

Basics of Goods and Services Tax 'GST'

Lesson 15

KEY CONCEPTS

■ CGST ■ IGST ■ SGST ■ UTGST ■ GST Compensation Cess ■ inter-State Supply ■ intra-State Supply

Learning Objectives

To understand:

- Concepts of GST
- Destination Principle
- Dual GST Model
- Provisions of IGST Act, 2017
- Provisions of UTGST Act, 2017
- Provisions of GST (Compensation to State) Act, 2017

Lesson Outline

- Basic Concepts and Overview of GST
- GST Model
- Integrated Goods and Services Tax Act, 2017
- Union Territory Goods and Services Tax Act, 2017
- GST Compensation to States
- FAQs on IGST
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK**1. Integrated Goods and Services Tax Act, 2017**

Section	Deals with
Section 2	Definitions
Section 5	Levy and Collection
Section 16	Zero Rated Supply
Section 20	Application of provisions of CGST Act

2. Union Territory Goods and Services Tax Act, 2017

Section	Deals with
Section 7	Levy and Collection
Section 8	Power to grant exemption from tax
Section 9	Payment of Tax
Section 9A	Utilisation of Input Tax Credit
Section 9B	Order of Utilisation of Input Tax Credit
Section 10	Transfer of Input Tax Credit
Section 15	Constitution of Authority for Advance Ruling
Section 16	Constitution of Appellate Authority for Advance Ruling
Section 18	Transitional arrangements for Input Tax Credit
Section 22	Power to make Rules
Section 23	General Power to make Regulations
Section 24	Every Rule made by the Central Government, every Regulation made by the Board
Section 25	Power to Issue Instructions or Directions
Section 26	Removal of Difficulties

3. Goods and Services Tax (Compensation to States) Act, 2017

Section	Deals with
Section 2	Definitions
Section 3	Projected Growth Rate
Section 4	Base Year

Section 5	Base Year Revenue
Section 6	Projected Revenue for any year
Section 7	Calculation and release of Compensation
Section 8	Levy and Collection of Cess
Section 9	Returns, Payments and Refunds
Section 10	Crediting proceeds of Cess to Fund
Section 11	Other Provisions relating to Cess
Section 12	Power to make Rules

4. Similar Provisions

<i>Section</i>	<i>Deals with</i>	<i>Act</i>
Section 9	Levy and Collection	CGST, 2017
Section 5	Levy and Collection	IGST, 2017
Section 7	Levy and Collection of Tax	UTGST, 2017

BASIC CONCEPTS AND OVERVIEW OF GOODS AND SERVICES TAX

Meaning of GST

Goods and Services Tax (GST) is a destination based tax on consumption of goods and services. It is levied at all stages right from manufacture to final consumption with credit of taxes paid at previous stages available as set-off. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer. It is a single, unified tax on every value-addition, right from manufacture to sale / consumption of goods / services. Hence, with the advent of GST, the legacy taxes on manufacture (Excise), inter-State sales (CST), intra-State sales (VAT) and Service Tax have been subsumed. By subsuming more than a score of taxes under GST, road to a harmonized system of indirect tax has been paved making India an economic union. There has been a paradigm shift in the way the tax is being levied. We have now moved from source based to destination-based taxation, with GST coming into foray. Hence GST is also labelled as a destination-based / consumption-based tax.

Destination Based Tax:

Destination Based Tax is the tax based on destination or consumption of the goods or services. It is different from origin based taxation because origin based tax is levied where goods or services are produced.

Continuous chain of tax credits

GST also does away with the cascading effects of taxation, by providing a comprehensive and continuous chain of tax credits, end to end and taxing only the value-added at every stage. The final tax is borne by the end consumer, as all the parties in the interim can extinguish their respective collections against their respective liabilities and the tax already paid by them (Input Tax Credit).

In India we have adopted dual GST Model in which States and Union Government impose tax simultaneously. Federal structure of the Constitution is also retained under this model. To ensure seamless flow of credit

throughout the territory of India a link Act was necessary and hence IGST Act, 2017 was passed. Compensation to states for the loss due to introduction of GST is provided through an Act, GST (Compensation to States) Act, 2017.

GSTN

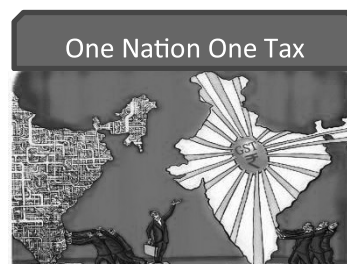
GSTN stands for Goods and Service Tax Network (GSTN). A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST processing system. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation 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.

GST MODEL

Dual GST Model:

The Dual GST Model refers to a concept where both the Centre and States simultaneously levy taxes on the supply of goods and services while the administration is run separately. India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-State sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-State sales, the GST is collected by the Centre (IGST). Sections 7 and 8 of the IGST Act deal with the criteria for determining whether a supply is inter-State or intra-State in nature.



GST consists of the following Acts:

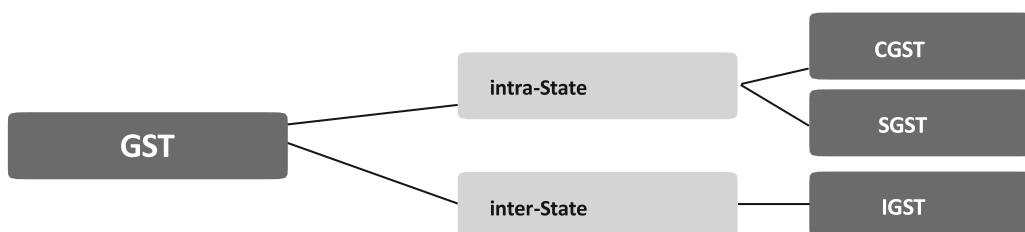


CGST/SGST/UTGST/IGST

The Central and State Governments have simultaneous powers to levy the GST on intra-State supply. However, the Parliament alone has exclusive power to make laws with respect to levy of goods and services tax on inter-State supply.

- GST is a destination-based tax applicable on all taxable events, involving supply of goods or services or both. , **Central Goods & Services Tax (CGST)**, levied by the Central Government and **State Goods and Services Tax (SGST)**, levied by the State Government.
- **Union Territory Goods and Services Tax (UTGST)** levied by Union Territories, on intra-State supplies of taxable goods or services or both.

inter-State supplies of taxable goods/services are subject to Integrated Goods & Services Tax (IGST), which is levied by the Central Government.



INTEGRATED GOODS & SERVICES TAX ACT, 2017

The Integrated Goods and Services Tax Act, 2017 (IGST) was passed by the Parliament for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

The Union Government presented the Integrated Goods and Service Tax Bill, 2017 in Lok Sabha and it was passed by the same on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented to by the President on 12th April, 2017.

