purpose of composition levy, turnover includes all supplies including exempted and exports. Exempted and export sales to be excluded for the purpose of determining turnover limit of Rs. 50 lacs.</p>
	<p><b>Chapter IV - Time and Value of Supply</b></p>	
5.	<p>Time of Supply – Section 12</p>	<p>This needs an exclusion clause for goods sent for job work, sale on approval, goods sent for testing, etc.</p>
6.	<p>Time of Supply – Section 12(2)(d) - Recipient shows receipt of the goods in his books of account</p>	<p>Needs clarification</p>
7.	<p>Section 15(2)(c) – GST on Royalties</p>	<p>It is not clear why this clause has been inserted since royalties otherwise would also be subject to tax</p>

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8.	Value of Supply – Section 15(2)(f) - The transaction value shall include – <i>“subsidies provided in any form or manner, linked to the supply.”</i>	This should be read as – <i>“Subsidies provided in any form or manner, <b>directly linked to and affecting the value of supply.</b>”</i>
9.	Value of Supply – Section 15(4)(ii) states that the Valuation Rules need to be referred if the supplier and the recipient of the supply are related	Should include – <b><i>“and such relationship has affected the value of supply”</i></b> at the end.  <b>In fact there should not be any valuation rule for related party transaction since GST is a value added tax and ultimately tax is to be paid by the consumer at the last leg of consumption. Hence, there is no scope of tax evasion. In fact there is no valuation rule of related party transaction in VAT law in any state.</b>
10.	Rule 5(iii) of Valuation Rules	Should provide a mechanism to compute <i>“profit margin of similar suppliers”</i> . This needs clarification. <b>However, in case of branch transfer there should not be any profit element since company can't make any profit on supply to its own.</b>
11.	Time of Supply read with Input Tax Credit – Goods sent for job work and received after 180 days (Section 43A read with section 16A)	In case goods are cleared from the job worker's premises to the ultimate consumer or any other job worker, after 180 days, it is not covered under Section 43A & there is no provision for taking ITC. In case one needs to take ITC, after 180 days, the goods need to come back to the manufacturer's premises (Section 16A). The wording in Section 43A needs to mention <i>“as per direction”</i>
12.	Time of Supply – ITC on advance (Section 23 read with Section 16(11)) – ITC on advance	On the one hand on advances (Section 23), GST has to be paid. However as per ITC (Section 16(11), one cannot take ITC unless he has received the goods. This is contradictory in nature and will lead to mis-match

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	<b>Chapter V - Input Tax Credit</b>	
13.	<p>Time limit for taking input tax credit – Section 16(3A) read with Section 16(15) Input tax credit should be taken <b>within one year</b> from the date of issue of tax invoice. [Ref: Section 16(3A).</p> <p>However input tax <b>credit</b> in respect of any invoice shall <b>not be allowed after filing</b> of monthly <b>return</b> for the <b>month of September</b> following the end of financial <b>year</b> or <b>filing</b> of the relevant <b>annual year, whichever is earlier</b>. [Ref: Section 16(15)] Accordingly input tax credit in respect of invoice raised in the month of March' 18 has to take latest by 20<sup>th</sup> October, 2018.</p>	There is an anomaly in these two section is they are read together. This needs to be removed
14.	<p><b>Inadmissible input tax credit</b> [Ref: Section 16(9)] (b) Goods and / or services provided in relation to foods and beverages, outdoor catering, beauty treatment, health services.....</p>	What will be the scenario if the business entity has to maintain such facilities required under any other law e.g. canteen in a factory under the Factories Act?
15.	<p><b>Inadmissible input tax credit</b> [Ref: Section 16(9)] <b>(c) goods and/or services acquired by the principal in the execution of works contract</b> when such <b>contract</b> results in construction of <b>immovable property</b>, 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</p>	The above-mentioned clauses are against the basic intention of capital investment as it forms a big cost for the business entity. Credit of the same is in favour of the theme Make in India.
16.	<b>Inadmissible input tax credit</b> [Ref: Section 16(9)]	If such supply is taxable then goods and / or services used for said private use may be allowed to that extent.

