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TAX FLASH NEWS

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Draft GST Rules for various procedures released

Background

In an important development, the government has released a set of nine Rules covering different aspects of Goods and Services Tax (GST). Along with the GST Bills introduced last fortnight in the Parliament, these would complete the GST legislation, further speeding up the country's aim of GST implementation by 1 July 2017.

These Rules cover registration, valuation, tax invoice, credit and debit notes, input tax credit, returns, payment of tax, refunds, transitional provisions, composition levy.

We are providing below our key insights into the draft GST Rules while highlighting key facets of the same *(for detailed procedures, actual Rules may be referred to).*

Registration

- The threshold turnover limit for obtaining registration has been specified as INR2 million (INR1 million in case of special category states).
- Mandatory information to be declared by the applicant for obtaining registration includes PAN, mobile number, email address, state, etc.
- Special Economic Zone (SEZ) developer/ unit to make separate application for registration (as a business vertical) distinct from its other units located in Domestic Tariff Area (DTA) in the state.
- Specific procedure for registration prescribed for person required to deduct or collect tax at source, non-resident taxable persons, person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient.
- A concept of *suo motu* registration introduced, wherein the officer may grant registration on a temporary basis to a person pursuant to any survey, enquiry, inspection, search, etc.
- Existing registrants:
  - to migrate into GST on a provisional basis
  - to be registered state-wise under single PAN
  - existing Input Service Distributor (ISD) to obtain fresh ISD registration under GST
  - to migrate with effect from the appointed day on temporary basis (later, the registration may be cancelled at the option of registrant).

Our comments

The specified threshold shall include all taxable supplies, exempt supplies, exports of goods or services or both and interstate supplies and the same is expected to be computed on an all India basis. However, the registration would be state/Union Territory specific.

Facility for submission of information and documents and also receiving notices, certificates, orders, etc., electronically through a common portal have been provided.

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Valuation

- Value for discharging tax liability under GST would be the 'transaction value' of goods or services or both, where:
  - supplier and the recipient of the supply are not related; and
  - the price is the sole consideration for the supply.
- Instances where the 'transaction value' of supply of goods or services cannot be determined are contained in the 'Determination of Value of Supply Rules' (Valuation Rules).
- Concepts discussed under the said Rules for determining value for discharging the GST liability includes:
  - Open market value
  - Value of supply of goods or services of like kind and quality
  - 110 per cent of cost of production or manufacture or cost of acquisition of goods or cost of provision of service
  - Residual value (to be determined using reasonable means consistent with the principles and general provisions of Section 15 of CGST Bill and Valuation Rules)
  - Pure agent, in case of supply of service.
- Specific methods have also been prescribed in the Rules for determining value of supply under the following cases:

  Valuation of supply of services:

  - Purchase or sale of foreign currency
  - Booking of tickets for air travel by an air travel agent
  - Life insurance business.

  Valuation of supply of goods:

  - Second hand goods;
  - Token/ voucher/coupon/stamp (other than postage stamp).

Our comments

The Valuation Rules under GST, contain the essence of valuation rules as stipulated under the existing valuation provisions of central excise, service tax and customs. Further, the concepts discussed in the Rules, such as, open market value, supply of goods or services of like kind and quality may open a Pandora's box of litigation for assessees under the GST regime.

Valuation of stock transfer is simplified as value declared in the invoice would be considered in cases where, the recipient is eligible to take full input tax credit thus calming the anxiety of many taxpayers.