IGST is levied and collected by the Centre on inter-State supply of goods and/or services. As per Article 269A of the Constitution, Goods and services tax 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. IGST paid is available as credit to set off against the payment of IGST, CGST and SGST on output supplies.

Integrated Goods and Service 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.

The IGST mechanism ensures that the tax money goes to the state where consumption takes place. IGST can be viewed as a smart-accounting mechanism serving a clearing house function in inter-state supplies to ensure that the tax money goes to the correct state.

IGST (Integrated Goods & Services Tax) Act, 2017 deals with supplies inter-State, import into India and supplies made outside India. The following table illustrates the same.

SUPPLY	TAX / TAXES
intra-State	CGST+ SGST
intra-Union Territory	CGST+ UTGST
inter-State/ import/ SEZ	IGST

IGST is applicable all over India including the state of Jammu & Kashmir vide The Integrated Goods and Services Tax (Extension to Jammu And Kashmir) Act, 2017 w.e.f. July 08, 2017.

IGST is a mechanism to monitor the inter-State trade of goods and services and ensure that the SGST component accrues to the consumer State. It maintains the integrity of ITC chain in inter-State supplies. The IGST rate is broadly equal to CGST rate plus SGST rate. IGST would be levied by the Central Government on all inter-State transactions of taxable goods or services.

$$\text{IGST rate} = \text{CGST rate} + \text{SGST rate}$$

Cross-utilisation of credit requires the transfer of funds between respective accounts. The utilisation of credit of CGST & SGST for payment of IGST would require the transfer of funds to IGST accounts. Similarly, the utilisation of IGST credit for payment of CGST & SGST would necessitate the transfer of funds from IGST account.

The IGST payment can be done by utilising the ITC. The amount of ITC on account of IGST is allowed to be utilised towards the payment of IGST, CGST and SGST/UTGST.

Nature of Supply [Section 7 to 9 of Integrated Goods & Services Tax Act, 2017]

Goods and Services Tax (GST) envisages two types of supply, intra-State and inter-State. Under GST Supply of Goods or Services within the same state or Union Territory is called intra-State Supply. The supply of goods or services from one state to another is termed as inter-State supply under GST. The following table illustrates the principles to be applied for determining whether a supply is intra-state or inter-state. Students may note that it is important to know whether a given supply is inter-State or intra-State as the tax or taxes payable are different in each case. For example, IGST is payable for inter-State supply and CGST + SGST is payable for intra-State supply.

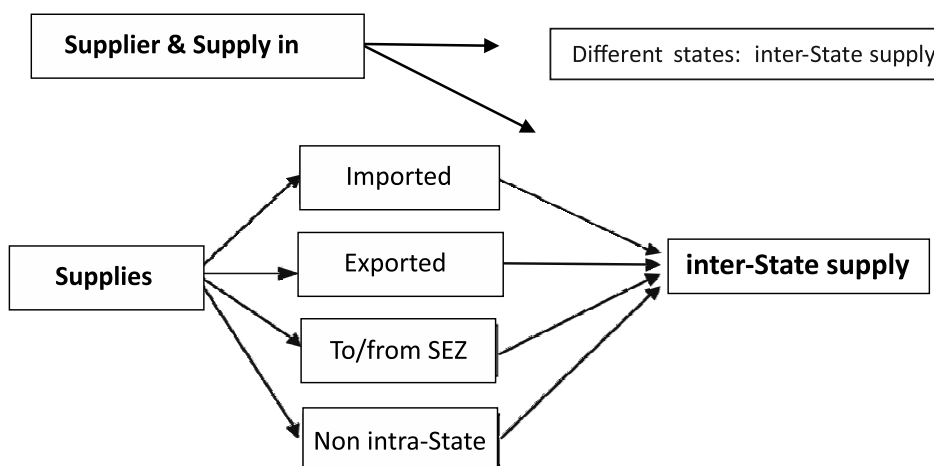
Section 7 of the IGST Act, 2017 deals with the situations where a supply is categorized as inter-State supply. Such situations are tabulated as under –

<i>Transaction Type</i>	<i>Nature of supply</i>
Domestic	
Supply of goods [Section 7(1)] or supply of services [Section 7(3)] where location of the supplier and the place of supply are in: ● two different States; ● two different Union territories; ● or a State and a Union territory	inter-State
Imports	
Supply of Imported goods into the territory of India till they cross the customs frontiers of India [Section 7(2)]	inter-State
Supply of service imported into the territory of India [Section 7(4)]	inter-State
Exports and other scenarios	
Supply of goods or services or both,- ● Where the supplier is located in India and the place of supply is outside India; ● to or by a Special Economic Zone developer or a Special Economic Zone (SEZ) unit; or ● in the taxable territory, not being an intra-State supply and not covered elsewhere in this section.	inter-State Supply

Section 8 of the IGST Act deals with the situations where a supply is categorized as intra-State supply. Such situations are tabulated as under –

<i>intra-State Supply</i>			
<i>Supply of</i>	<i>Goods [Section 8(1)]</i>	<i>Services [Section 8(2)]</i>	<i>Nature of Supply</i>
Where location of the supplier and the place of supply are in	same State or same Union Territory		intra-State

Essentially, if the location of supplier and the place of supply is within the same state, it is an intra-State supply, and if these are in different states, then that is inter-State supply.



Supply in Territorial Waters [Section 9 of the IGST Act, 2017]

Notwithstanding anything contained in this Act –

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
- (a) where the place of supply is in the territorial waters, the place of supply,

Note: 1 nautical mile = 1.853 Km approximately

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

The expression territorial waters have not been defined under the GST law. It should be understood as the area upto 12 nautical miles from base line of sea coast into the sea.

If the supplier is in territorial waters, the location of supplier or if the supply is in territorial waters, the place of supplies shall be taken as the coastal state or Union Territory closest to the base line.

Example 1: Suppose there is a supply from the territorial waters where the supplier is located and the nearest base line is at Kandla, Gujarat state, then the place of supply is said to be in Gujarat.

Example 2: Some goods were supplied to a fishing trawler located in territorial waters near Yanam, a part of Union Territory of Puducherry. Since the nearest base line is at Yanam, place of supply shall be the Union Territory of Puducherry. If the supplier is located in Puducherry, it shall be an intra-State supply. If the supplier is located in Chennai, it is an inter-State supply.

It is very important to determine the nature of supply – whether it is inter-State or intra-State, as the kind of tax to be paid (IGST or CGST+SGST) depends on that.

(i) inter-State Supply (Section 7 of Integrated Goods and Services Act, 2017)

Subject to the place of supply provisions, where the location of the supplier and the place of supply are in:

- (a) Two different States;
- (b) Two different Union Territories; or
- (c) One State and One Union Territory.

Such supplies shall be treated as the supply of goods or services in the course of inter-State trade or commerce. Any supply of goods or services in the taxable territory, not being an intra-State supply, shall be deemed to be a supply of goods or services in the course of inter- State trade or commerce.