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	<p>(f) goods and / or services <b>used</b> for <b>personal use</b>.</p> <p><b>Services put to a private use is a deemed supply</b> as per Sl. no 2 and 3 of Schedule I.</p>	
17.	<p><b>Conditions for claiming ITC</b> [Ref: Section 16(11)]</p>	<p>An area of concern is the availability of credit linked to compliance by the supplier and matching of records for credit.</p> <p>Why should the person claiming input suffer when he has paid the tax to the supplier who is an agent of the Government? If the supplier does not do compliance and the person availing cenvat has to pay tax again, does it not amount to double taxation?</p>
	<p><b>Chapter VI – Registration</b></p>	
18.	<p>Registration – Section 19(1) Every Person who is liable to be registered under Schedule III of this Act shall apply for registration in every such state in which he is so liable within 30 days from the date on which he becomes liable to registration in such manner and subject to such conditions as may be prescribed.</p>	<p>It is not clear if a Person taken two registrations in the same State, whether he will be considered as 1 person or 2 persons?</p>
19.	<p>Section 21(6) – The cancellation of registration under the CGST Act/ SGST Act shall be deemed to be a cancellation of registration under the SGST Act/ CGST Act</p>	<p>This is a harsh provision since cancelation of one registration shall affect the registrations in all states. This may be deleted</p>
	<p><b>Chapter VII - Tax Invoice, Credit and Debit Notes</b></p>	
20.	<p>Tax Invoices – Section 23 – Raising of tax invoice for advances</p>	<p>The section mentions that a Tax Invoice has to be raised. However how can a Tax Invoice be raised for advances when details like quantity, serial number, etc.</p>

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		are not known. This needs clarification.
21.	Section 24 – Credit and Debit Notes	The section mentions that no credit note shall be issued if the incidence of tax and interest on such supply has been passed by him to any other person. This should however be allowed for the principal/ supply part of the invoice
	<b>Chapter IX - Payment of Tax</b>	
22.	Section 37(2) Tax deduction at source – Amount of TDS has to be paid within 10 days	There should be a provision wherein a assessee can adjust his excess input tax credit for the payment of TDS. If TDS is to be paid by cash, there would be an additional requirement of working capital in spite of having credit in SGST/CGST account.
	<b>Chapter X – Refunds</b>	
23.	Refund – Section 38(1) Refund of IGST	Section 38(1) mentions of refund of IGST, however there is no such refund clause mentioned in the IGST Act.
24.	Section 38(2) - Refund of unutilized ITC No refund of unutilized ITC shall be available in cases where the goods exported out of India are subject to export duty	Exporters exporting goods on payment of export duty are put to worse in comparison to assessee who are supplying goods domestically. If the assessee supplying goods domestically can claim refund of unutilised ITC, there is no logic to disallow the refund benefit to exporters paying export duty. In any case, the exporters even though paying export duty are contributing for earning foreign exchange and therefore there does not appear to be any reason to treat the differently.
25.	Section 38(4A) - Refund on account of export  Refund on account of export shall be	No specific timeline has been specified for grant of provisional refund of 80% as per above provisions. Timeline of 90 days has however been prescribed u/s 38(5)

