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Supply – Taxable Event under Model GST Law – inclusive and subjective

With step-by-step progress towards Goods and Services Tax (“GST”), the Country is all set to witness the biggest indirect tax reform of unmatched importance in independent India. GST would mark a paradigm shift in the indirect taxation of our Country and the concept of origin based taxation as practiced currently, would no longer be there. In line with the global practices, concept of destination based taxation would usher in under GST. At the same time, 17 of the major taxes levied under the Indirect taxation i.e. Central Excise, Service tax, VAT/CST etc., would be subsumed under the ambit of GST, resulting in change of the taxable event as well.

“SUPPLY” – the taxable event under the Model GST Law

In GST, a uniform and single taxable event ‘supply’ would replace multiple taxable events i.e. manufacture, provision of service and sale, etc., as prevalent in the present regime. Thus, the constant monitoring and compliance required for keeping track of varied tax trigger points at present would fade away in GST, but, simultaneously, the term ‘supply’ will hold the greatest significance and shall be important in determining the taxability of all transactions, whether commercial or otherwise under GST regime.

Section 3 of the Model CGST/SGST Act, 2016 [also applicable for the Model IGST Act vide Section 2(f) thereof] specifies the meaning and scope of the term supply, broadly, in the following manner:

Broad Category	Sub-section of Section 3	Particulars
	1	Supply includes :
Normal supply of goods and/or services	1(a)	All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business .
Import of service	1(b)	Importation of service, whether or not for a consideration and whether or not in the course or furtherance of business .

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Broad Category	Sub-section of Section 3	Particulars
Supply Without consideration	1(c)	A supply specified in Schedule I (Matters to be treated as supply without consideration), made or agreed to be made without consideration.
Supply of goods v/s Supply of services	2	Schedule II (Matters to be treated as supply of goods or services), in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as either supply of goods or supply of services.
Principal - Agent Transaction	2A	Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.
Power(s) of Central/State government	3	Subject to sub-section 2, the Central or a State Government may, upon recommendation of the GST council, specify, by notification, the transactions that are to be treated as:- (i) a supply of goods and not as a supply of services; or (ii) a supply of services and not as a supply of goods; or (iii) neither a supply of goods nor a supply of services.
Branded service by an aggregator under trade or brand name	4	Notwithstanding anything contained in sub-section 1, the supply of any branded service by an aggregator, as defined in sec 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.

Inclusive definition of term 'supply'

Despite being the first step for taking off under GST regime, the Model GST Law has chosen to define 'supply' in an inclusive manner, without even defining what 'supply' actually means. Thus, the proposed definition of the term 'supply' under the Model GST Law suffers

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from ambiguity as it starts with the word “*Supply includes....*”. It is crucial here to note that the term “includes” is generally used to expand the meaning of the former word. Even, the wide import of term “includes” has been settled in number of judicial pronouncements to establish that its usage expands the meaning. In the case of ***Doypack Systems (Pvt) Ltd. Vs. Union of India [1988 (36) ELT 201 (SC)]***, the Hon’ble Supreme Court has interpreted the meaning of the term ‘includes’, as **“It is well settled that the word ‘includes’ is an inclusive definition and expands the meaning.”**

Similarly, in the case of ***Tata Consultancy Services Vs. State of Andhra Pradesh [2004 (178) ELT 22 (S.C.)]***, the Hon’ble Supreme Court has interpreted the meaning of the word ‘includes’, to suggest that **“...When the word ‘includes’ is used in an interpretation clause, it must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. [See Scientific Engineering House Pvt. Ltd. v. Commissioner of Income-tax, Andhra Pradesh (1986) 1 SCC 11].”**

Manifestly, the settings of the definition of ‘supply’ as adopted by legislature, leaves the interpretation of the term ‘supply’ open for all, including tax payers and the Centre & the State Governments, which would lead to bizarre outcomes. The prudent approach here could have been to draw the meaning of such a crucial definition in crystal and definitive manner. Here, it would not be out of place to look at the meaning of term supply, as adopted in the other countries like Canada, Malaysia where GST is applicable.

Under Canadian Goods & Services Tax **“supply means the provision of property or a service in any way, including sale, transfer, barter, exchange, licence, rental, lease, gift, or other disposition”**. Similarly, under Malaysia Goods & Services Tax, where GST made applicable with effect from April, 2015, Section 4 thereof defines supply as **“subject to subsections (2) and (3), “supply” means all forms of supply, including supply of imported services, done for a consideration and anything which is not a supply of goods but is done for a consideration is a supply of services.....”**

Keeping in mind, the importance the term supply would entail in GST, the term supply could have been defined in exhaustive manner to ensure the boundaries restricting any sort of wide interpretation of the taxable event.

