

## Understanding Model GST Law- Concept of “person” – Part -12

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Continuing the series of basic and simple articles on the Model GST law we examine some of the important definitions and concepts in the next few articles.

### Background

Goods & Services Tax (GST) as the name suggests, is a tax on supply of goods or services. Presently, certain taxes are being levied only by the Central Government and certain taxes only by the State Government. However, GST would be levied by both the Central Government and State Government on the same transaction, making GST a dual transaction tax structure.

GST would be levied on any supply of goods and or services, whether within state or interstate basis, subject to exemptions from GST, which are yet to be announced.

Any person, providing or supplying goods or services will be liable to charge GST. The person supplying the goods or services is allowed to take credit for taxes paid on purchases, consequent to which, GST becomes a tax on the value added by the supplier.

CGST/SGST/IGST shall be payable by every taxable person. In this article paper writer has examined the scope of person and taxable person.

### Who is person?

The term “**person**” has been defined in Section 2(74) in an inclusive manner to include—

- (a) an individual- refers to any natural person.
- (b) a Hindu undivided family(HUF) - refers to Hindu undivided family that consists of common ancestor and all his lineal male ascendants and their wives and unmarried daughters in general.
- (c) Company - As per Companies Act, 1956 company means a company registered under this Act.
- (d) Firm - Means a partnership firm, whether registered or not under Indian Partnership Act.
- (e) Limited Liability Partnership - Limited Liability Partnership is body corporate formed and incorporated under the Limited Liability Partnership Act 2008 and is legal entity separate from that its members.
- (f) association of persons (AOP) or a body of individuals (BOI), whether incorporated or not, in India or outside India- Association is formed by some persons or group of persons for achievement of common objective.

- (g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India - this could cover corporate registered under foreign law.
- (i) a co-operative society registered under any law relating to cooperative societies - This refers to joining of some persons who come together in some common objective. If registered under law, it becomes incorporated society.
- (j) a local authority - example could be municipalities
- (k) government - Central/State Govt/its depts.
- (l) society as defined under the Societies Registration Act, 1860 - this covers society recognized as separate person even though it may not have profit motive.
- (m) Trust - an arrangement whereby a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries; and
- (n) every artificial juridical person, not falling within any of the preceding clauses - This is residuary clause.

In short, person can be natural person and legal person. A natural person is human being. Legal persons are beings who for purpose of legal reasoning are treated in a greater or lesser degree in same way as human.

The definition of person specifically covers Govt as well as local authorities.

### **Who is taxable person?**

Taxable person is defined in section 9 of GST. Taxable Person means a person who carries on any business at any place in India /State of \_\_\_\_ and who is registered or required to be registered under Schedule III of this Act.

The taxable person could be from any place in India, and carrying on business.

### **What is scope of business?**

The common understanding of business is that it is “a continuous, frequent and regular activity for a profit. Term business is defined in inclusive manner to include –

- (a) any trade, commerce, manufacture, profession, vocation or any other similar activity,
- (b) whether for a pecuniary benefit or not;
- (c) any transaction in connection with or incidental or ancillary to above;
- (d) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- (e) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- (f) provision by a club, association, etc of the facilities or benefits to its members;
- (g) admission, of persons to any premises, for a consideration; and