Also, supplies to or by Special Economic Zones (SEZs) are defined as inter-State supply. Further, the supply of goods imported into the territory of India till they cross the customs frontiers of India or the supply of services imported into the territory of India shall be treated as supplies in the course of inter- State trade or commerce. Also, the supplies to international tourists are to be treated as inter- State supplies.

- Supply of services from one State or Union Territory to another State or Union Territory
- Import of goods till they cross customs frontier
- Import of services
- Export of goods or services
- Supply of goods/services to/by SEZ
- Supplies to international tourists
- Any other supply in the taxable territory which is not intra-State supply.

Thus, the nature of the supply depends on the location of the supplier and the place of supply.

(ii) intra-State Supply (Section 8 of Integrated Goods and Services Act, 2017)

It has been defined as any supply where the location of the supplier and the place of supply are in the same State or Union Territory.

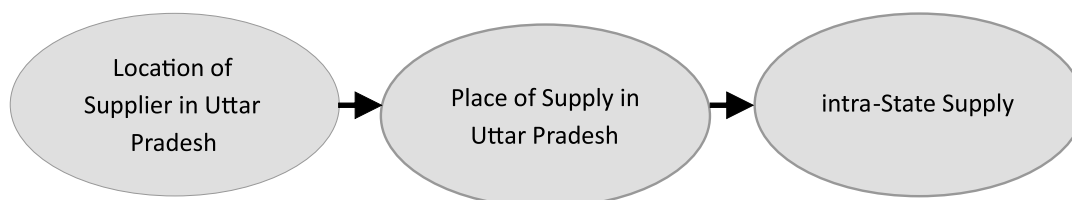


Illustration:

Divya GST Registered person in Varanasi (Uttar Pradesh) provides Management Consultancy services to Aman GST Registered person in Noida for Rs. 8 lakhs. The place from where the supply is made is Varanasi and the place where the supply is received is Noida. The supply in this situation is an intra-State supply.

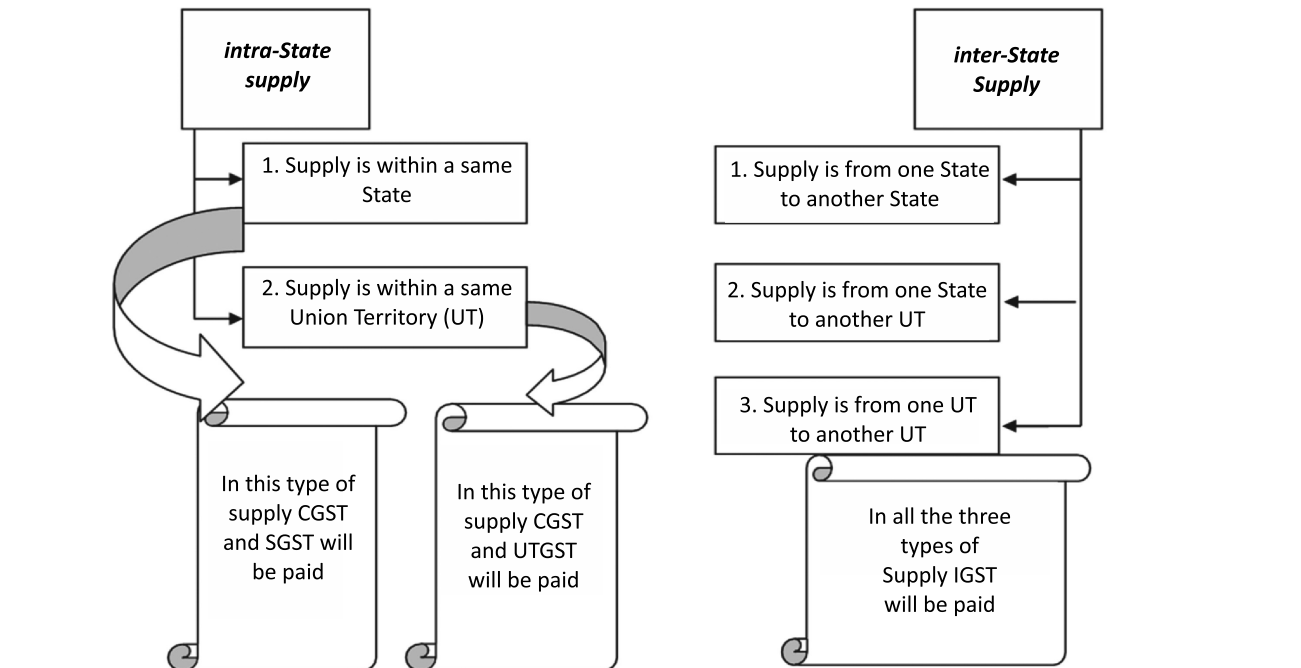
Illustration:

Divya GST registered person in Varanasi (Uttar Pradesh) provides Management Consultancy services to Aman GST registered person in the Mumbai (Maharashtra) for Rs. 8 lakhs. The place from where the supply is made is Varanasi and the place where the supply is received is in Mumbai. The supply in this situation is an inter-State supply.

Illustration:

Amrinder, a Company Secretary GST registered person in Maharashtra for the past 5 years and having a flourishing practise there, goes to Delhi for 10 days as a visiting faculty for a summer course at a reputed College. While in Delhi, Amrinder earns Rs. 5 Lakh as Professional Fee for the services rendered.

This is an example of inter-State Supply because, Amrinder does not have a registered place of business in Delhi, or a fixed establishment in Delhi. The location of supplier will thus have to be taken as Maharashtra where Amrinder is registered under GST. Since the location of supplier is in Maharashtra and the place of supply is in Delhi, the supply is an inter-State supply, though no supply has actually taken place from Maharashtra.

TYPE OF SUPPLY AND TYPES OF GST TO BE LEVIED**Definitions**

Section 2 of the IGST Act, 2017 contains the definitions of various terms used at several places in the Act. Some of the important definitions are reproduced as follows:

Section 2(3): “continuous journey” means a journey for which a single or more than one ticket or invoice is

issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation – For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

Section 2(5): “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Section 2(6): “export of services” means the supply of any service when, –

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Section 2(7): “fixed establishment” means a place (other than the registered place of business) which is characterised 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.

Section 2(10): “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

Section 2(11): “import of services” means the supply of any service, where –

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India.

Section 2(14): “location of the recipient of services” means,

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient.

Section 2(15): “location of the supplier of services” means, –

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier.

Section 2(16): “non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory

Explanation: “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017

Section 2(17): “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) *online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of Central Goods & Services Tax Act, 2017

Section 2(18): “output tax”, in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

Section 2(19): “Special Economic Zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

Section 2(20): “Special Economic Zone developer” shall have the same meaning as assigned to it in clause of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co- Developer as defined in clause (f) of section 2 of the said Act.

