

[for capacity Building purpose]

Understanding GST: Through 7x 7- Steps/Filter Approach

Introduction:

With Goods and Services Tax (GST) system of taxation in place, following key questions arise in the mind of any person who is planning to start any new business involving either supplies of goods or services or both:-

- (i) Whether he is liable to pay GST at all?
- (ii) If yes, which tax should he pay i.e. (CGST + SGST/UTGST) or (IGST), and how much tax should he pay? Is he liable to pay Cess also [Under GST (Compensation to State) Act, 2017) ?.
- (iii) What point of time should he pay GST to the Government?
- (iv) Other vital procedure related questions:-
 - Classes of taxable person under which one need to register-one or more than one? One or multiple registration?
 - Types and frequency of returns to be filed- i.e. which return (s) is to be filed by him and when? What is the information to be furnished in different returns? What will happen if he does not file return or file it late?
 - How much Input Tax Credit is eligible to him on inputs, capital goods and input services? Is there anything on which input tax credit is not admissible to him? What happens to credit lying in his account or when he is switching over from exempted/non-taxable/composition category to taxable category or vice versa?
 - What are timelines prescribed for filing return, payment of taxes etc? What are the consequences of failing to comply with time lines prescribed in the law for various processes?
 - What are compliance requirement and what if he fails to comply with such statutory provisions?
 - Whether any refund is available to taxable person? If yes, then how much, when & how?
 - What is the mechanism envisaged in the law for resolution of tax disputes?
 - Whether there are any penalty/ fine/fees/interest prescribed in the GST law for dealing with situations of non-compliance? If yes, what are the penalties/fee/interest/fine prescribed under law in different situations of non-compliance?

2. Through the 7 x 7 Step approach as explained below, an attempt has been made to answer the above said questions in a logical and sequential manner. If answer is negative in first two filters/steps, then one is not required to take GST registration. If answer is yes, then one should continue going through the remaining steps to determine his tax liability on every supply of goods/ services made by him.

3.1 Part A: 7 Steps Substantive Filter Approach to Determine Liability to Pay GST and to Determine the Amount of Tax Payable on any Supply

Step 1: Supply filter [*see whether activity done by any person falls within the scope of term “Supply” as defined under Section 7 of CGST Act, 2017 read with activities listed in the Schedule-I (activities which are deemed to be taxable supplies even when there is no consideration) and Schedule-III (activities which are neither considered supply of good nor supply of Services)*]

Key Points to Note

Three important considerations for any activity to be a “supply”:

- Whether activity can be considered as supply of goods or supply of services;
- Whether for consideration
- Whether in the course of business or furtherance of business

[If any one or more of the above said elements is absent, then activity is not covered within the meaning of the term “supply”]

[*Note: If any activity being done by any person falls within the scope of term “supply” then move to Step-2.*]

Step 2: Taxable Supply Filter

[*see whether any/all of the supplies falls in category of non-taxable supply, Nil rated supply (chargeable to Nil rate of tax) or exempted supply i.e. supply fully exempted from payment of tax*];

Key points to Note

- If all supplies made by a person falls in non-taxable supply or exempted supply/nil rated supply or there is no import of supply/ no liability to pay tax on reverse charge/ no liability for deduction of TDS/TCS, then there is no need for him to register for GST purpose.
- Under Section 23 (1) (b) of the CGST Act, 2017, the Government has specified an agriculturist as person not liable for registration, only to the extent of supply of produce out of cultivation of land.

- Government also has right to specify category of person who may be exempted from obtaining registration [Ref: Section 23(2) of the CGSG Act, 2017]
- In any supply being made by a person is a taxable supply of goods and his aggregate turnover is over 40 lakhs [in other than special category states] or 20 lakhs [in special category states], then such supplier of goods needs to register under GST and discharge tax liability as per GST law.
- In any supply being made by a person is a taxable supply of Services and his aggregate turnover is over 20 lakhs [in other than special category states] or 10 lakhs [in special category states], then such supplier of Services needs to register under GST and discharge tax liability as per GST law.
- Also see the 24 of the CGST Act, 2017 providing compulsory registration in certain cases irrespective of aggregate turnover being less than limit mentioned above.