(h) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation

**Comments:**

- **Trade/commerce:** Primarily exchange of goods/services for money or activity carried out with a view to gain or profit from the same.
- The important point to be noted is that in the absence of profit also it is business as long as it is done with a view to make a profit. A good example could be sale of scrap by manufacturing industries as it is incidental to its manufacturing operations.
- The transactions not resulting in profit would also be covered as per the definition as the intention was to make profit.
- It could be said to be any transaction in connection with trade, commerce, manufacture, profession or occupation or incidental or ancillary thereto and would include services.
- **Manufacture** – This has not been defined in the Act but may take some color from the Central Excise Act, 1944 as well as the Income Tax Act, 1961.
- Normally manufacture could be said to be the following:
  - i. Process bringing into existence of new and distinct object.
  - ii. Process resulting in a commodity with different chemical composition.
  - iii. Where the input material loses its character after the process and cannot be used as it was possible originally.
  - iv. Assembly is manufacture as what goes in are components and what comes out is a different item.
- The concept of deemed manufacture, ie packing /labelling /stickering and other specified processes done on specified goods such as watches and other consumer durables presently specified under Section 2(f)(ii) and Section 2(f)(iii) of Central excise Act is not applicable to GST as trading and manufacture have been collapsed / merged.
- A onetime activity may be covered.
- Supply or procurement of goods/services in connection with commencement or closure of business.
- Provision of facilities by club/assn. to members for consideration. –This clause may be open to Constitutional challenge on grounds of mutuality.
- Admission of a person to premises in exchange for payment.
- Services by person as holder of office accepted in course of trade/profession/vocation. Example: services by trader as Chamber of Commerce office bearer.

**Who is not taxable person?**

- a) Agriculturist- a person who cultivates personally land for agricultural purpose including floriculture, horticulture, sericulture, raising of crops, grass or garden produce and also grazing.
- b) A person whose aggregate turnover in a financial year does not exceeds Rs 20 Lakhs].
- c) A person who conducts his business in any of the NE States including Sikkim when aggregate turnover in a financial year does not exceed Rs.10 Lakhs]  
Present basic exemption limit is Rs. 10 Lakhs under service tax, Rs 150 Lakhs under Central excise and Rs. 2 lakhs to Rs. 10 Lakhs under various State VAT laws.
- d) The Central Government, a State Government or any local authority in respect of specified activities or transactions given in Schedule IV to this Act.  
It is expected in respect of specified services provided by Govt/local authority, service receivers such as business entity could be made liable to pay tax under reverse charge.
- e) any person who provides services as an employee to his employer in the course of, or in relation to his employment  
Similarly at present services provided by employee to employer in course of employment is excluded from ST levy.
- f) any person engaged in the business of exclusively supplying goods and/or services that are not liable to tax under this Act;
- g) any person, liable to pay tax under sub-section (3) of section 7, receiving services of value not exceeding \_\_\_\_\_ rupees in a year for personal use.

There is an exemption without monetary limit for import of services for personal use under present service tax law.

#### **Concept of casual and non-resident taxable person**

**“Casual taxable person”**: means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;

There is similar concept of casual dealer under State VAT laws.

**“Non-resident taxable person”**: means a taxable person who occasionally undertakes transactions involving 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.

There is similar concept at present under State VAT laws.

#### **Special provisions for casual and non-resident taxable person**

The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for a period of ninety days from the effective date of registration.

The proper officer may, extend the 90 days by a further period not exceeding 90 days, at the request of the said taxable person.

A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Where any extension of time is sought, such taxable person shall deposit an additional amount of tax corresponding to the estimated tax liability for the period for which extension is sought.

The estimated amount of tax liability deposited shall be credited to the electronic cash ledger[parallel could be PLA concept under excise] of such person.

### **Comparison with present Central indirect tax laws:**

#### **Central excise**

There is no concept of taxable person. Sub-rule (1) of Rule 4 of Central Excise Rules provides every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 i.e. monthly basis or under any other law. Central excise duty is payable by manufacturer of final products.

#### **Service tax:**

Service tax is levied on taxable services, namely any activity carried out by a person for another for a consideration. The term person is defined on similar lines to the definition under model GST law.

#### **Landmark decisions:**

1. In Commissioner Vs Bangalore Metropolitan Transport Corporation - 2015 (38) S.T.R. J429 (S.C.) held that Bangalore Metropolitan Transport Corporation (BMTC) not being a person, its activity of running buses for convenience of citizens, not liable to Service Tax.
2. In Precot Mills Ltd. Vs CCE, Tirupati, 2006 (2) S.T.R. 495 (Tri.-Bang.), it has been held that there cannot be any service between two units of the same legal entity.

#### **Conclusion**

In this article the paper writers have examined the concept of person.

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