Section 2(21): “supply” shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act.

Section 2(22): “taxable territory” means the territory to which the provisions of this Act apply.

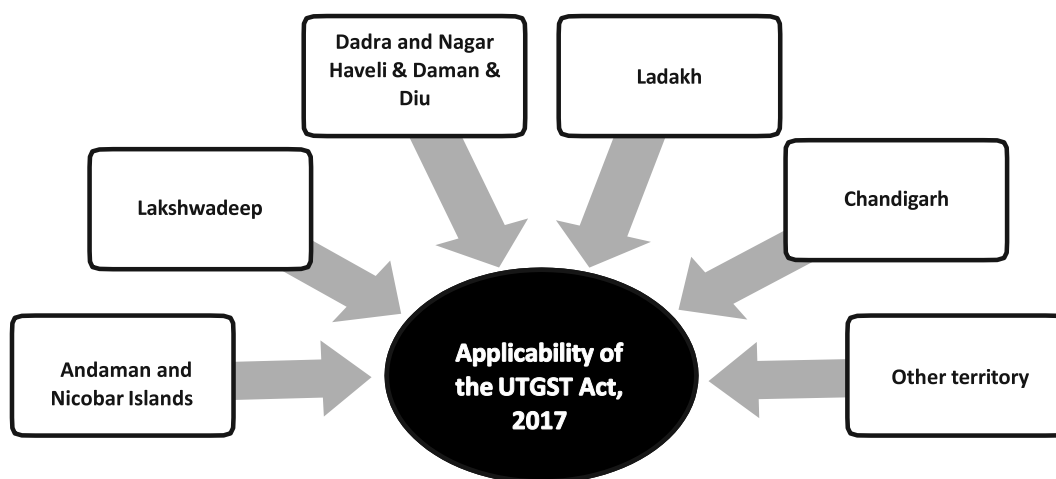
**Yet to be notified*

UNION TERRITORY GOODS & SERVICES TAX ACT, 2017

UTGST is the GST levied by the Union Territory on transactions of taxable goods and services within a Union Territory. The Union Territory Goods and Services Tax Act, 2017 is an act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Union territories and the matter connected therewith or incidental thereto.

Applicability of the UTGST Act, 2017

This Act may be called the Union Territory Goods and Services Tax Act, 2017. It extends to the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh (Note: added vide Section 136 of Finance Act, 2020), Chandigarh and other territory.



Delhi, Puducherry and Jammu Kashmir are Union Territories but this Act will not be applicable there as they have their own State Legislature and Government. State GST would be applicable in their case.

Some definitions prescribed in the Act as defined under Section 2 are as follows:

Definitions :

In this Act, unless the context otherwise requires:

- 1) “appointed day” means the date on which the provisions of this Act shall come into force;
- 2) “Commissioner” means the Commissioner of Union territory tax appointed under section 3;
- 3) “designated authority” means such authority as may be notified by the Commissioner;
- 4) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;
- 5) “existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
- 6) “Government” means the Administrator or any Authority or officer authorised to act as Administrator by the Central Government;

- 7) “output tax” in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.
- 8) Union territory” means the territory of,-
 - (i) the Andaman and Nicobar Islands;
 - (ii) Lakshadweep;
 - (iii) Dadra and Nagar Haveli and Daman and Diu;
 - (iv) Ladakh;
 - (v) Chandigarh; or
 - (vi) other territory.
- 9) Union territory tax” means the tax levied under this Act;
- 10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax(Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

Applicability of GST on Union Territory of Jammu & Kashmir and Ladakh

As per Jammu and Kashmir Reorganisation Act, 2019, the State of Jammu & Kashmir has been divided between Union Territories, namely, Union Territory (UT) of Jammu and Kashmir and UT of Ladakh. The appointed date for the same was 1st October, 2019.

CBIC has issued Notification No. 62/2019- Central Tax dated 26th November, 2019 which seeks to notify the transition plan with respect to J&K reorganization w.e.f. 31.10.2019.

However, as per Section 2(114) of the CGST Act, “Union Territory” means the territory of-

- (a) the Andaman and Nicobar Islands;
- (b) Lakshadweep;
- (c) Dadra and Nagar Haveli and Daman and Diu;
- (d) Ladakh;
- (e) Chandigarh; and
- (f) Other territory.

Section 3 of the said Act states that Union Territory of Ladakh shall be formed without legislature. Hence, it shall have status to that of a Union Territory.

In view thereof, Union Territory of Jammu and Kashmir shall continue to charge SGST and CGST for intra- state supplies, however for supplies made from Jammu & Kashmir to Ladakh (and vice – versa), IGST shall be charged [Section 7(1)(b) of the IGST Act]. UTGST and CGST will be charged for supplies made within Ladakh.

Now, the Ministry of Home Affairs (Department of Jammu and Kashmir Affairs) has issued a Removal of Difficulties Order dated 30-10-2019 which seeks to remove difficulties arising in giving effect to the provisions of the Jammu and Kashmir Reorganisation Act, 2019.

Now, Section 2(7) of the said order states that:

“The Jammu and Kashmir Goods and Services Tax Act, 2017 shall be applicable to the Union Territory of Jammu and Kashmir and the Union Territory Goods and Services Tax Act, 2017 shall be applicable to the Union Territory of Ladakh.”

Merger of Daman & Diu and Dadra & Nagar Haveli

On 3rd day of December, 2019 the Parliament passed the Dadra and Nagar Haveli and Daman and Diu Bill, 2019 for the merger of the two UTs and the appointed date of the said amendment was made effective from 26th January, 2020.

Upon Merger of Union Territories of Dadra and Nagar Haveli and Daman and Diu, single State Code under Goods and Service Tax Laws in this Union Territory was declared.

It was decided by the GST Council to allot State Code No. 26 to the merged Union Territory of Dadra and Nagar Haveli and Daman and Diu w.e.f. 1st August, 2020.

Consequently, all the Registered Persons in the erstwhile Union Territory of Daman and Diu having GSTIN (Goods and Service Tax Identification Number) starting with State Code 25 switched over to New State Code number 26.

Administration & Powers of Officers [Section 4, 5 & 6]**Authorisation of Officers (Section 4)**

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Powers of Officers (Section 5)

- (1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

Authorisation of Officers of central tax as proper officer in certain circumstances (Section 6)

- (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act, 2017 are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) Subject to the conditions specified in the notification issued :
 - a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;
 - b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

Levy and Collection of UTGST [Section 7]

As per the provision of Section 7 of the UTGST Act, 2017 there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act, 2017 and at such rates, not exceeding twenty per cent, as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

However, the Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

All the provisions of this Act shall apply to a recipient of goods or services or both, notified under reverse charge as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

The Central Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on intra-State supplies of which, shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Further it is provided that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Note: For details study on Levy and Collection please refer Lesson 16.