Filter 2A: Reverse Charge Filter [see whether any of the goods/services being received are liable for payment on reverse charge basis under **Section 9(3)** of CGST Act, 2017].

Filter 2B: TDS Filter [see whether the person is required to deduct tax at source before making payment for services received under **Section 51** of the CGST Act, 2017]

Filter 2C: TCS Filer [see whether the person is required to collect tax at source under **Section 52** of the CGST Act, 2017]

Filter 3: Intra-state or Inter-state supplies filter

[see whether in a particular supply, location of supplier and place of supply is located within the same state/UT or are in different state/UTs]

Key Points to note

- Rule for determining “Place of supply” are contained in the IGST Act, 2017.
- If location of supplier and place of supply are within the same State/UTs, then supplier should pay CGST+ SGST.
- If location of supplier and place of supply are in different states/UTs, then supplier should pay IGST.
- Notwithstanding above, there are certain supplies which are to be considered as Inter-state supplies i.e. import of goods (till crossing of customs frontiers)/services, sale to tourist (as defined under section 15 of IGST Act, 2017), supplies made to/or by SEZ unit/ Developer, OIDAR services; and thus, require payment of IGST.

Legal Provisions to be referred

- Definition contained in Section 2(10) of IGST Act: Import of Goods; Section 2(11) of the IGST Act: Import of Services; Section 2(15) of the IGST Act: Location

of Supplier of Services; and Section 2(71) of the CGST Act, 2017: Location of supplier of Services.

- Section 7, 8, and 9 of the IGST Act, 2017 dealing with determination of nature of supply;
- Section 10, 11, and 12 of the IGST Act, 2017 dealing with place of supply of goods or services or both.

Filter 4: Goods or services filter [see whether supply under consideration is “supply of goods” or “supply of services”]

- Consider definition of “goods” (clause (52) of section 2) or “services” (clause(102) of Section 2) under the CGST Act, 2017
- Also consider supplies which are to be treated only as “supply of goods” or “supply of services” as specified in Schedule II of the CGST Act, 2017.

Filter 5: Rates of GST filter [see the classification of Goods or services being supplied and rate of GST applicable on goods/services being supplied]

Key Points to Note

- Consider rate of schedule for goods as specified by the Government under Section 9 the of CGST Act, 2017 read with corresponding provision of State GST Act [*based on Harmonized system of Nomenclature (HSN)*]
- Consider rate of GST on services as specified by Government under Schedule of Service Accounting code (SAC) under Section 9 the of CGST Act, 2017 read with corresponding provision of State GST Act.
- In case of supply of goods specified in GST (Compensation to States) Act, 2017, also consider the rate of Compensation cess required to be paid at the rate specified in the Act.

Step 6: Value of supply filter [see on what value of supply, the GST is payable. As the GST is leviable on *ad valorem* basis i.e. specified percentage of taxable value, one need to determine the value of supply on which tax is payable]

Key Points to Note

- For GST, Transaction value approach has been adopted.
- Transaction value is price actually paid or payable for the supply of goods or services, where the supplier and recipient are not related and the price is the sole consideration for the supply (*Ref: Section 15 of the CGST Act, 2017*)
- Know as to what charges are includable in the value of supply? and what is the position in respect of various types of discounts given by supplier to the recipient?
- Relevant legal provisions are contained in Section 15 of the CGST Act, 2017 and Rule 27 to 35 of the CGST Rules, 2017; and Rule 31A and 32A of

the CGST Rules, 2017 for determining the value of supply in case of lottery, betting, gambling, horse racing and online gaming.

Step 7: Time of supply [see at what point of transaction, Tax payer is liable to pay tax to the Government –whether date of receipt of goods, date of receipt of payment in the books of account; date of issue of invoice, date of provision of service etc.]

- Consider legal provisions regarding “Time of supply of goods” and “Time of supply of services” contained in Section 12 and 13 of the CGST Act, 2017 respectively along with relevant definitions in Section 2 of the CGST Act, 2017 and Section 2 of the IGST Act, 2017.