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	made of 80% of total amount of refund claimed on provisional basis (to the class of exporters as may be notified) and the balance 20% of the refund shall be allowed after verification of documents	for refund to the 'Consumer Welfare Fund' under Section 38(4)
26.	Section 38(9) – Withholding of refund Refund can be withheld if the demand is not <b>stayed</b> by the Court or Tribunal or Appellate Authority.	There does not appear to be any provision for granting of Stay by the Appellate Authority or Tribunal inasmuch as there is requirement of pre-deposit of certain prescribed percentage of the disputed amount for filing the appeal without which appeal cannot be entertained. Can the said pre-deposit be considered as if the demand has been stayed and refund cannot be withheld under Section 38(9). If not, then would the taxable person not entitled for refund till the time appeal is disposed off by Appellate Authority.
	<b>Provisions relating to audit, assessment, etc.</b>	
27.	Section 45 – Scrutiny of Returns Section 49 - Audit by tax authorities Section 50 - Special audit Section 58 - Provisional attachment to protect revenue in certain cases Section 60 - Power of inspection, search and seizure Section 61 - Inspection of goods in movement Section 62 - Power to arrest Section 63 - Power to summon persons to give evidence and produce documents Section 64 - Access to business premises Section 69 - Detention of goods and conveyances, and levy of penalty Section 70 - Confiscation of goods and levy of penalty Section 71 - Confiscation of conveyances	a. From the various sections as mentioned above, it is clear that the departmental officers have been given a lot of powers in the model GST law. However, power comes with responsibility. The assesses have been given no recourse if an officer unnecessarily harasses an assessee. The Government has been propagating about ease of doing business, but not a single provision has been provided to safeguard the assessee's interests. No administration can claim to be accountable, responsive and user-friendly unless it has established an efficient and effective grievance redress mechanism. Recently, Hon'ble Allahabad High Court in the case of <b>Kunj Power Project Pvt. Ltd. vs. Union Of India [2015 (40) S.T.R. 1061</b>



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		<p><b>(All.)</b>], had directed both the officers to file affidavits indicating as to why procedure prescribed had not been followed and also justify as to why the court should not pass an order directing disciplinary action to be taken against them for misusing their powers and provisionally attaching the property frivolously and without sound reasons.</p> <p>In order to make the GST administration efficient and assessee friendly, there should be provision for disciplinary action against officers misusing their powers. Further, there should be a separate section providing for the assessee's rights' under the GST law and a grievance redressal mechanism should also be there in the GST law.</p> <p>b. There are many provisions w.r.t. audit, assessment, scrutiny, etc. and no safeguard has been given to the assessee regarding their applicability. This needs to be removed.</p>
	<p><b>Chapter XIV – Demands and Recovery</b></p>	
<p>28.</p>	<p><b>Section 51C(9)</b>:            “The adjudication proceedings shall be deemed to be concluded if the order is not issued within three years as provided for in sub-section A (7) or within five years as provided for in sub-section B (7).”</p>	<p>There is no time limit prescribed for issue of Show Cause Notice. Instead, there is <b>time limit of 3 years from due date/actual date of filing of annual return to pass Adjudication Order</b>. Time limit will be 5 years for cases involving fraud, suppression, etc. It may lead to a situation where the Show Cause Notice will be invariably issued in the 11<sup>th</sup> hour and without giving proper opportunity to the taxable person, an adjudication order will be passed.</p> <p>A time limit of at least 3 months before the last date of adjudication for issue of</p>

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		Show Cause notice must be provided.
	<b>Chapter XVIII – Appeals and Revision</b>	
29.	<p>Section 82- Appeals to the Appellate Tribunal</p> <p>Section 82(10) No appeal shall be filed under sub-section (1) unless the appellant has deposited a sum equal to ten percent of the amount in dispute arising from the said order, in relation to which the appeal has been filed.</p>	<p>a. Does this mean one has to file 10% again or will the 10% deposited at the 1<sup>st</sup> Appeal stage get adjusted?</p> <p>b. The 10% pre-deposit of penalty is a very harsh provision and should be removed as it will create unnecessary hardship</p>
	<b>Chapter XXV – Transitional Provisions</b>	
30.	<p>Invoice made before the applicability of GST and Goods/Invoice received on or after the applicability of GST</p> <p>Section – 143</p>	<p>a. There will be instances for every business that an invoice is duly made as per the earlier law before the applicability of GST but the same is received after the applicability of GST. In that case, it will not be possible for the business to take credit as per the last return furnished under the earlier law because the invoice does not belong to that period. So, the invoice made under the earlier law should be allowable as input tax credit under the GST law in the period in which it is received</p> <p>b. There is no provision in the section as to how existing assesses who are presently under the composition scheme will take input credit of goods lying on the appointed day, if they decide to go in the GST era as a normal assesse. Ideally such input credit should be allowed</p>
31.	<p>Credit on inputs in stock for persons who were engaged in provision of exempted services</p> <p>Section – 145</p> <p>Section 145 only allows credit on inputs in</p>	<p>However, persons who were engaged in providing exempt services earlier have not been covered here. This will especially hamper construction companies/contracts under work who were providing exempt services earlier</p>