To add more woes, Section 3(1)(a) of the Model CGST/SGST Act, uses the term “such as” while covering all forms of supply of goods and/or services under the taxable net. Thus, all or any form of supply which is made for a consideration by a person in the course or furtherance of business, would be supply to attract GST. Even barter and exchange would be taxable under GST. Furthermore, the Model GST Law has gone a step ahead to even tax the supplies made without consideration as per Schedule I. The Schedule I to the Model

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CGST/SGST Act, comprises of a list of matters/ transactions, which would be treated as 'supply without consideration', which are as under:

- Permanent transfer/disposal of business assets.
- Temporary application of business assets to a private or non-business use.
- Services put to a private or non-business use.
- Assets retained after deregistration.
- Supply of goods and/or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business. But, this will not cover goods sent for job work.

Perusal of the above provisions reveals that the government wants to levy tax on each and every transaction entered by a taxable person and don't want to leave any room for charging GST. Even any business assets/ services used for private/ non-business use, shall also be treated as supply. This can be best understood with a simple example of a Company providing mobile phones to its employees, which are used for making business calls and personal calls as well. Since, use of mobile phones for making personal calls would be exigible to GST, valuation would be another problematic area and it would be an uphill task to bifurcate the usage of business assets/services to a private or non-business use. At the same time, one may also ponder as to how the department will ascertain the proportion of personal and business use or administer such transactions for levying GST.

It may not be out of place here to mention that on one hand, the credit of GST will be restricted to so much of the input tax as is attributed to the purposes of business only [as per Section 16 of the Model CGST/SGST Act], but, on the other hand, GST would be payable on business assets/services put to a private or non-business use. Thus, the assesses would have despaired from both the sides.

In the light of above discussions, it is critical that the lawmakers should wake up to the realities of the situation and ensure to have concrete taxable base by defining the term 'supply' in clear and unambiguous manner, which is the pivotal term under the proposed GST regime, that would be the centric point to determine levy & collection of GST. Knowingly or unknowingly, the Model GST Law has sown the seeds for another series of fresh litigation, which the present indirect taxation is crippled with, when it comes to determining the test of manufacture for levy of Excise duty or rendering of services to levy Service tax. The law is striving hard even as on date to settle down after several decades of jurisprudence. It would indeed be quite interesting to watch how the term supply is re-defined, amended, explained, substituted in the Final GST Law, keeping in mind the long trodden path so far.

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Time of Supply & Place of Supply of Goods and/or Services under GST

GST is going to be big game changer and the prevailing concepts of manufacturing of goods/ provision of services/ sale of goods would no longer be relevant as tax would be levied on 'supply' of goods and/or services and common base has to be arrived at for levy & collection of GST in all cases.

Closely linked to the taxable event of 'supply', are the principles governing the place of supply to determine the taxing jurisdiction as GST essentially seeks to replace an origin-based tax levy currently prevailing in India, with a destination-based consumption tax levy. Whenever there is a supply of goods, it may be comparatively easier to identify the place of supply, however, in case of supply of services, it would lead to chaos if no mechanism is established since there is no physical movement unlike goods.

Thus, under GST regime, the principles of time of supply and place of supply, undoubtedly, would play the crucial role.

Understanding provisions of 'Time of supply' under the Model GST Law

POT is referred to the point of time, when a transaction is to be taxed. Thus, we need to understand when liability to pay CGST/SGST (Intra-State Supply) and IGST (Inter-State Supply) will arise. For determining time of supply for goods and services, separate provisions have been prescribed under Chapter-IV of Model CGST/SGST Act, 2016 ("**Model CGST/SGST Act**"), applicable to levy of IGST vide Section 27 of Chapter-IX of the Model IGST Act, 2016 ("**Model IGST Act**").

I: Time of supply of goods

A. For normal supply: CGST/SGST and IGST on the goods shall be payable at the earliest of the following dates on which:

- (i) Goods are removed for supply to the recipient (for goods required to be removed);
- (ii) Goods are made available to the recipient (for goods not required to be removed);
- (iii) Invoice is issued by supplier;
- (iv) Payment is received by supplier;
- (v) Recipient shows receipt of goods in his books of account.

B. For continuous supply of goods:

Situation	Time of supply
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Successive statements of accounts or successive payments are involved	Date of expiry of the period to which such successive statements of accounts or successive payments relate	
No successive statements of account	Date of issue of invoice (or any other document) or Date of receipt of payment	Whichever is earlier

C. For supply of goods under reverse charge: Time of supply shall be the earliest of the following dates of:

- (i) Receipt of goods,
- (ii) Payment,
- (iii) Receipt of invoice,
- (iv) Debit in books of account.