3.2 Part B: 7-Steps - Procedural filters:

Step- 1. Registration filter: (Identify the number of registrations (one or more, depending on the business operations and its spread across States/UTs) and category/Type of registration to be obtained under the GST law).

Key Points to Note:

- Obtain State/UT-wise registration in which business activity exists [if business activity is spread over more than one state]
- Obtain separate registration for SEZ Unit/SEZ Developer if the taxable person also has SEZ Unit or being SEZ developer.
- If several establishments within a state, taxable person allowed to obtain separate registration for each business vertical within the same state or one registration for entire State/UT.
- They are several classes of taxable person such as Taxable person, Casual taxable person/Non-resident taxable person/TDS/TCS/Input Service Distributor/Composition taxable Person/OIDAR Services. Identify which one is applicable to the taxable person.
- Separate registration of Head office as Input Service Distributor (ISD).
- There is allocation of Unique Identify Number to UN offices/Embassy/Consulate.
- Application for Registration to be filed electronically on GSTN platform.

Legal Provisions to be referred:

- Section 22 to 30 of the CGST Act, 2017.
- Section 139 of the IGST Act, 2017
- Rule 8 to 18 of the CGST Rules, 2017
- FORM GST REG-01 to FORM GST REG-31..

Step 2: Tax Return Filter: [see and identify : Type, frequency and due date prescribed for filing various returns under GST law.]

Key Points to note:

- Know the returns to be filed such as details of outward supplies (*section 37*) /details of inward supply and input tax credit (*section 38*)/ Return (monthly/quarterly) (*section 39*)/ First return (*Section 40*)/ Annual Return (*section 44*)/ final return (*Section 45*) /Information return (*Section 150*).
- Know frequency of return such as one time return or Periodical return.
- In case of periodical return, find out periodicity of filing return such as monthly/Quarterly /annually.
- Know that Returns are to be filed electronically on GSTN platform. So determine and familiarize as to how one is going to do it in real environment.]
- Know late fee/fine (in case of failure to furnish information return) prescribed that is required to be paid in case of delay in filing return (*section 47 of CGST Act, 2017*).
- Find out other consequences of non-filing of returns such as issuance of notice (*Section 46*)/ cancellation of registration (*Section 29(2)*), assessment of non-filers (*Section 62*), denial of input tax credit to the recipient of supply (*Section 16*);
- Single return for CGST/SGST/UTGST/IGST/CESS i.e. in other words, no separate returns for SGST/UTGST/CGST/IGST/CESS.

Legal Provisions to be referred:

- Section 37 to 47 and Section 150 of the CGST Act, 2017
- Rules 59 to 89 of CGST Rules, 2017
- FORM GSTR-1 to FORM GST-11.

Step 3. Payment of Tax filter: [see as to what is the due date prescribed for payment of tax to the Government. Also identify the various modes available for making payment of taxes and most appropriate mode of payment for one as taxable person].

Key Points to Note:

- Identify due date for payment of taxes to the Government. For different classes of taxpayer and different types of return, the different due dates have been prescribed.
- Self-assess the taxes on monthly basis (quarterly basis in case of composition taxable person) and pay the taxes on or before due date.
- Decide the mode through which you will be paying taxes. Tax can be paid through internet banking, by using debit/credit card; NEFT or RTGS.
- Failure to pay taxes by due date to the Government to attract interest @ rates fixed by Government and the return filed to be considered as invalid return. Delay of more than 30 days in making payment of self-assessed taxes to attract penalty of 10% of tax amount paid late.

- In case of return filed being “invalid return”, it will result in denial of Input Tax Credit (ITC) to the recipient of supplies made by such tax payer.
- Frequent delay in making payment of taxes also to affect Tax compliance rating as well as result in imposition of mandatory penalty on the taxpayer.