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	<p>stock on the date of applicability of GST if (a) if such person was not liable to be registered under the earlier law or (b) was engaged in the manufacture of exempted goods and such person becomes liable to tax under GST.</p>	<p>and such exemption gets withdrawn under GST. This is because these companies will not be able to get the credit of the eligible duties &amp; taxes on inputs in stock held in whatever form when they provide taxable supplies under GST simply because they were providing exempt services under the earlier law. Bringing exempted services within the ambit of this section will be in the interest of natural justice and also provide parity between the treatment of exempted goods and exempted services.</p>
32.	<p>Input Tax Credit – Transitional provision (Section 145)</p> <p>ITC on op stock shall be allowed to a taxable registered person subject to the following condition –</p> <ul style="list-style-type: none"> <li>➤ such <b>inputs</b> are used or <b>intended to be used</b> for making <b>taxable supplies</b>,</li> <li>➤ the <b>said taxable person was eligible</b> for <b>cenvat credit</b> on receipt of such <b>inputs</b> and/or goods under the <b>earlier law</b> but for his <b>not being liable</b> for registration or the goods remaining exempt under the said law,</li> <li>➤ the said taxable person is eligible for input tax credit under this Act;</li> <li>➤ taxpaying document is available, invoice date should be within 1 year</li> </ul>	<ol style="list-style-type: none"> <li>1. Whether composite service providers like construction service / works contract service, will be entitled to take credit on inputs held in stock?</li> <li>2. How will ITC be calculated for a dealer who has purchased materials from a stockiest on a commercial invoice?</li> </ol>
33.	<p>Clarity on services covered under composition scheme Section – 146</p> <p>Taxable persons who were paying taxes under the composition scheme under the</p>	<p>Services which are currently covered under Rule 2A to Rule 2C of the Service Tax (Determination of Value) Rules, 2006 involves paying service tax at a fixed rate or percentage which is the precondition for Section 146. Similarly, services on</p>

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	<p>earlier law and who start paying taxes under the normal scheme under the GST law are covered under this section. These persons will be eligible to obtain credit on duties and taxes in respect of inputs in all kinds of forms held in the stock on the date of applicability of GST.</p>	<p>which abatement is applicable under Notification no. 26/2012-ST dated 20<sup>th</sup> June, 2012 also involve paying at a fixed percentage. So, will these kinds of services be covered under Section 146 of the GST law or not is a clarification which is warranted.</p>
34.	<p>Section 150, 151 – Transitional provisions - Goods sent for job work and returned after/not returned within a period of 6 months</p> <p>If the inputs/semi-finished goods are removed for any purpose to the job worker, the said goods should be returned within 6 months from the date of applicability of GST.</p> <p>If the said goods are returned after a period of 6 months, then the tax will be payable by the job worker.</p> <p>If the said goods are not returned within 6 months, then the tax will be payable by the manufacturer.</p>	<p>Ideally, the tax should be payable only once – either by the manufacturer or the job worker. Even if the tax is required to be paid twice, then tax paid by the manufacturer should be allowed as credit to the job worker or vice-versa. The language of the law does not provide any of these, thereby causing ambiguity</p>
35.	<p><b>Refund claim filed after the date of applicability of GST</b></p> <p><b>Section – 154</b> Section 154 deals with refund claims filed before the applicability of GST. If the refund is granted, it will be paid back in cash subject to Section 11B(2) of the Central Excise Act.</p>	<p>What happens to the claims filed after the date of applicability of GST in respect of the past period when the earlier law was applicable has not dealt with by the transition provisions. Without clarity on this, there will be unwanted litigations under this section.</p> <p>In case of rejection of refund claim under GST, the said amount is said to lapse under GST. There are no provisions for appealing to higher authorities or giving an opportunity of being heard to the taxable person. So, refund without the basic elements of natural justice will be very aggrieving to the taxable persons</p>