Exemption from GST [Section 8]

As per the provisions of Section 8 of the Act, the Central Government on the recommendations of the GST Council, by notification exempt either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable on such supply. In other cases, Central Government in public interest and on recommendation of the Council, by special order, exempt from payment of tax.

The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification or order issued, insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under Section 8(1) or order under Section 8(2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation – For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

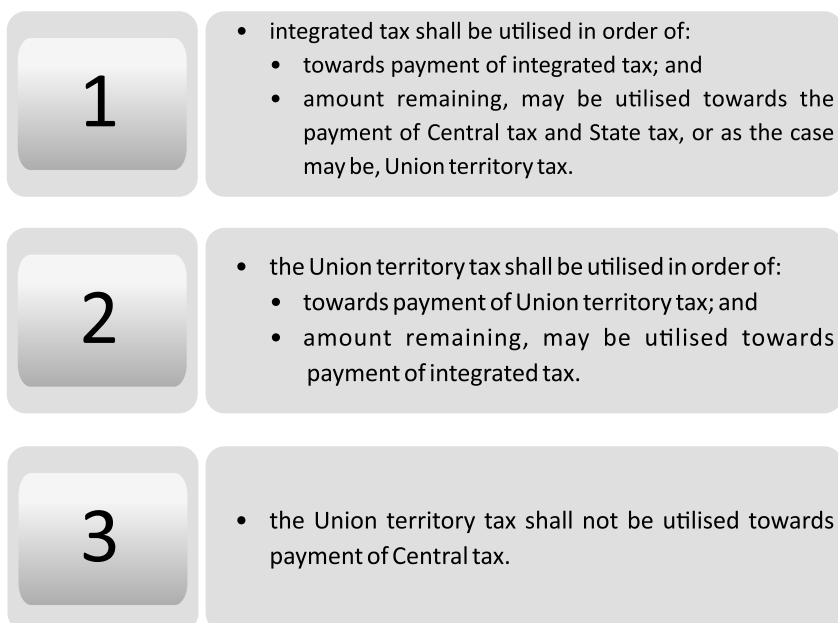
Note: For details study on exemption under GST please refer Lesson 16.

Payment of Tax [Section 9]

As per the provision of section 9 of the Act, the amount of Input Tax Credit available in the electronic credit ledger of the registered person on account of:

- a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in that order;
- b) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
- c) the Union territory tax shall not be utilised towards payment of Central tax.

The amount of Input Tax Credit available in the electronic credit ledger of the registered person on account of:



Note: For details study of ITC please refer Lesson 18.

Utilisation of Input Tax Credit [Section 9A]

Notwithstanding anything contained in section 9, the Input Tax Credit on account of Union territory tax shall be utilised towards payment of integrated tax or Union territory tax, as the case may be, only after the Input Tax Credit available on account of integrated tax has first been utilised towards such payment.

Order of utilisation of Input Tax Credit [Section 9B]

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (c) of section 9, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the Input Tax Credit on account of integrated tax, Central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Order of utilization of Input Tax Credit at present is as follows:

<i>Input tax credit on account of</i>	<i>Output liability on account of Integrated tax</i>	<i>Output liability on account of Central tax</i>	<i>Output liability on account of State tax/ Union Territory tax</i>
Integrated tax	(I)	(II) – In any order and in any proportion	
(III) Input tax credit on account of Integrated tax to be completed exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax/ Union Territory tax	(VII)	Not permitted	(VI)

There is no offset available between the CGST and the SGST/ UTGST.

In other words, first fully exhaust ITC on IGST towards output liability of IGST and CGST/SGST/UTGST. CGST/SGST/UTGST output liability payment can be in any order or ratio. Later, utilize ITC on CGST to pay output liability of CGST and balance of IGST, if any. Further, utilize ITC on SGST/UTGST to pay output liability of SGST/UTGST and balance of IGST, if any.

Transitional Input Tax Credit: Input Stocks [Section 18]

The eligible Input Tax Credits in respect of inputs held in stocks, inputs held in semi finished goods and inputs held in stock of finished goods on the day immediately preceding the appointed day will be eligible as Input Tax Credit to be taken as UTGST in the electronic ledger.

The following registered taxable person will be eligible for the Input Tax Credit:

- Who was not liable to be registered under existing Law;
- Who was involved in sale of exempted goods or tax free goods;
- Goods which have suffered tax at first point of sale and their subsequent sale was not liable to tax in the Union Territory under the previous law but which are liable to be taxed in GST;
- Where a person is entitled to the credit of input tax at the time of sale of goods.

Section 2(5) of UTGST Act, 2017:
“existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation.

However, the Input tax credit is available subject to the following conditions:

- i. such inputs or goods are used or intended to be used for making taxable supplies under GST;
- ii. the said registered person is eligible for Input Tax Credit on such inputs under GST;
- iii. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- iv. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

However, in case such registered person other than a manufacturer or a supplier of services, is not in possession of an invoice or tax paying document, such registered person can take credit at such rate as may be prescribed. However he would be required to pass the benefit of reduced taxes to his recipient.

Transitional Input Tax Credit: Taxable as well as Exempted Goods

A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger the amount of credit of the value added tax and entry tax, if any, carried forward in a return furnished under the previous law by him and the amount of credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods in accordance with the provisions of the Act.

Transitional Input Tax Credit: Switch Over from Composition Levy

A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the previous law shall be eligible for, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:

- i. Such inputs or goods were used or intended to be used for making taxable supplies under this Act;
- ii. the said registered person is not paying tax under section 10 of the Central Goods and Services Tax Act;
- iii. the said registered person is eligible for Input Tax Credit on such inputs under this Act;
- iv. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and
- v. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Advance Ruling [Section 14 of UTGST Act, 2017]

“Advance Ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the Central Goods and Services Tax Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

“Appellate Authority” means the Appellate Authority for Advance Ruling constituted under section 16; “Applicant” means any person registered or desirous of obtaining registration under this Act; “Authority” means the authority for Advance Ruling constituted under Section 15.

Questions for which Advance Ruling can be sought?

Advance Ruling can be sought for the following questions:

- classification of any goods or services or both;
- applicability of a notification issued under provisions of the GST Act(s);
- determination of time and value of supply of goods or services or both;
- admissibility of Input Tax Credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods or services under the Act;
- whether applicant is required to be registered under the Act;
- 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.

Constitution of Authority for Advance Ruling [Section 15 of UTGST Act, 2017]

The Central Government shall, by notification, constitute an Authority to be known as the (name of the Union territory) Authority for Advance Ruling provided that the Central Government may, on the recommendations of the Council, notify any Authority located in any State or any other Union territory to act as the Authority for the purposes of this Act.

The Authority shall consist of :

- i. one member from amongst the officers of central tax; and
- ii. one member from amongst the officers of Union territory tax, to be appointed by the Central Government.