II: Time of supply of services

A. CGST/SGST and IGST on the services shall be payable at the earliest of the following:

	Situation	Time of supply	
1.	Invoice issued within prescribed period	Date of issue of invoice or Receipt of payment	Whichever is earlier
2.	Invoice not issued within prescribed period	Date of completion of the provision of service or Receipt of payment	Whichever is earlier

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3.	Not falling under (1) or (2) above	Date on which the recipient shows the receipt of services in his books of account
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B. For continuous supply of services:

Situation	Time of supply	
Where due date of payment is ascertainable from the contract	Date on which the payment is liable to be made by recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier	
Where due date of payment is not ascertainable from the contract	<u>Each such time when the supplier of service-</u> Receives the payment or Issues an invoice	Whichever is earlier
Where the payment is linked to the completion of an event	Time of completion of that event	

C. Supply of services under reverse charge: Time of supply shall be determined in same manner as in case of goods discussed supra.

Understanding Place of supply of goods and/ or services

At first place, the importance of determination of place of supply, lies in identification of nature of supply as 'Inter-State' or 'Intra-State', based on which CGST & SGST/ IGST would be applicable. Similarly, principles of place of supply hold importance for determining imports and exports of goods and/or services, for which one of the condition is that place of supply should be in India (for imports) and out of India (for exports).

Principles for determining place of supply of goods:

Section 5 of the Model IGST Act governs the principles of place of supply for goods as under:

Scenario	Place of supply
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When movement of goods is involved	Location of goods where movement terminates for delivery
When goods are supplied by transfer of documents during movement of goods (Bill to Ship to Model)	Principal place of business of third person on whose direction goods were supplied to another person.
When movement of goods is not involved (like sale of goods at showroom)	Location of goods at the time of delivery
When goods are assembled or installed at site	Place of such installation or assembly
When goods are supplied on board a conveyance (like food supplied by Indian Railways on journey)	Location at which such goods are taken on board

Principles for determining place of supply of services:

Section 6 of the Model IGST Act governs the principles of place of supply of services in following 3 broad categories:

- General Rule - B2B and B2C
- Specific Rules for identified situations
- Place of supply of services are different for B2B and B2C Supplies for certain specified services

The principles of place of supply for services are tabulated hereinbelow for ease understanding:

S. No.	Services	Place of supply of services
1	General Rule	<u>B2B supplies:</u> location of recipient <u>B2C supplies:</u> location of recipient where address on record exists, If not, then the location of supplier of services
Specific Rules for identified situations & different treatment for certain B2B and B2C of specified services		
1.	Immovable property related services	Location of immovable property Where property / vessel located in more than one

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		state- proportionate allocation amongst states as per the contract or on reasonable basis
2	Performance based services	Place of actual performance --> Specific services covered such as supply of restaurant and catering services, health service etc.- place of performance Services in relation to training and performance appraisal- <u>B2B supply:</u> location of recipient <u>B2C supply:</u> place of performance
3	Event based services	Admission and ancillary services: Place where event held or where the park/ other place is located Organization of event and services in relation to such event and ancillary services or assigning of sponsorship: B2B supply: location of recipient B2C supply: where event is held Proportionate value of services to be considered where the event is held in more than one State and a consolidated amount is charged
4	Goods transportation services	<u>B2B supply:</u> location of recipient <u>B2C supply:</u> location at which such goods are handed over for their transportation
5	Passenger transportation services	<u>B2B supply:</u> location of recipient <u>B2C supply:</u> Place where the passenger embarks on the conveyance for a continuous journey
6	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
Similarly principles of place of supply has also been prescribed for Telecommunication services including data transfer, broadcasting, cable and DTH services, Banking and other financial services, Insurance services, Advertisement services to the Central Government, a		

