

Decoding the Model GST law

Impact on Entertainment and Media sector

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India on the brink of GST

The current Indirect tax regime in India provides for a complex tax environment due to multiplicity of taxes, elaborate compliance obligations and tax cascading.

There has been significant progress on the GST front recently. With the release of the draft Model GST Law on 14 June 2016, a major milestone has been achieved, and we have certainly moved a step closer to GST. It is expected that the Government would push for passage of the GST Constitution Amendment Bill during the upcoming Monsoon session. India finally seems to be on the cusp of implementing this much-awaited tax regime.

In the light of the above developments, industry would now need to analyse the provisions of the draft law in detail, and examine its impact on their business. This is essential to ensure that timely representations are made to the Government, as well as to identify key implementation requirements as part of the preparations for transition from the existing indirect tax regime to GST regime.

In the ensuing paragraphs, we have sought to identify the key aspects of the Model GST Law as may be relevant for the Entertainment and Media industry.

1. Industry will now also need to pay State GST

As per the structure of the GST law, each intra-State supply would attract Central GST as well as State GST. For inter-State supply, IGST would be applicable. The draft Model GST Law contains provisions to determine the place of supply in each case.

Place of supply for broadcasting services would be determined based on the location where the cable connection or dish antenna is installed. Direct to Home ('DTH') operators would be required to determine the customers' location, as SGST would accrue to the state where the cable connection or dish antenna is installed. In case of paper vouchers, location of the cable connection or dish antenna may not be known at the time of sale of such vouchers. Further, such paper vouchers are actionable claims, which will add to the ambiguity. There should be clarity on this aspect.

Currently, service tax being a central levy, an option of centralised registration is available, and hence the place of supply of services is not very relevant. However, considering that states will also charge SGST, and considering the absence of a centralised registration option, determination of place of supply becomes crucial.

Video streaming services provided by an entity located outside India to subscribers (private individuals) may become taxable under reverse charge, if the payment exceeds a threshold limit, which is not specified in the draft law. However, there is no clarity on how this scheme would be operationalised.

Key Action points

- Update customer database to ensure correct raising of invoice
- Revamp IT system to be in line with place of supply for various transactions
- File representation for continuation of centralised registration option for CGST

2. Valuation

Presently, the value of taxable services is the gross amount charged by service provider. Normally, the area of dispute by the tax authorities relates to the probable addition of reimbursements to the value of taxable services.

Under the GST regime, the entire concept of taxing services is proposed to be changed. Transaction Value would be considered for payment of tax, with various inclusions defined under the GST Valuation Rules. In case the proper officer has reason to doubt the truth or accuracy of the value declared, he has the power to examine transaction value put to tax. This would mean an additional burden on the taxpayers, as it would involve satisfying the tax authorities of the truth or accuracy of the transaction value.

This may further entail determination of value by comparison, computed or residuary method. The taxpayer would be required to submit documents substantiating the cost of provision of services, amount towards profit,

and general expenses, etc. In other words, the new Valuation concept for services would require in-depth preparation of backup documentation by the taxpayer. This is not warranted under the current service tax law.

Key Action points –

- There is a need for representation that since the services are not comparable to one another, the concept of market value will lead to challenges for service providers, and should be done away with.
- Service providers have to be mindful while setting prices for services provided by them, and would need to take the prevailing market prices into consideration.
- Representation for dilution of the valuation provisions as they apply to services.

3. Discounts

Post-supply discounts will not be included in the transaction value if it is established as per the agreement and is known at, or before, the time of supply. Year-end discounts and discounts offered on achieving a target will also be excluded if they could be specifically linked to relevant invoices against which discount has been offered.

Key Action points

- The agreements to be revisited to recognise discounts in advance in order to avail the benefit of excluding post-supply discounts from the transaction value.
- IT systems to be revamped in order to track invoices pursuant to which discounts are provided

4. Barter and exchange

Barter and exchanges are quite common transactions in the entertainment and media sector. The term supply under GST law specifically includes barter and exchange. However, there are no specific provisions to determine the value of barter and exchange, which will lead to practical difficulties.

Key Action points

- The valuation of transactions under the barter system has to be done meticulously by the service providers. The value should be comparable to same or similar services provided by other service providers in the market.

5. Free services

Presently, as per the definition of the term 'service', only those activities which have a consideration are liable to service tax.