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36.	<p>Proceedings relating to output tax liability after the date of applicability of GST Section – 156</p> <p>Proceedings instituted before the applicability of GST relating to output tax liability will be disposed of under the earlier law. The refund or recovery of tax will be made in cash based on the decision of these proceedings.</p>	<p>a. However, proceedings instituted in respect of output tax liability filed after the date of applicability of GST have not been specified within this section. There might be disputes as to how these proceedings will be disposed of. So, clarity in this respect is of utmost importance.</p> <p>b. If a demand is pending under an earlier law and it gets confirmed under appeals after the applicability of GST, the assessee needs to pay GST for such demand. Will the said amount be available as Input tax credit in the hands of the recipient?</p>
37.	<p>Ongoing long term construction/works contracts</p> <p>Section – 159</p> <p>Section 159 only deals with construction/works contracts entered before the applicability of GST and where the goods/services are supplied after the date of applicability of GST.</p>	<p>It hasn't been specified as to how will contracts which started before the applicability of GST and ending after the date of applicability of GST be treated. So, treatment of ongoing contracts as on the date of applicability of GST should be clearly stated.</p>
38.	<p>Power to grant exemption has been retained in Section 10 of the draft Model GST law, but it does not provide for treatment of Area based exemptions.</p>	<ul style="list-style-type: none"> <li>• The First Discussion Paper on GST had stated that area-based exemptions under the Excise legislation should be converted to a tax refund mechanism.</li> <li>• The Model GST Law or a separate paper should prescribe the manner in which such area based exemptions will be claimed as refund.</li> </ul>
39.	<p>Rule 5 of the GST Valuation Rule, 2016 specifies 'Cost of Production' – Basis thereof ?</p>	<p>In the computation of "cost of production", whether provisional basis would be adopted based on last year's actual data, since current year's data will be available only after accounts for the year is finalized after the year end needs</p>

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		to be clarified. Requirement of information for finalization of Provisional Assessment also not specified.
40.	Dies, moulds, etc. – Time limit for return from job-workers.	There is no specific provision in draft law for dies, moulds etc. with respect to time limit for receiving back from the job worker of the goods using such moulds, dies etc. supplied by the principal manufacturer or brand owner like presently prescribed in the Cenvat Credit Rules, 2004. Since sending moulds, dies etc. to job worker of the goods is necessary for smooth running of business, what alternative would be available after implementation of GST Laws ?
41.	Show Cause Notice - Reply time.	The time for submission of reply to Show Cause Notices is not specified in the proposed GST Laws.
42.	There is no clarity in the Model GST law with respect to Waybill requirement under GST.	<p>The Model GST Law grants power to the Government to prescribe documents for consignment of goods exceeding INR 50,000 in value.</p> <p>Provisions related to way bill should be removed as the same will lead to greater efficiencies in the economy than many other measures in the GST law.</p>
43.	<p>The Place of Supply of Service provisions do not determine location of receipt of a service in case of many services, such as advertising.</p> <p>E.g. in case of advertising service, the advertisement is telecasted all over India. The Model GST law does not prescribe which place will be considered in such a case for the purpose of taxation, i.e., which State has received the advertising</p>	<p>The Model GST law should provide for rules which will not have multiple overlapping jurisdictions in such cases.</p> <p>The rules should determine which establishment would be regarded as the service provider / receiver, in order to determine whether the supply is an intra-State or inter-State supply.</p> <p>This needs to be specified, as it is critical</p>

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	service.	to availment and utilization of credit by the companies.