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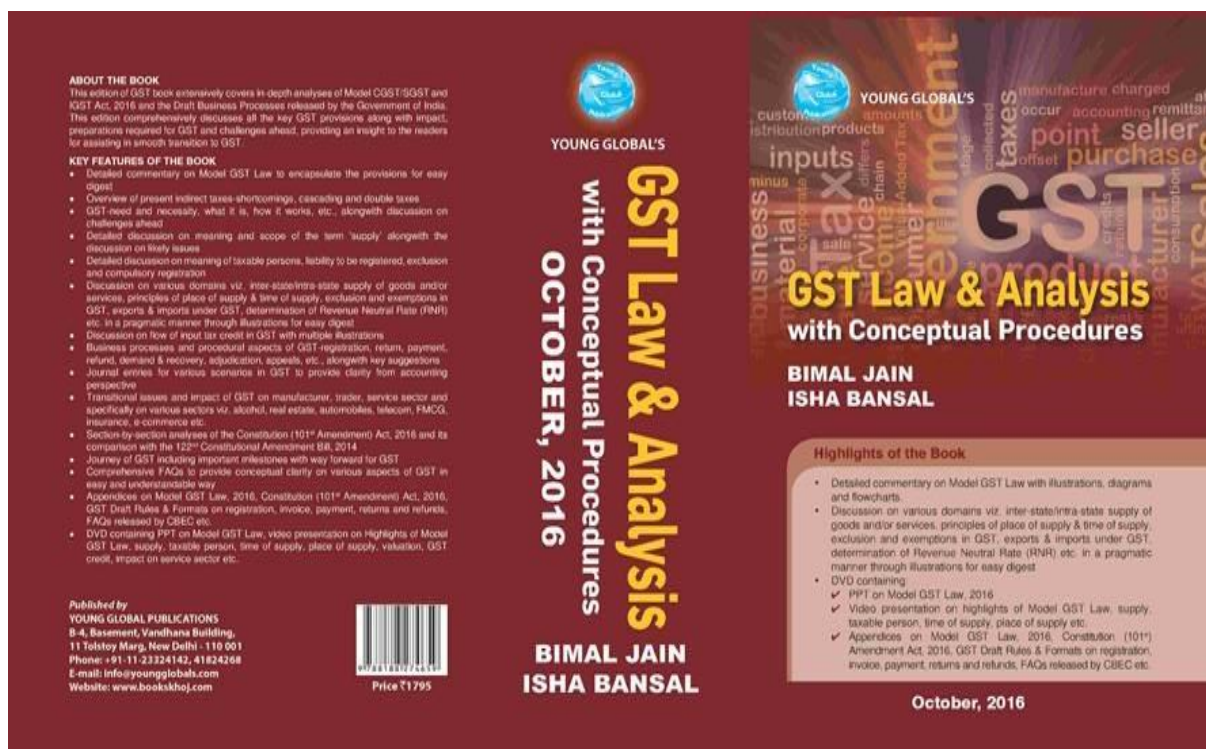
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State Government, a statutory body or a local authority.

Apparently, there are numerous parameters given under the Model GST Law, for determining 'time of supply' and 'place of supply' for goods & services, which may be a major challenge initially for successful transition.

OUR GST BOOK (2ND EDITION) RELEASED, TITLED "GST LAW & ANALYSIS - WITH CONCEPTUAL PROCEDURES"

With the blessings of the Almighty God and your best wishes & gratitude, we are pleased to announce release of our book on GST, titled, "**GST LAW & ANALYSIS – WITH CONCEPTUAL PROCEDURES**" (2nd Edition), covering detailed commentary on Model GST Law and Draft Business Processes along with FAQs & practical illustrations/ diagrams/ flowcharts of various aspects of GST in respective chapters of the book along with DVD containing PPT on Model GST Law, Videos on various aspects of Model GST Law, Draft Rules on Registration, Payment, Invoice, Return and Refund, etc.



For detailed contents, please access the following link of slides:

<http://www.slideshare.net/Youngglobal/gst-law-analysis-with-conceptual-procedures-with-free-dvd-october-2016>

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This book can be ordered online at:

- <http://www.bookskhoj.com/ViewDetails.aspx?viewId=8728>

Or order it from your local supplier across the Country.

Videos on GST:

Watch the following video presentations to understand the intricacies of taxable event i.e. Supply under GST along with principles of time of supply and place of supply of goods and/or services:

- **Highlights of Draft GST Law, 2016:** <https://www.youtube.com/watch?v=7ByfCXugAk0>
- **Presentation on Draft GST Law - Levy, Taxable Event: Supply, Taxable Person, Composition Scheme:** <https://www.youtube.com/watch?v=XrWHZMZf8GQ>
- **GST impact & preparedness for Service sector:** <https://www.youtube.com/watch?v=0Hwh92GSm-A>
- **GST Preparedness & Implementation on SME & MSME Sector:** <https://www.youtube.com/watch?v=WlmKDQdCdkA>
- **Supply, Time of Supply (POT) and Place of Supply for Goods and Services in GST:** <https://www.youtube.com/watch?v=7M5dqp0CZoY>
- **Highlights - GST ITC, Job work, ISD and Draft Rules on Registration, Invoice, Payment, Returns & Refund:** <https://www.youtube.com/watch?v=Gr6yzpU1gZY>

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards,

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