The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

Constitution of Appellate Authority for Advance Ruling [Section 16 of UTGST Act, 2017]

The Central Government shall, by notification, constitute an Appellate Authority to be known as the (name of the Union territory) Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority.

The Appellate Authority shall consist of:

- i. the Chief Commissioner of central tax as designated by the Board; and
- ii. the Commissioner of Union territory tax having jurisdiction over the applicant.

Miscellaneous

Subject to the provisions of this Act and the rules made thereunder, the provisions of the Central Goods and Services Tax Act, 2017 relating to –

- (i) scope of supply;
- (ii) composition levy;
- (iii) composite supply and mixed supply;
- (iv) time and value of supply;
- (v) Input Tax Credit;

- (vi) registration;
- (vii) tax invoice, credit and debit notes;
- (viii) accounts and records;
- (ix) returns;
- (x) payment of tax;
- (xi) tax deduction at source;
- (xii) collection of tax at source;
- (xiii) assessment;
- (xiv) refunds;
- (xv) audit;
- (xvi) inspection, search, seizure and arrest;
- (xvii) demands and recovery;
- (xviii) liability to pay in certain cases;
- (xix) advance ruling;
- (xx) appeals and revision;
- (xxi) presumption as to documents;
- (xxii) offences and penalties;
- (xxiii) job work;
- (xxiv) electronic commerce;
- (xxv) settlement of funds;
- (xxvi) transitional provisions; and
- (xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall *mutatis mutandis* apply.

The above provisions are applicable to IGST Act also.

The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

Power to Make Rules [Section 22 of UTGST Act, 2017]

Section 22 of the UTGST Act, 2017 lays down the powers of Central Government to make rules on the recommendations of the Council. The Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a maximum penalty of ten thousand rupees (Rs.10,000).

General Power to Make Regulations [Section 23 of UTGST Act, 2017]

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Laying of Rules, Regulations and Notifications [Section 24 of UTGST Act, 2017]

Every rule made by the Central Government, every regulation made by the Board and every notification issued by the Central Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

Power to Issue Instructions or Directions [Section 25 of UTGST Act, 2017]

For the purpose of uniformity in the implementation of this Act, the Commissioner may, issue such orders, instructions or directions to the Union Territory tax officers as he may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

Removal of Difficulties [Section 26 of UTGST Act, 2017]

If any difficulty arises in giving effect to any provisions of this Act, the Central Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty. However, no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017**Background & Introduction**

The GST Council in its 10th meeting held on 18th February, 2017 approved the GST (Compensation to States) Bill that provides for the compensation of loss arising out of introduction of Goods and Services Tax to states in India. The Act which provides for compensation to the states for the loss of revenue arising on account of implementation of Goods and Services Tax for a period of five years in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, came in force as the Goods & Services Tax (Compensation to States) Act, 2017.

The Union Government presented the Goods and Services Tax (Compensation to States) Bill, 2017 in Lok Sabha on 27th March, 2017 and the same has been passed by Lok Sabha on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented by the President on 12th April, 2017.

This Act may be called the Goods and Services Tax (Compensation to States) Act, 2017. It extends to the whole of India.

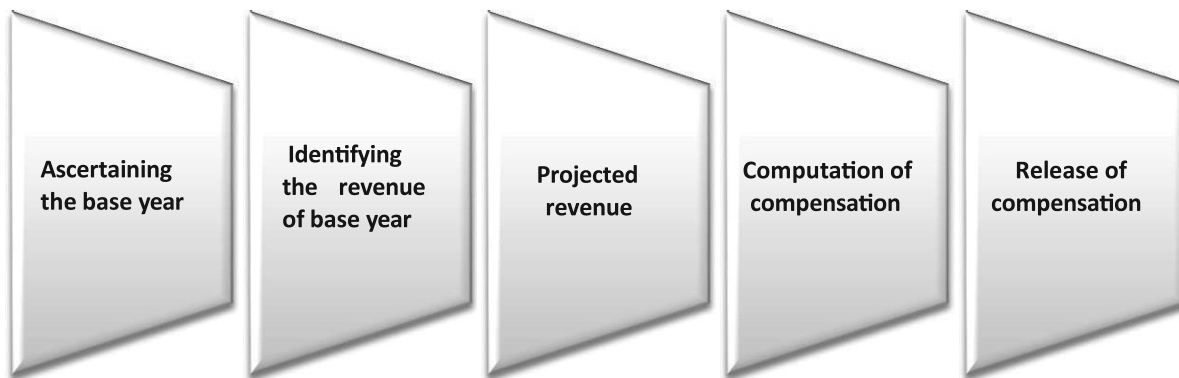
The compensation cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Compensation Cess not charged on goods exported by an exporter under bond and the exporter are be eligible for refund of Input Tax Credit of Compensation Cess relating to goods exported. In case goods have been exported on the payment of Compensation Cess the exporter is eligible for refund of Compensation Cess paid on goods exported by him. Compensation Cess not be leviable on supplies made by a taxable person who has decided to opt for composition levy.

The constitutional validity of Compensation Act was challenged in the matter of *Union of India Vs. Mohit Minerals Pvt. Ltd.* before Hon'ble Supreme Court where The Supreme Court has placed extensive reliance upon the Statement of Objects and Reasons of the Amendment Act which highlights that the purpose of GST is to confer "concurrent taxing powers on the Union as well as the States including Union Territory with legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both" and affirmed the constitutional Validity of Compensation Cess Act.

Salient Features of GST (Compensation to States) Act, 2017

The GST (Compensation to States) Act, 2017 provides for the manner of ascertaining the amount of compensation that shall be payable to states during the transition period of five years by the Centre on account of revenue loss attributable to levy of Goods and Services Tax in India. It involves the following steps:



The compensation shall be met out from compensation Cess for which the provisions in relation to collection, payment return, refund etc. have been provided for in the GST (Compensation to States) Act, 2017.

Highlights of the Act:

1. It provides for the compensation of loss to the states arising due to implementation of Goods and Services Tax in India.
2. The financial year 2015-16 shall be taken as base year for the purpose of calculating compensation amount payable to the states.
3. The revenue to be compensated consists of revenues from all the taxes that are levied by the states which have subsumed under Goods and Services Tax, as audited by the Comptroller and Auditor General of India.

