

TSMT UPDATE

| Goods & Services Tax | One Nation One Tax | *Supply of Goods & Services*



Foreword

The Constitution of India earlier empowered the Union Government and the State Government to levy tax on matters listed out in the Union list and the State list. The Union list provided for matters such as manufacture of goods, provision of services etc., while the State list provided for a tax on sale of goods amongst other matters.

This had created a situation of stupefaction as to what is taxed as goods and what is taxed as services and who has the power to levy such tax. For instance, a while ago, broadband usage was taxed by the Center Government as services but a State Government tried to levy VAT by classifying broadband as sale of light energy.

The Constitution of India is now amended to make room for a single indirect tax, the "**Goods and Services Tax**" (**GST**), which will be a simultaneous single levy of tax on supply of goods and services by both, States and the Union.

The GST Law seeks to levy tax on a "**Supply**" of "**Goods and Services**". We bring you this update, explaining the concept of supply and outlining what is considered as goods and what is considered as services under GST.

Goods under GST

The term "**Goods**" has been assigned an exhaustive definition under GST.

It means:

- Every kind of movable property
- Actionable claim
- Growing crops and grass and things attached to or forming part of land

Deemed to be goods

- Hire Purchase Transactions
- Transfer of business assets (*With or without consideration*)
- Assets held at the time of closure of business

It excludes:

- Money
- Securities

Services under GST

Unlike the current definition of service under the service tax law, the GST law has defined the term '**Service**' to mean **anything apart from goods**.

This essentially means, whatever cannot be classified as goods, is a service! This is a very broad & extensive definition and would include almost everything you can think of under the ambit of the law.

It also includes:

- Activities relating to the use of money for consideration
- Conversion of money for consideration

It excludes:

- Money
- Securities

Through the deeming provisions in the GST Bill and extensive definitions, the ambiguity and the raging debates on what should be taxed as goods and what should be taxed as services have been put to rest. However, we expect to still see some classification disputes focused on the correct rate of taxation as well as classification disputes in the case of composite supplies where, goods and/or services or bundled together in one transaction. Look out for our upcoming update on taxability of such composite supplies.

Supply under GST

Having discussed the concepts of goods and services, we now move on to the taxable event under the GST Law which is the "Supply" of goods and services.

The term "**Supply**" has been defined to include-

- All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal for consideration
- Import of Service whether or not in the course or furtherance of business

As with the definitions of goods and services, supply has also been defined to cover almost any transaction carried out by most businesses today.

Deemed to be Services

- Transfer of right in goods or right to use goods
- Leasing or renting of any immovable property
- Goods used for private use, with or without consideration
- Construction
- Temporary transfer of Intellectual Property Rights
- Information Technology Software
- Works Contract (Relating to immovable property)
- Restaurant / Catering
- And any other service as notified

Activities deemed to be supply even if without consideration

- Permanent transfer or disposal of business assets where input tax credit has been availed
- Supply between related persons and branches
- Gift to employees exceeding Rs. 50,000/-
- Supply from principal to agent or vice versa.
- Import of services from related

What is not supply?

- Services by an employee to employer in the course of or in relation to his employment.
- Services by any court or Tribunal
- Service of funeral, burial, crematorium or mortuary
- Sale of land and Building
- Actionable claim, other than lottery, betting and gambling
- Functions performed MP's & MLA's

Conclusion:

Due to the ambiguity in the existing law on classification of goods and services, certain class of goods and services were simultaneously taxed by both Union and States, which resulted in an increased burden of taxation and led to litigations. We believe that, a majority of such classification issues have been resolved under the GST regime, while fresh issues such as on taxation of composite supplies may become the bone of contention.

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