

THE BIG GST LEAP



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Transition provisions: Goods and Services Tax

With the passage of the GST bill in the Lok Sabha and further ratification by two states in their assembly it is more or less certain that Goods and Services Tax is a reality in India. There exists a high probability that it would be enacted with effect from 1st of April, 2017. It has been a long pending demand of the Trade and Industry to get this law implemented in India in order to remove inter-state borders while doing business.

In the several series of articles to come on GST this is a first part to help you understand where all you would need to make changes in your business to be ready for GST once the same is enacted in expected next 12 months.

The Model Law

The Government of India has issued a draft paper describing as the model law on which the GST would be framed. At the very first reading of the law it does not seem to be a very big game changer as was being highlighted. However, over a period of time we can expect several clarifications / explanations / amendments and rules to mitigate the short comings of the model law.

- a. CGST (Central Goods and Service Tax) – Covers central laws such as Excise and Service tax.
- b. SGST (State Goods and Service Tax) – Covers state VAT laws.
- c. IGST (Inter State Goods and Service Tax) – Covers current CST law.

Unutilized CENVAT credit and VAT input as on the date of enactment

As per the model law in order to avail the unutilized CENVAT and VAT Input the following conditions need to be met, The assessee should ensure that the below data is accurately available failing which their electronic credit ledger would not be updated correctly thereby denying them due credit.

- a.) Credit to be eligible under the existing Service Tax and VAT laws.

- b.) They should have been shown in the filed returns of the assessee.
- c.) That credit should be eligible under GST law.
- d.) Reflected in the “Electronic Ledger” maintained under GST.
- e.) CENVAT admissible against CGST and VAT against SGST.

Plan of Action by the assessee

With regard to smooth transition into the GST regime it is of utmost importance that the assessee are ready with trained staff. As per our understanding of the current law the following should be given priority by the assessee to be GST ready.

- a.) All the purchases till the enactment to the GST should ideally be from registered dealers under respective state laws to ensure credit availability.
- b.) Special audits be undertaken for the transactions initiated from 1st April, 2016 to ensure no credits have been missed in any law.
- c.) In case of service tax it would be ideal to discharge all the reverse charge duty in order to ensure availability. In case any such demand is confirmed later on there exists a possibility that credit for the same may be denied under GST.
- d.) Payments should be made to all vendors standing for more than 3 months to ensure availability of CENVAT.
- e.) Any specific forms for charging concessional VAT, if VAT law of any particular state provides, must be obtained prior to GST. If buyer is not able to give, tax should be charged at normal tax rate so that at least buyer could get the credit. If later on (once GST is introduced) buyer is not able to give the form for whatever reasons, seller may have to pay differential tax without corresponding eligibility of credit to buyer.
- f.) All credit/debit notes must be settled prior to migration date so that correct credit balance could be ascertained for carry forward.
- g.) If any credits were reversed earlier under protest, it should be availed as on transition date and may again be reversed post transition under protest.
- h.) If there is doubt/uncertainty as to eligibility of any credits under current law, it may be availed under protest under intimation to department so that credit is not lost warranting carry forward in return.

- i.) If any credit is missed out or return not filed on time, it is not certain whether revision of return filed under existing law shall be allowed or not. Hence, returns for all registrations must be filed on time fully capturing the details of credit balance.
- j.) Registration under Goods and Service Tax (GST), if allowed to be obtained before roll out date, must be obtained in advance so that credit shown in return could be carried forward to electronic credit ledger automatically.
- k.) The inventory balance should be minimized on migration date. This is because a VAT dealer may not be entitled to excise credits under existing law. If inventory is held on migration date and sold post Goods and Service Tax (GST), liability of Goods and Service Tax (GST) would arise without eligibility of corresponding excise credits. If same goods are purchased post Goods and Service Tax (GST), credit of GST would be available to set off against output supply.

There could be many other steps/actions which business may have to take depending upon their business and the applicability of provisions of Central Excise Act, Finance Act 1994, VAT law of particular state, Cenvat Credit Rules and other relevant provision of the law to ensure that credit balance taken is taken properly under Goods and Service Tax (GST) regime. The exercise could be done internally by business or may get it done through professional consultants so that there is neither any leakage nor any ineligible carry forwards.

Conclusion

There is urgent need for business to take adequate steps timely. Any delay could directly result in loss/leakage of credits. It is also equally imperative to make representation before government to clarify all the open issues so that business is not put to state of confusion.

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