4. The projected growth rate of revenue during transition period shall be 14%.
5. The compensation shall be released at the end of every two months period on a provisional basis and final adjustment shall be made after getting audited accounts of the year from the Comptroller and Auditor General of India.
6. In case of eleven special category states referred to in Article 279A of the Constitution, the revenue forgone on account of exemption of taxes granted shall be counted towards the definition of Revenue for the base year 2015-16 for calculating compensation.
7. The revenues of the states that were not credited to the consolidated fund of states government but were directly collected by "mandi" or "municipality" would also be included in the definition of revenue if these were subsumed in the Goods and Services Tax.
8. To generate revenue to compensate states for five years for loss suffered by the states on account of implementation of Goods and Services Tax, is by levy of a Cess on such goods as recommended by the GST Council over and above the GST rate on that item.
9. The proceeds of the Cess shall be credited to the fund called Goods and Services Tax Compensation Fund and all the compensation payable to the states as GST compensation shall be paid from this fund. The balance if any left out in the GST compensation fund after five year shall be equally shared between the Centre and the states.

Some definitions prescribed in Section 2 of the Goods and Services Tax (Compensation to States) Act, 2017 are as follows:

Section 2 : In this Act, unless the context otherwise requires:

- a) "Central tax" means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;
- b) "Central Goods and Services Tax Act" means the Central Goods and Services Tax Act, 2017;
- c) "Cess" means the goods and services tax compensation cess levied under section 8;
- d) "Compensation" means an amount, in the form of goods and services tax compensation, as determined under section 7;
- e) "Council" means the Goods and Services Tax Council constituted under the provisions of article 279A of the Constitution;
- f) "Fund" means the Goods and Services Tax Compensation Fund referred to in section 10;
- g) "Input tax" in relation to a taxable person, means,
 - i. Cess charged on any supply of goods or services or both made to him;
 - ii. Cess charged on import of goods and includes the Cess payable on reverse charge basis;
- h) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;
- i) "Integrated tax" means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;
- j) "Prescribed" means prescribed by rules made, on the recommendations of the Council, under this Act;
- k) "Projected growth rate" means the rate of growth projected for the transition period as per section 3;
- l) "Schedule" means the Schedule appended to this Act;

- m) "State" means,
 - i. for the purposes of sections 3, 4, 5, 6 and 7 the States as defined under the Central Goods and Services Tax Act; and
 - ii. for the purposes of sections 8, 9, 10, 11, 12, 13 and 14 the States as defined under the Central Goods and Services Tax Act and the Union territories as defined under the Union Territories Goods and Services Tax Act.
- n) "State tax" means the State goods and services tax levied and collected under the respective State Goods and Services Tax Act;
- o) "State Goods and Services Tax Act" means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;
- p) "Taxable supply" means a supply of goods or services or both which is chargeable to the Cess under this Act;
- q) "Transition date" shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;
- r) "Transition period" means a period of five years from the transition date; and
- s) "Union Territories Goods and Services Tax Act" means the Union Territories.

The words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act shall have the meanings respectively assigned to them in those Acts.

Projected Growth Rate [Section 3 of GST (Compensation to States) Act, 2017]

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent (14%) per annum.

Base Year [Section 4 of GST (Compensation to States) Act, 2017]

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year. Thus, the base year shall be Financial Year 2015-16.

Base Year Revenue [Section 5 of GST (Compensation to States) Act, 2017]

Section 5(1) mandates that subject to the provisions of sub-sections (2), (3), (4), (5) and (6), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into GST:

- a) the Value Added Tax 'VAT', sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;
- b) the central sales tax 'CST' levied under the Central Sales Tax Act, 1956 (74 of 1956);
- c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile entry 52 of List-II (State List) of the Seventh Schedule to the Constitution;
- d) luxuries tax, entertainments tax, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the constitution;

- e) advertisement tax or any other tax levied by the concerned State under the erstwhile entry 55 of List-II (State List) of the Seventh Schedule to the Constitution;
- f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution;
- g) any Cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution by the State Government under any Act notified under sub-section (4), prior to the commencement of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The following amounts **shall not** be included in the revenue collected during the base year in a State, net of refunds, in the calculation of the base year revenue for that State:

- a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-I (State List) of the Seventh Schedule to the Constitution, prior to the coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
- b) tax levied under the Central Sales Tax Act, 1956, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
- c) any Cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and
- d) the entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The base year revenue shall include the amount of tax collected on sale of services by the said State Government during the base year in respect of the State of Jammu and Kashmir.

Also, in respect of the States mentioned in sub-clause (g) of clause (4) of article 279A of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub-section (1), shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

The base year revenue shall be calculated as mentioned above and on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor-General of India.

In respect of any State, if any part of revenues mentioned above are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

Projected Revenue for any Year [Section 6]

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration – If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows –

$$\text{Projected Revenue for 2018-19} = 100 \left(1 + \frac{14}{100} \right)^3 = 148.1544$$

GST Compensation [Section 7 of GST (Compensation to States) Act, 2017]

The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India. However, in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year. [Section 7(2)]

The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner:

- a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated by applying the projected growth rate over the base year revenue of that state.
- b) the actual revenue collected by a State in any financial year during the transition period shall be :
 - i. the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act;
 - ii. the integrated goods and services tax apportioned to that State; and
 - iii. any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes, as certified by the Comptroller and Auditor- General of India.
- c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b). [Section 7(3)]

The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner:

- a) The projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6.

Illustration: If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be $100 \times (10/12) = \text{Rs.} 83.33$;

The actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be:

- i. the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act;
 - ii. the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Indirect Taxes and Customs; and
 - iii. any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes.
- b) the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the

relevant period in accordance with clause (a) and the actual revenue collected by a State in the said period as referred to in clause (b), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period. [Section 7(4)]

In case of any difference between the final compensation amount payable to a State calculated in accordance with the provisions of sub-section (3) upon receipt of the audited revenue figures from the Comptroller and Auditor- General of India, and the total provisional compensation amount released to a State in the said financial year in accordance with the provisions of sub-section (4), the same shall be adjusted against release of compensation to the State in the subsequent financial year. [Section 7(5)]

Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed. [Section 7(6)]

Compensation Cess [Section 8 of GST (Compensation to States) Act, 2017]

There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, 2017 and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, 2017 and collected on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act, 2017 is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council. On 24.06.2022, the Ministry of Finance vide Notification No 1/2022 Compensation Cess has notified Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022, w e f 01.07.2022 through which it has extended the time period for levy of compensation Cess up to 31st March 2026.

However, no such Cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act, 2017.

The Cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify.

Where the Cess is chargeable on any supply of goods or services or both with reference to their value, the value of such supply shall be determined under section 15 of the Central Goods and Services Tax Act for all intra- State and inter-State supplies of goods or services or both.

The Cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Payments, Return and Refund [Section 9 of GST (Compensation to States) Act, 2017]

Every taxable person, making a taxable supply of goods or services or both, shall:

- a) pay the amount of Cess as payable under this Act in such manner;
- b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and
- c) apply for refunds of such Cess paid in such form, as may be prescribed.