Legal provisions to be referred

- Section 49 to 52 of the CGST Act, 2017
- Rule 85 to 88 of the CGST Rules, 2017
- FORM GST PMT-01 to GST PMT-07 and GST PMT-09;

Step-4. Input Credit Filter [see on what inputs, input services and capital goods, Input tax credit is available]

[Key Points to Note:

- SGST/UTGST/CGST/IGST paid on inputs, input services and capital goods is available as Input Tax Credit if such inwards supplies of goods/services are used in the course of business or furtherance of business.
- There are certain negative list of inward supply of goods and services on which input tax credit is not admissible as given in Section 17 (5) (b) of the CGST Act, 2017
- Input tax credit is not admissible for inward supplies of goods and services which are not used for business. In case of partial use for business and partial use for other than business purpose, the credit is restricted to the amount attributable to supplies of goods/services used for business.
- Input tax credit is also not admissible on inward supplies of goods and services used for making non-taxable supplies or Nil rated supplies or fully exempted supplies. However, it is available for making zero rated supplies/ deemed export.

Legal Provisions to be referred:

- Section 16 to 21 of the CGST Act, 2017.
- Rule 36 to 45 of the CGST Rules, 2017
- FORM GST ITC-01 to FORM GST ITC-04

Step 5. Refund Filter: [see as to when and under what situations refund is available? How to file application and what are prescribed documents to be filed along with application for claim of refund?]

Key Points to note:

- Refund of Tax, interest, penalty, fee paid is available in following situations:

- Export of goods/Services or zero rate supplies [refund of tax paid on zero rated supplies or refund of taxes paid on inputs /input services used in making zero rated supplies].
 - Refund of Un-utilized Input Tax credit accumulated on account of inverted duty structure where rate of tax on outward supplies (other than nil rated or exempted supplies) is less than the rate of tax on inputs.
 - Deemed exports of the goods/ services.
 - Finalization of provisional assessment.
 - Payment of tax wrongly treating inter-state supply as intra-state supply.
 - Refund Claim of balance credit in electronic cash ledger by casual Taxable person or non-resident tax person by discharging tax liability from advance tax deposited.
 - Refund claim of taxes paid by specified UN agencies/consulate/embassy/ class of person notified by Government.
 - Refund claim arising out of the order passed by the Adjudicating Authority/ Appellate Authority/ Appellate Tribunal or Court, which has attained finality.
 - Refund claim of any tax paid in excess.
 - Refund of Integrated tax to international Tourist.
- Period of 2 years from relevant years prescribed for filing claim for refund and period of 2 months prescribed from the date of receipt of complete application for grant of refund claim.
 - Interest to be given at the prescribed rate (not exceeding 6%) in case of delay in grant of refund claim.
 - Provisional refund up to 90% of the refund amount allowed on export of zero rated supply of goods and services within 7 days of acknowledgement of refund claim.
 - Refund claim to be filed electronically on GSTN platform along with prescribed documents.

Legal Provisions to be referred:

- Section 54 to 58 of CGST Act, 2017
- Section 77 of the CGST Act, 2017 and Section 15 of the IGST Act, 2017.
- Section 17 and 19 of the IGST Act, 2017.
- Notifications issued under Section 55, 56 and 147 of the CGST Act, 2017.
- Rule 89 to 97 A of the CGST Rules, 2017.
- FORM RFD-01 to GST RFD-11.

Step-6: Dispute Resolution Filter: [Be aware of the dispute resolution mechanism provided in the GST Law]

Key Points to Note:

- There is time bound disposal of dispute at adjudicating authority level.
- Time limit of 3 years/ 5 years prescribed from relevant date for issuance of adjudication order in cases other than of fraud/willful mis-statement /suppression of facts and in case involving fraud/willful mis-statement/suppression of facts respectively.
- Specified timelines for issuance of notice and adjudication of cases. Section 73(2) /Section 74(2) specifies timelines for issuance of SCN.
- Suitable Appellate mechanism of Appellate Authority/Appellate Tribunal/High Court/ Supreme Court prescribed.
- Concept of pre-deposit of prescribed percentage of amount of tax in dispute before admission of appeal at the level of appellate authority/ Appellate Tribunal to the extent of 10% in case of appeal to Appellate Authority and additional 20% in case of appeal to Appellate Tribunal is required to be pre-deposited.
- 100% of amount being disputed (subject to upper ceiling) is required to be paid before filing appeals to HC/SC.
- Concept of Advance Ruling and Appellate Authority of advance ruling has been incorporated in the GST law as a measure of dispute avoidance.