Tax invoice, credit and debit notes

The Rules prescribe issuance of specified documents, including particulars to be contained in the said documents for undertaking supply of goods or services or both:

- Tax invoice**:** to be issued in case of supply of taxable goods or services by a registered person.
- Bill of supply*:* to be issued by a registered person making supply of exempted goods or service or while paying tax under composition levy.
- Receipt voucher*:* to be issued in case of receipt of advance payment for supply of goods or services by registered person.
- Supplementary Invoice and Debit and Credit notes*:* to be issued in case where the invoice is in excess or deficit as compared to the actual value of supply, or in case of return of goods.
- Tax invoice in special cases:
  - Input service distributor
  - Insurer, banking company, Financial Institution, Non-Banking Financial Company;
  - Goods transport agency and passenger transport agency.
- Transportation of goods without invoice: The consignor may issue a delivery challan instead of invoice under the following circumstances:
  - Supply of liquid gas
  - Transportation of goods for job work
  - Transportation of goods other than by way of supply
  - Any other cases as may be notified.

  Further, where the goods are being transported without invoice under the cover of delivery challan, the same shall be declared in Form [Way Bill].

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Input tax Credit (ITC)

Every registered person is entitled to take the ITC of the tax charged on supply of goods and/or services, which are to be used or intended to be used in the course or furtherance of business.

The Rules published by the GST Council in this regard *inter alia* provide for the conditions and restrictions for availing the ITC:

- ITC shall be availed by the assesse based on the specified documents viz. tax invoice, debit note, bill of entry, document evidencing payment of tax under reverse charge, document issued by an ISD.
- Reversal of ITC would be required in case of failure to pay to the supplier, value of supply along with the tax payable thereon within 180 days from the date of issuance of invoice. The said ITC would be added to the output tax liability of registered person for the month, to be paid along with the applicable interest.
- Specific procedure has been prescribed for a banking company or Financial Institution including a Non-Banking Financial Company in respect of claiming ITC.
- Mechanism provided for distribution of ITC by an ISD:
  - ITC of IGST to be distributed as IGST
  - If ISD and recipient of ITC are located in the same state, then, ITC of CGST and SGST to be distributed as CGST and SGST, respectively;
  - If ISD and recipient of ITC are located in different states, ITC of CGST and SGST to be distributed as IGST;
  - ISD credit to be distributed monthly and formula prescribed for distributing credit to different recipients in different states.
- Procedure prescribed to claim ITC of inputs lying in stocks or inputs contained in semi-finished/ finished goods lying in stock, or the credit on capital goods to a new registrant/ registrant opting out from composition levy.
- Transfer of ITC allowed on sale, merger, amalgamation, lease or transfer of business subject to conditions.
- Methods prescribed for reversal of ITC on inputs and/ or input services, where such inputs and/ or input services procured are used partly for business purposes and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies.
- Reversal of ITC on capital goods prescribed under following situations:
  - Capital goods partly used for the purposes of business and partly for other purposes;
  - Capital goods partly used for effecting taxable supplies including zero rated supplies and partly for exempt supplies.
- Method prescribed for reversal of ITC relating to inputs lying in stock, inputs contained in semi-finished and finished goods lying in stock, and capital goods lying in stock under the following circumstances:
  - Person opting for composition levy
  - Person supplying goods or services or both become wholly exempt
  - Cancellation of registration under GST.
- Conditions and restrictions in respect of inputs and capital goods sent to the job work have been also prescribed.

Our comments

The ITC Rules are to play a significant role in successful implementation of GST in India. Largely, the said Rules are the revamped version of CENVAT Credit Rules, 2004 to appropriately match the scenarios under the GST regime.

However, certain provisions are a departure from the erstwhile CENVAT Credit Rules, 2004, for example, in respect of capital goods, under the current regime, no reversal is required where capital goods used for both, taxable and exempt activity.

Returns

The Rules pertaining to the returns to be filed in the GST regime stipulates filing of the following:

- Form GSTR-1 and GSTR-2A: Details of outward supply of goods or services or both to be furnished in GSTR-1, which would be made available to the recipient in Form GSTR-2A.
- Form GSTR-2 and GSTR-1A: Details of inward supply of goods or services or both to be submitted by the purchaser in Form GSTR-2. The modification, if any, would be made available to supplier under Form GSTR-1A.
- Form GSTR-3: Monthly return to be furnished by registered person for outward and inward supplies, payment of tax.
- Form GSTR-4A and GSTR-4: Return pertaining to the person opting for composition levy.