For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act, 2017 and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

Crediting Proceeds of Cess to Fund [Section 10 of GST (Compensation to States) Act, 2017]

- (1) The proceeds of the Cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.
- (2) All amounts payable to the States under section 7 shall be paid out of the Fund.
- (3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.
- (3A) Notwithstanding anything contained in sub-section (3), fifty per cent. of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:

Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two months' period, fifty per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5.
- (4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.
- (5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

Other Provisions relating to Cess [Section 11 of GST (Compensation to States) Act, 2017]

The provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017, and the rules made thereunder, including those relating to assessment, Input Tax Credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, *mutatis mutandis*, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax and integrated tax on such intra-State supplies under the said Act or the rules made thereunder.

The Input Tax Credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

Power to make Rules [Section 12 of GST (Compensation to States) Act, 2017]

The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

- a) the conditions which were included in the total base year revenue of the States
- b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State
- c) the manner of refund of compensation by the States to the Central Government
- d) the manner of levy and collection of cess and the period of its imposition
- e) the manner and forms for payment of cess, furnishing of returns and refund of cess
- f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

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, two different union territory or in a state and union territory Further import of goods and services, supplies to SEZ units or developer, or any supply that is not an intra-State supply. (Section 7 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 interstate 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 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 5. 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. Exports of goods and services will be zero rated. The exporter has the option either to export under bond without payment of duty and claim refund of ITC or pay IGST at the time of export and claim refund of IGST. The IGST on imports is leviable under the provisions of the Customs Tariff Act and shall be levied at the time of imports along with the levy of the Customs Act (Section 5 of the IGST Act).

Q 6. 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 7. 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.

Q 8. What treatment is given to supplies made to SEZ units or developer?

Ans. Supplies to SEZ units or developer shall be zero rated in the same manner as done for the physical exports. Supplier shall have option to make supplies to SEZ without payment of taxes and claim refunds of input taxes on such supplies (section 16 of the IGST Act).

Q 9. Are business processes and compliance requirement same in the IGST and CGST Acts?

Ans. The procedure and compliance requirement are same for processes likes registration, return filing and payment of tax. Further, the IGST Act borrows the provisions from the CGST Act as relating to assessment, audit, valuation, time of supply, invoice, accounts, records, adjudication, appeal etc. (Section 20 of the IGST Act).

***Source :** www.cbic.gov.in

LESSON ROUND-UP

- President on 12th April, 2017, gave assent to the following four Acts:
 - Central Goods & Services Tax Act, 2017
 - Integrated Goods & Services Tax Act, 2017
 - Union Territory Goods & Services Tax Act, 2017
 - Goods & Services Tax (Compensation to States) Act, 2017.
- Federal structure of the Constitution is continued under the GST regime of indirect taxes.
- IGST is levied and collected by the Centre on inter-state supply of goods and services including imports into India and supplies made outside India along with supplies to/from SEZs.
- Owing to shortcomings in previous regime like cascading effect under Central Sales Tax regime, IGST came into being.
- Union Territory Goods and Services Tax Act, 2017 would be applicable in the Union Territories except Delhi and Puducherry.
- Various provisions of the Central Goods and Services Tax Act, 2017 as contained in Act shall apply to Union Territories.
- The GST (Compensation to States) Act, 2017 Act provides for calculation and ascertainment of base year, projected growth rate, compensation to be paid and the like.
- There shall be levied a cess and collected on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue.
- GST does away with the cascading effects of taxation, by providing a comprehensive and continuous chain of tax credits, end to end and taxing only the value-add at every stage.
- India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-State sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-State sales, the GST is collected by the Centre (IGST).
- The exemptions from GST are those that have been kept out of scope and have been notified separately.
- When the location of supplier and the place of supply is within the same state, it is an intra-state Supply, and if these are in different states, then that is inter-state supply.
- To conform with international standards, IGST paid on goods taken out of India by a foreign tourist will be refunded under IGST Act, 2017.

GLOSSARY

Central Goods and Services Tax (CGST): It is levied & collected under the authority of CGST Act, 2017 passed by the Parliament. It is a tax levied on intra- State Supplies of both goods and/or services by the Central Government and is governed by the CGST Act, 2017.

State Goods and Services Tax (SGST): It is levied & collected under the authority of SGST Act, 2017 passed by respective State. It is a tax levied on intra- State Supplies of both goods and/or services by the State Government and is governed by the SGST Act, 2017.

Integrated Goods and Services Tax (IGST): It is levied on all inter-State supplies in the GST regime. The IGST mechanism ensures that the tax money goes to the state where consumption takes place. Though IGST is levied by the centre, the revenue does not belong fully to the centre. The tax revenue collected as IGST goes partially to the Centre as CGST and the remaining to the State/Union Territory where consumption takes place as SGST/UTGST.

Union Territory Goods and Services Tax (UTGST): It is levied & collected under the authority of UTGST Act, 2017 passed by the Parliament. This is applicable to Union Territories. UTGST applicable territories as mentioned in Section 2 of UTGST Act, 2017 are Andamans and Nicobar Islands; Lakshadweep; Dadra & Nagar Haveli; Daman and Diu; Chandigarh and Other territories.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions (MCQs)

1. Which of the following is considered as inter-State Supply?
 - a) Supplies received from SEZ unit in Noida to Domestic Tariff Area
 - b) Supplies made to SEZ developer in Kandla from Kerala
 - c) Goods imported from France
 - d) All of the Above
2. Which section of IGST Act 2017 deals with Zero Rated Supply?
 - a) Section 20
 - b) Section 16
 - c) Section 5
 - d) None of the Above
3. When did President give assent to GST (Compensation to states) Act 2017?
 - a) 12th April 2017
 - b) 27th March 2017
 - c) 1st July 2017
 - d) None of the above
4. Which financial year is taken as base year for the purpose of calculating compensation amount payable to the states under GST (Compensation to states) Act 2017?
 - a) Financial Year 2014-15
 - b) Financial Year 2016-17
 - c) Financial Year 2015-16
 - d) None of the Above

5. The UTGST States to which the UTGST Act, 2017 applies are:

- a) Dadra and Nagar Haveli and Daman and Diu
- b) Chandigarh
- c) Ladakh
- d) All of the above

Answers: 1 (d), 2 (b), 3 (a), 4 (c), 5 (d)

Descriptive Questions

1. Are all goods and services taxable under GST?
2. Which are the questions for which advance ruling can be sought?
3. Explain with the help of illustrations how a particular transaction of goods and/or services is taxed simultaneously under Central GST (CGST) and State GST (SGST)?
4. A dual GST has been implemented in India. Elaborate.
5. What was the need to bring GST in India? What are the taxes which have been subsumed in GST?

LIST OF FURTHER READINGS

- Goods & Services Tax, Laws, Concepts and Impact Analysis-Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra.
- GST Ready Reckoner- Taxmann – V.S. Datey.
- A complete guide to Goods & Services Tax Ready Reckoner in Q & A Format- Bloomsbury – Dr. Sanjiv Agarwal & Sanjeev Malhotra.

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