

Understanding GST Model Law - Time of supply of services – Part- 5

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This is the fifth in the series of articles to understand the GST Model Law. The purpose is mainly to create an awareness and enable one to look at the unintended impact on his her sector. It would aid in making representations to make this law tax payer friendly, simple and transparent. The GST Model Law has been put in public domain to get the feedback for amendments. This law requires in the opinion of the paper writers large number of amendment to even make it workable.

Background

It is very important to arrive at the time of supply of service. The liability to pay CGST/ SGST on services shall arise at the time of supply of service within the State. IGST for inter state supplies of services. In this backdrop, the paper writers have examined the provisions relating to determination of the time of supply of services under the GST regime.

Time of supply of services:

The time of supply of services shall be:

- (i) **If the invoice is issued within the prescribed period:** The earliest of date of issue of invoice or the date of receipt of payment; or
- (ii) **If the invoice is not issued within the prescribed period:** The date of completion of the provision of service or the date of receipt of payment, whichever is earlier; or
- (iii) **Where above provisions do not apply:** The date on which the recipient shows the receipt of services in his books of account.

Example 1: When invoice issued within prescribed period: Assumed prescribed period could be 30 days from date of receipt of advance or date of completion of provision of service.

Provision of taxable service done on 1st April 2017

Payment received on 5th May 2017

Invoice for taxable supply of service raised on April 30th 2017.

Time of supply of service: Date of issue of invoice 30th April 2017.

Example 2: Assumed prescribed period could be 30 days from date of receipt of advance or date of completion of provision of service.

When invoice issued beyond prescribed period:

Taxable provision of service done on 1st April 2017

Payment received on 5th May 2017

Invoice for taxable supply of service raised on May 30th 2017.

Time of supply of service: Date of provision of service 1st April 2017.

Comments:

Deemed supply of service: *The supply of service is deemed to have been made to the extent it is covered by the invoice or the payment. In other words, even mere raising of invoice without provision of service is treated as deemed supply of service. This seems to go against spirit of levy which is attracted on rendition or supply of services.*

The date of receipt of payment shall be earliest of the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank Account.

Prescribed period for issuance of invoice would be prescribed later by notification or by the rules/regulations.

*The term **provision of service** is used instead of supply of service which is taxable event under GST law.*

Time of supply in case of Continuous Supply of Services

Continuous supply of service

The term "continuous supply of service" means supply of services which is provided, or to be provided,

- continuously or on a recurrent basis
- under a contract,
- for a period exceeding 3 months, with periodic payment obligations
- and includes supply of such service as the Central or a State Government may by notification, specify;

Example: Renting of commercial premises for period of 11 months from April 2017 to February 2018 is continuous supply of service.

In case of continuous supply of services, the time of supply shall be -

(i)**Where the due date of payment is ascertainable from the contract:** The date on which the payment is liable to be made by the service receiver, **whether or not any invoice has been issued or any payment has been received by the supplier of service;**

(ii).**Where the due date of payment is not ascertainable from the contract:** When the supplier of service receives the payment, or issues an invoice, **whichever is earlier;**

(iii).**Where the payment is linked to the completion of an event:** The time of completion of that event;

Example:

Where the due date of monthly advances/payment towards construction of multistoried commercial premises is fixed to be 6th of each month in agreement: The date on which the payment is liable to be made by the service receiver ie 6th of succeeding month is treated as date of supply of service.

Where the due date of payment is not mentioned in construction agreement: For April 2017, supplier issues invoice on 5th May 2017 and the payment received on 15th May 2017. Time of supply of service is 5th May 2017;

When payment linked to completion of each floor of the commercial building premises: When first floor is complete on 24th May 2017, the payment of Rs. 1 Crore to be made. Time of supply is 24th May 2017.

Time of supply in case supply of services under Reverse Charge

In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely-

- the date of receipt of services, or
- the date on which the payment is made, or
- the date of receipt of invoice, or
- the date of debit in the books of accounts.

Date on which payment is made shall be earliest of:

1. the date on which the payment is entered in the books of accounts of the recipient or
2. the date on which the payment is debited in his bank account

Example: In case of taxable supply of services taxable under reverse charge in hands of A Co Ltd:

Date of provision of service 10th April 2017

Date on which payment made 15th May 2017

Date of receipt of invoice 20th April 2017

Date of debit in books 25th April 2017

Time of supply of service-**earliest of above** 10th April 2017

When the supply of services ceases under a contract before the completion

When the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.

Example: Home tutoring in financial accounting by A Co was contracted to be provided to Mr ABC for period from April 2017 to May 2017. Service was discontinued on 4th May 2017 as student was not satisfied. Service deemed to have been provided on 4th May 2017.

Residuary Rule

When the point of supply cannot be determined as per the above rules, the following rule shall be followed:

- Where a periodical return is to be filed, the date on which such return is filed, or
- In any other case, the date on which CGST / SGST is paid.

Change in rate of tax in respect of supply of services

The thumb rule shall be the rate applicable in respect of supply of service would be the rate which is prevalent when two out of the following three events has taken place:

1. Date of invoice or
2. Date of provision of service or
3. Date of receipt of payment

Example:

Tax rate was 18% till May 2017 and increased to 24% wef June 2017.

Taxable Supply of service provided and invoice issued in April 2017.

Payment received in June 2017.

Old service tax rate of 18% applicable.

Comparison with the present law

1. There are broadly similar provisions to time of supply of services under service tax law given in Point of Taxation rules.
2. The default rule is that service tax is attracted on earliest of date of issue of invoice or date of completion of service or date of receipt of payment.
3. In the past there have been consistent demands of service tax on debtors at new rate in respect of services provided earlier when old rate was applicable. The view taken all along by paper writer that old service tax rate applies has emerged.

Recommendations / Suggestions:

- (i) When there is mere raising of invoice, and service not supplied subsequently, adjustment of tax paid earlier should be permitted without time limit.
- (ii) Supply of goods and or services is at heart of levy of GST. Old tax rate to be made applicable in case of supply of services completed earlier to change in effective rate of tax even though invoice issued and payment received after change of tax rate.

Conclusion:

In the article paper writers have examined the basic concept of time of supply of services under GST law. The model law could be referred for further details. Practical Guide to Service Tax – 2016 by Bharat Law House can provide vital insights into the present service tax provisions which are adapted here in the model law.

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