Legal Provisions to be referred:

- Section 107 to 121 of the CGST Act, 2017 [dealing with Appeal and Revision]
- Rule 108 to 116 (including rules 109A and 109B) of the CGST Rules, 2017 (for GST Appeal/Revision)
- FORM GST APL-01 to FORM GST APL-08
- Section 95 to 106 of the CGST Act, 2017 [dealing with advance Ruling]
- Rule 103 to 107 (including 107A) of the CGST Rules, 2017 (for Advance Ruling)
- FORM GST ARA-01 to FORM GST ARA-03 (GST Advance Ruling).

Step 7: Penalty/Fee/Fine/Interest Payment Filter: *[Be familiar with the legal provisions dealing with imposition of penalty for various offences as provided in the law].*

Key Points to Note

- 21 types of offences have been listed in section 122 of the CGST Act, 2017 and penalty has been prescribed for these offences.
- Penalty prescribed for relatively serious offences is of mandatory & non-discretionary nature.

- Law also provides for general disciplines related to penalty. It incorporate concept of “minor breaches of law” and provides that the penalty imposed to be commensurate with the degree and severity of the breach.
- In serious offences, law provides for launching of criminal proceeding seeking imprisonment of offenders as well as provision for compounding of offences.
- Discretionary powers with the adjudicating authority to impose lesser penalty are very limited and are available in case of offences of relatively non-serious in nature.
- Law provides enabling tools to the officer to achieve effective enforcement such as inspection, search, and seizure (*Section 67*); power to arrest (*section 69*); power to summon persons (*section 70*), access to business premise (*section 71*) and put obligation on other officers specified to assist proper officers (*section 72*). Section quoted are of the CGST Act, 2017.

Legal Provisions to be referred

- Section 122 to 131 of the CGST Act, 2017 [for penalty and offences - civil proceedings].
- Section 132 to 138 of the CGST Act, 2017 [for criminal proceedings].

Other Important Filters: Invoice Filter and Accounts & Record Filter [see as to what information must be there on invoice so that recipient of supply could take Input Tax Credit]

- There are other two important procedural requirement relating to issue of invoice/Bill of Supply (sections 31-34 of the CGST Act, 2017 /Accounts & records (Sections 35-36 of the CGST Act, 2017]. Please look at these provisions carefully from compliance angle.
- Also see Rules 46 to 55 of the CGST Rules, 2017 (for Invoice, Debit and Credit Note); and Rules 46 to 55 of the CGST Rules, 2017 (for Accounts & Records).

[For detail understanding on each of the subject listed above, refer to the topic-wise summary sheets/ e-books which will be made available shortly. The same may be gone through carefully for the purpose of improved understanding of the subject matter as well as being on the right side of the law.

Abbreviations Used in the Document

- CGST: Central Goods and Services Tax
- CGST Act: Central Goods and Services Tax Act, 2017
- CGST Rules: Central Goods and Services Tax Rules, 2017
- GST: Goods and Services Tax

- GSTN: Goods and Services Network
- HSN: Harmonized System of Nomenclature
- IGST: Integrated Goods and Services Tax
- IGST Act: Integrated Goods and Services Tax Act, 2017
- OIDAR: Online Information Database Access and Retrieval
- NEFT: National Electronic Funds Transfer
- RTGS: Real Time Gross Settlement
- SEZ: Special Economic Zone
- SGST: State Goods and Services Tax
- SGST Act: State Goods and Services Tax Act, 2017
- UTGST: Union Territory Goods and Services Tax
- UTGST Act: Union Territory Goods and Services Tax Act, 2017
- TCS: Tax collected at Source
- TDC: Tax Deducted at Source

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