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- Form GSTR-5: Return for non-resident taxable person containing details of outward supplies and inward supplies.

- Form GSTR-6A and GSTR-6: Returns to be furnished by an ISD.

- Form GSTR-7A and GSTR-7: Returns of person required to deduct tax at source under Form GSTR-7 and certificate for tax deduction in Form GSTR-7A.

- Form GSTR-8: Details of supplies effected through e-commerce operator and the amount of tax collection at source.

- Form GSTR-9/ 9A and GSTR-9B: Annual return, audited annual accounts and a reconciliation statement.

Matching of ITC

- On submission of the monthly return in Form GSTR-3, following details would be matched:
  - GSTIN of the supplier
  - GSTIN of the recipient
  - Invoice/Debit Note Number
  - Taxable value
  - Tax amount.
- The claim of ITC of the recipient would be matched with the details furnished by the supplier.

- Facility of communication of acceptance, discrepancy or duplication of ITC claim provided in Form GST ITC-1.

- Supplier to whom any discrepancy is issued may make suitable rectifications in the statement of outward supplies to be furnished for that month.

- In case of non-rectification of discrepancy, the respective amount shall be added to the output tax liability of recipient in his return for the month succeeding that month in which the discrepancy was communicated.

- Similar provisions have been made for matching of details in case of reduction in output tax liability on account of credit notes as well as matching of details furnished by e-commerce operators with details furnished by the supplier.

Our comments

Electronic matching of credits is one of the most important features of Indian GST, which is expected to facilitate automation, bring accuracy and avoid misuse. It however would require large IT preparedness across the taxpayer population.

Payment of tax

The Rules for payment entail maintenance of the following electronic ledgers on the common portal:

- Electronic Tax Liability Register (Liability Register) on the common portal for payment of tax liability as per return, liability determined under any proceedings, amount payable due to mismatch and interest on any account.

- Electronic Credit Ledger (Credit Ledger) for details of ITC and refund claims of unutilised ITC.

- Electronic Cash Ledger (Cash Ledger) for every deposit made towards tax, including tax deducted or collected at source, interest, penalty, fee or any other amount on generation of a challan.

- Also, for each transaction in Liability Register, Credit Ledger and Cash Ledger, a unique identification number shall be generated at the common portal.

Refunds

The Refund Rules stipulates procedures and manner for filing and granting the refund claims. Outer time limit of two years from the relevant date has been prescribed for filing the refund claims. The key highlights of Refund Rules are:

- Electronic filing of refund application through the common portal or through a facilitation centre to be notified by the commissioner.

- Specific refund scenarios and key conditions specified therein are mentioned hereunder:
  - Export of goods: refund to be filed after export manifest or an export report is delivered under Section 41 of the Customs Act, 1962.

  - Supply of goods to SEZ developer/ unit: refund to be filed after such goods have been admitted in full in SEZ for authorised operations as endorsed by Specified Officer (SO).

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- Supply of services to SEZ developer/unit: refund to be filed along with evidence regarding receipt of services for authorised operations as endorsed by SO.

- Deemed exports: application for refund shall be filed by the *recipient of deemed export* supplies.

- Certificate from a Chartered Accountant/cost accountant required substantiating no unjust enrichment in case where the refund amount exceeds INR0.2 million.

- Specific formula prescribed for determining the refund of ITC relating to zero-rated supplies (i.e. export of goods/services, including supplies to SEZ developer/unit) akin to the one prescribed under the CENVAT Credit Rules, 2004.

- Provisional grant of refund amount of 90 per cent within seven days of filing the application for refund in case of zero-rated supplies subject to certain conditions.

- Time limit of 60 days specified for disposing off the refund application by relevant statutory authorities.

