

Understanding GST - Taxable person – Part - 6

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This is the sixth 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

Under the Central excise law, the person who engages in manufacture of excisable goods is liable for discharging excise duty liability. Under Service tax, the service provider has to pay service tax on provision of taxable services. Under State VAT laws, the dealer engaged in sale of goods within state is liable to pay VAT. Under CST, the selling dealer is liable to pay sales tax on interstate sale of goods.

Under proposed GST law, CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act. The paperwriters have examined who is taxable person under the GST regime. This would assist to determine who is fastened with liability to pay tax under GST law.

Taxable person

Person liable to register under Schedule III: Taxable Person means a person who carries on any business at any place in India/State and who is registered or required to be registered under Schedule III of this Act. The person who engages in economic activity including trade, commerce or similar activity and activities incidental thereto is treated as taxable person.

Person includes an individual, HUF, company, firm, LLP, an AOP/BOI, [whether incorporated or not, within or outside India], any corporation established under central/ state/ provincial act or Government company as defined in Companies Act 2013, body corporate incorporated under laws of foreign country, co-operative society, local authority, government, trust, artificial juridical person.

Central Government, a State Government or any local authority: They shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities, other than activities specified in Schedule IV to the CGST/SGST Act.

Indicative list in Schedule IV covers: Services by one Government or local authority to another, Services to individuals in discharge of statutory functions such as issuance of passport visa, services provided by Government towards diplomatic or consular activities etc. It is expected in respect of such activities, the specified recipient could be made liable to pay tax under reverse charge.

Who is liable to be registered under Schedule III?

1. **Supplier who makes taxable supply exceeding Rs. 9 lakhs:** Shall be liable to be registered in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds Rs 9 lakhs.
2. **Supplier who makes taxable supply exceeding Rs. 4 lakhs:** Supplier liable to be registered under this Act in the State from where he makes a taxable supply of goods and/ or services if his aggregate turnover in a financial year exceeds Rs. 4 lakhs. **This threshold will apply only if the taxable person conducts his business in any of the NE States including Sikkim.**
3. The above limits shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.
4. The supply of goods, after completion of job-work, by a registered jobworker shall be treated as the supply of goods by the “principal” and the value of such goods shall not be included in the aggregate turnover limits given above of the registered job worker.

Comments: *Supplier is required to get registered when he crosses Rs. 9 Lakhs/4 Lakhs and start paying tax after exceeding Rs. 10 Lakhs/ 5 Lakhs onwards.*

The supplier shall not be liable to registration if his aggregate turnover consists of only goods and/or services which are not liable to tax under this Act.

5. **Registered under earlier law:** Every person who, on the day immediately preceding the appointed day, is registered under an earlier law shall be liable to be registered under this Act with effect from the appointed day.

Comments: *It mentions registered person under old law is responsible /liable to get registered under new law.*

6. **Transfer of business by taxable person as going concern:** Where a business carried on by a taxable person registered under this Act is transferred, whether on account of

succession or otherwise, to another person as a going concern, the transferee, or the successor, shall be liable to be registered with effect from the date of such transfer or succession.

7. **Comments:** *Transferor to continue to be liable in respect of transactions of taxable supplies till effective date.*

8. **Transfer pursuant to amalgamation/demerger:** In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, **where required**, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Comments: *Transferor to continue to be liable in respect of transactions of taxable supplies till effective date.*

9. **The following categories of persons shall be required to be registered for taxable transactions done from Rs.1:**

(i) Persons making any inter-State taxable supply;

(ii) Persons required to pay tax under reverse charge;

(iii) **Casual taxable persons** who occasionally does transactions involving supply of goods and/or services in the furtherance of business as principal, agent or in any other capacity, **in a taxable territory where he has no fixed place of business**. Example: A person who has place of business in Bangalore supplies taxable consulting services in Pune where he has no place of business would be treated as casual taxable person in Pune.

(iv) **non-resident taxable persons:** A taxable person who occasionally undertakes supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India. Similar to above except the non-resident **has no place of business in India**.

(v) persons required to deduct tax under section 37, namely Central/State Government dept, local authority, Governmental agencies to deduct tax at 1% on payment made/credited to supplier of taxable supplies, where total value of supply under a contract exceeds Rs. 10 Lakhs;

(vi) persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise;

(vii) input service distributor;

- (viii) persons who supply goods and/or services, other than branded services, through electronic commerce operator;
- (ix) Aggregator who supplies services under his brand name.
- (x) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

Relevant terms

1. **E-commerce operator**; 'Electronic commerce operator' includes person who, owns, operates or manages an electronic platform facilitating the supply of any goods and/or services or in providing any information **but shall not include persons engaged in supply of such goods and/or services on their own behalf.**
2. **Aggregator**: Means a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service under the brand name of the aggregator

Comparison with similar existing provisions:

- *Under CST law it taxes interstate sale of goods by selling dealer from Re.1.*
- *Under VAT/sales tax laws casual dealer, non-resident dealer or his agent are regarded as dealers.*
- *Also under VAT/CST laws, there is provision for VAT TDS in case of industrial canteen and works contract.*
- *Under present ST law, there is no basic exemption from ST to receiver of service under reverse charge/Joint charge.*
- *Also under service tax law, the aggregator is liable to pay service tax on branded taxable services provided under his brand name from Rs 1.*

Who are not taxable persons?

The following persons shall not be considered as taxable persons—

1. Agriculturist shall not be considered as taxable person. Agriculturist means a person who cultivates land personally, for the purpose of agriculture; Cultivate personally means doing agricultural operation on own account by own labour or family's labour or servants on wages or hired labour under personal supervision or supervision of members of family. In case of HUF, land deemed to be cultivated personally if cultivated by family member.

2. Person required to be registered under Schedule III shall not be considered as taxable person until aggregate turnover in financial year exceeds Rs. 10 Lakhs. [Threshold of Rs. 5 Lakhs would apply to person who does business in any of NE states].
3. any person who provides services as an employee to his employer in the course of his employment;
4. any person engaged in business of exclusively supplying goods and/or services that are not liable to tax under this Act ;
5. any person, liable to pay tax under reverse charge, receiving services of value not exceeding _____ rupees in a year for personal use

Comparison with existing provisions:

There is exclusion under Service definition in present ST law which excludes services provided by employee to employer in course of employment.

Basic ST exemption limit under service tax is Rs.10 Lakhs pa. In various states of India the basic exemption limit under VAT varies from Rs. 5 Lakhs to Rs. 10 Lakhs pa.

Import of services for personal use is exempted from service tax.

Recommendations / Suggestions:

- (i) Increase in the prescribed monetary limits of the aggregate turnover from Rs.10 lakhs to Rs. 25 lakhs and from Rs. Five lakhs to Rs. 50 lakhs in case taxable person conducts his business in any North-Eastern States including Sikkim to be considered.
- (ii) Aggregate **taxable turnover** [excluding non-taxable supplies and exports of goods and /or services] to be made criteria to arrive at the monetary limits.

Conclusion:

In the article paper writers have examined basic concept of a taxable person under GST law. The model law could be referred for further details.

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