The Model GST Law proposes to also tax services by a taxable person to another person in the course of furtherance of business, without any consideration. This proposal could have far-reaching implications, as identification and value attribution for such supplies could be challenging. For example, viewing of news channels for limited period of time, free music downloads, free subscription for limited period, etc. could be subject to GST.

Key Action points

- The industry should represent that instances of free supply of services, which would be taxable, should be specified in the GST legislation.

6. Input Service Distributor concept ('ISD')

ISD concept has been proposed for transfer of credit of input services between two or more locations. ISD can transfer credit of all types of GST (CSGT, SGST or IGST). Further, ISD can be any supplier of goods or services. Considering the possibility of multiple registration state-wise, ISD could be used as a tool to ensure optimal utilisation of head office-related credit, hence resulting in actual reduction in cost.

Key Action points

- Locations to be identified where there may be accumulated credit and insufficient output liability – ISD registration may be taken in such State to distribute credit to other locations
- Revamp IT systems for such changes

7. Impact on ongoing contracts

Specific transition provision has been stipulated *vide* Section 160 for periodic supplies as under:

‘160. Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day if the consideration for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law’

As per the above, it appears that in case of periodic supply of goods/ services, GST Act would not apply on advances received prior to GST law for goods/ services to be provided during GST regime, provided tax has been paid on the same. This provision does not cater to a scenario where tax has not been paid, but is payable under the earlier law post enactment of GST regime.

Also, there is no provision for treatment of supplies prior to GST law where, either the invoice has not been raised, or payment has not been received, or tax has not been paid prior to enactment of the GST law. This could result in dual taxation both, under the previous regime as well as under the GST regime.

Coverage of the transition provision needs to be analysed to check whether implications for all possible transactions during the transition period are clear. Accordingly, necessary representation would need to be filed for clarity in transition provisions.

Key Action points

- To analyse tax liability for all ongoing projects (likely to overlap with GST implementation) in line with transition provision
- Transition planning for timing of supplies, advances and payment of tax
- Representation to be filed to provide less ambiguity on transition provision for ongoing contracts

8. Input Tax Credit

Scope

The definition of capital goods has been drafted on the same lines as the existing CENVAT Credit Rules, 2004. Inputs has been defined as anything other than capital goods. Input services includes services used or intended to be used for outward supply in course of business

However, such terms have not been used in the provision for claiming credit (which refers to only input tax without any reference to inputs, input services and capital goods). One of the possible reasons for bifurcation into inputs, input services and capital goods appears to be for transition provisions. More clarity may be available when the subsequent Rules are issued for the same.

Also it is important to note that while the industry was expecting a liberal credit regime under GST, some of the restrictions in the current credit regime are proposed to be continued in GST regime. Further, there is a provision for proportionate restriction of credit when any goods (including capital goods) and/or services are used in providing taxable as well as exempt supplies. This is more restrictive than the current regime, where capital goods used for taxable as well as exempt activities are not subject to any restrictions on credit. The industry should consider filing representations for a more liberal credit regime under GST.

Since entertainment tax is getting subsumed in GST, it will result in persons liable to pay entertainment tax coming under the GST chain, and consequently, becoming eligible for credit of GST paid on procurements. This will be a positive for businesses such as cinema exhibitors, etc.

Reconciliation of inward and outward supplies

If there is a mismatch between the details of outward supplies uploaded on the GST Network by vendors and the inward supplies uploaded by the recipient, such mismatches will be communicated to the recipient.

If the mismatch is not rectified by the vendor in the month of communication, the recipient will be liable to pay the differential GST along with interest in the subsequent month. This provision places the liability for non-compliance on the recipients, i.e., the companies, as against their vendors.

Similar provisions have been prescribed wherein details of credit notes issued by a supplier have to match with the corresponding reduction of input tax credit claimed by the recipient. Accordingly, if the recipient does not adjust the input tax credit, the tax and interest would be recovered from the supplier. This provision places liability on companies for non-compliance by vendors.

Key Action points

- Representation to be filed for a more liberal credit regime
- Representation on the premise that placing the responsibility on the company for non-compliance by vendors will cause unnecessary hardship to the companies.

9. Territory

The GST Act extends to the whole of India. Currently under the service tax law, J&K has been excluded. In other words, J&K is included under the GST Act. Hence, service providers would now not be required to bifurcate their services between J&K and the rest of India.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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