Our comments

The procedures and timelines specified for disbursal of refund applications is likely to promote the objective of ease of doing business in India. However, successful implementation of the scheme would be crucial under the GST regime. Also, clarity on the periodicity of filing the refund claims is awaited as of now.

Transitional provisions

For the purpose of transition/carry forward of credit into GST, application is required to be made in Form GST TRAN-1 within 60 days of the appointed date, specifying the amount of tax/duty to be carried forward:

- Amount of credit of eligible duties and taxes paid (under earlier law) in respect of inputs or input services received on or after appointed date – additional details to be furnished in respect of name of supplier, invoice details, description, value of goods, amount of taxes charged by the supplier, date on which receipt of goods was entered in books of accounts of recipient.

- Amount of credit of tax paid by a registered person, who was not liable to be registered under the earlier law in respect of goods held in stock on the appointed date, where documents evidencing payment of tax under earlier law is not available:

  - Credit at 40 per cent of CGST applicable on supply of such goods after the appointed date to be made available on payment of CGST on such supplies

  - The scheme shall be available for six tax periods from the appointed day

  - Such goods were not wholly exempt or nil rated under earlier law

  - Document for procurement of such goods is available

  - A registered person shall furnish the requisite details of stock held in prescribed manner

  - Amount of eligible credit would be credited in the Credit Ledger

  - Stock of such goods shall be stored in a manner so that it can be easily identified.

  Similarly, on compliance of the above conditions, carry forward of credit at 40 per cent of amount of SGST on supply of goods held in stock to be made available on payment of SGST on such supplies to the registered person, where such goods have suffered VAT at the first point of sale and subsequent sales of which are not subject to VAT and document evidencing payment of VAT is not available.

The amount of credit specified in the application in Form GST TRAN-1 shall be credited to Credit Ledger of the applicant maintained on the Common Portal.

Our comments

Transitional provisions are crucial for the industry from the perspective of smooth migration into GST. The above Rules have appropriately supplemented the transitional provisions as stipulated under the CGST legislation.

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Composition levy

The person whose aggregate turnover in preceding financial year does not exceed INR5 million may opt for the composition levy under the GST regime.

The Rules further provides for the conditions and restrictions for composition levy:

- Specific procedures to be adopted under the following circumstances for intimation of opting for composition levy:
  - person who has been granted a provisional registration under GST
  - person who is newly registering himself under GST
  - person who is already registered under GST and opts to pay tax under composition levy.

- Following persons cannot opt for composition levy:
  - Supplier of service except when engaged in supply of foods or drink for human consumption (other than alcoholic liquor)
  - Casual taxable person
  - Non- resident taxable person
  - Manufacturer of specified goods in preceding financial year
  - Supplier of non-taxable goods
  - Supplier of interstate outward supply of goods
  - Supplier supplying goods through Electronic commerce Operator.

- For a person who has been granted provisional registration and opts for composition levy, the goods held in stock by a person on the appointed day should not have been purchased or received from outside the state or from outside India or from his branch outside the state or from his agent or principal outside the state.
- If goods held in stock have been purchased from unregistered person then tax should be discharged by person opting for composition levy on reverse charge basis.
- Procedures regarding withdrawal of option of composition levy and other adjudicating procedures have also been prescribed in the Rules.

Tax rates:

- Manufacturer - 1 per cent (not being a manufacturer of such goods as may be notified by the government);
- Supplier of food or drink for human consumption - 2.5 per cent (other than alcoholic liquor for human consumption);
- Any other eligible supplies – 0.5 per cent.

Way forward

- The release of draft GST Rules will now enable the trade and industry to prepare for transitioning into GST in a streamlined manner.
- However, clarity is still required on certain provisions of the draft rules as discussed above, where, the trade and industry should consider filing representations to the government.
- Nevertheless, this is one of the most crucial leg in the journey towards GST.

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