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Dear Professional Colleague,

Meaning and Scope of 'Supply' – Comparative view under Revised Model GST Law vis-à-vis Earlier Model GST Law

Whilst the Government is keen to make Goods and Services Tax ("GST") a reality by envisaged April 1, 2017 deadline, efforts put in by the Government to look into the voluminous suggestions submitted by various stakeholders, on First cut Model GST Law (put on public domain on June 14, 2016), is indeed commendable. Honest attempt of the Government to eradicate the daunting provisions in the earlier Model GST Law, can be very well seen in the Revised Model GST Law which was made public on November 26, 2016.

Apart from addressing key concerns of the Industry in a very decent manner, the Revised Model GST Law has also proposed an anti-profiteering mechanism to ensure benefit of lower taxes is shared with consumers, and also ensures no tax on securities and subsidies provided by the Government as also free of cost supplies.

In our series of newsletters, we would be highlighting the changes made in each component of the Model GST Law along with decoding the changes brought in along with their implications, for easy digest. To start this journey of rendezvous with the Revised Model GST Law, the first part of the newsletter, deciphers the meaning of the taxable event i.e. Supply under GST.

Supply – the taxable event in GST

Determination of the taxable event in any tax law is of utmost significance as the levy of tax is based on occurrence of that event. In the Model GST Law, 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.

Like the Earlier Model GST Law, definition of term 'supply' is contained in Section 3 of the Model CGST/SGST Act, 2016. A comparative view of the provisions is given hereunder for easy digest:

Section	Sub	Earlier Model GST Law	Revised Model GST Law
3	(1)	Supply includes	Supply includes

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	(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	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
No changes		<ul style="list-style-type: none"> • Definition of 'supply' still continues to be an inclusive and subjective one 	
	(b)	importation of service, whether or not for a consideration and whether or not in the course or furtherance of business	importation of services, for a consideration whether or not in the course or furtherance of business, and
Corresponding provision in Schedule I			<p><u>Following inserted in Schedule I – Para 4:</u></p> <p>Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business</p>
Gist of the changes		<ul style="list-style-type: none"> • Importation of services without consideration out of taxable net, except for following specified scenarios: <ul style="list-style-type: none"> ✓ Importation of services by a taxable person from a <u>related person</u>, in the course or furtherance of business ✓ Importation of services by a taxable person from <u>any of his other establishments outside India</u>, in the course or furtherance of business • Importation of services for personal use still continues to be considered as a supply 	
	(c)	a supply specified in Schedule I, made or agreed to be made without a consideration	a supply specified in Schedule I, made or agreed to be made without a consideration
No changes		<ul style="list-style-type: none"> • Concept of supply without consideration still continues but Schedule I revamped to done away with nightmare situations like Business Assets/ services put to private or non-business use, Assets retained after deregistration, FOC Supplies, etc. 	

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	(2)	Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services	Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services
No changes		<ul style="list-style-type: none"> • Supply of goods Vs. Supply of services still continues with minimal changes 	
	(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	Omitted
Corresponding provision in Schedule I			<p><u>Following inserted in Schedule I – Para 3:</u></p> <p>Supply of goods—</p> <p>(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or</p> <p>(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal</p>
Gist of the changes		<ul style="list-style-type: none"> • Taxability of Principal-Agent transactions has been shifted from the definition of supply to Schedule I. But there are following important changes underlying this shift: <ul style="list-style-type: none"> ✓ <u>FOC Principal-Agent transaction also covered under taxable net</u> ✓ <u>Taxability restricted to goods only</u> 	
	(3)	----	<p>Notwithstanding anything contained in sub-section (1),</p> <p>(a) activities or transactions specified in schedule III; or</p>

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			(b) activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV, shall be treated neither as a supply of goods nor a supply of services
Gist of the changes		<ul style="list-style-type: none"> • Certain exclusions have been provided in Schedule III and IV which would be out of taxable net. • Schedule IV dealing with activities or transactions undertaken by the Central Government, a State Government or any Local Authority in which they are engaged as public authorities, which shall neither be treated as supply of goods nor supply of services, was also present in earlier Model GST Law. • Schedule III has been now newly added which covers activities or transactions which shall neither be treated as supply of goods nor supply of services like services by an employee to employer in course of or in relation to his employment, services of funeral, burial etc. 	
	(3) (4)	Subject to sub-section (2), the Central or a State Government may, upon recommendation of the 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	Subject to sub-section (2) and sub-section (3) , the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods; or (c) neither a supply of goods nor a supply of services
No Changes		<ul style="list-style-type: none"> • Powers of the Central or a State Government to notify transactions either as supply of goods or supply of services or neither of them, continues as such 	

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	(4)	Notwithstanding anything contained in sub-section (1), the supply of any branded service by an aggregator, as defined in section 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.	Omitted
Gist of the changes		<ul style="list-style-type: none"> The provision has been omitted in view of separate provisions inserted for taxability of services supplied through electronic commerce operator under chargeable section. Such persons would be liable to pay tax and supplies made by such persons would not be deemed supplies by them. 	
	(5)	----	<p>The tax liability on a composite or a mixed supply shall be determined in the following manner —</p> <p>(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;</p> <p>(b) a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax</p>
Gist of the changes		<ul style="list-style-type: none"> <u>Taxability of composite and mixed supplies: A new incorporation to determine taxability of bundled supplies in following manner:</u> <ul style="list-style-type: none"> ✓ Composite supply i.e. supplies naturally bundled → It shall be treated as a supply of principal supply ✓ Mixed supply i.e. two or more individual supplies or combination thereof, not constituting composite supply → It shall be treated as a supply which attracts the highest rate of tax 	

In our next Article, we would cover analyses and impact of the changes made in Schedule I to the Model CGST/SGST Act, 2016.

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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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