

# *REVISED Model GST Law*

***Import, Export, SEZ and Refund  
including Transitional Provisions***

# GST MODEL LAW

- INTRODUCTION

- A proposed INDIRECT TAX for entire India
- One Nation One Tax
- A singular tax on 'supply' of 'Goods' and 'Service'
- Tax on value addition at each stage with benefit of setoff to achieve seamless credit and absolutely remove cascading effect of taxes.

# GST MODEL LAW

- GST Philosophy
  - CGST and SGST on intra-State supplies of goods in India.
    - Integrated GST (IGST) on inter-State supplies of goods or services in India – levied and collected by the Centre.
  - IGST applicable to
    - Import of goods and services
    - Inter-state stock transfers of goods and services
    - Export of goods and services – Zero rated.
    - Additional Cess on luxury items
  - All goods or services likely to be covered under GST except :
    - Alcohol for human consumption - State Excise plus VAT
    - Electricity - Electricity Duty
    - Real Estate - Stamp Duty plus Property Taxes
    - Petroleum Products (to be brought under GST from date to be notified on recommendation of GST Council)
    - Tobacco Products under GST with Central Excise duty

# MODEL IGST LAW

- **Import of Goods and Services**

- Definition

Section 2(10) and 2(11) of IGST ACT 2016 defines

- “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;
- Section 3(3) of IGST Act states

**Supplies of goods and/or services in the course of inter-State trade or commerce.....**

- .....(3) Supply of goods in the course of import into the territory of India till they cross the customs frontiers of India shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

Above section classifies Sale in Course of Import as Interstate Sale.

# MODEL IGST LAW

- **Import of Goods**

- Further proviso to section 5 i.e. **Levy and collection of Integrated Goods and Services Tax states**
- .....PROVIDED that the Integrated Goods and Services Tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962), on a value as determined under the first mentioned Act.

# MODEL IGST LAW

- **Import of Goods**

| Model IGST Law                          | Present Scenario                         |
|---|--|
|   |  |
| Basic Customs Duty (BCD)                | Basic Customs Duty (BCD)                 |
| Integrated Goods and Service Tax (IGST) | Countervailing Duty (CVD)                |
|   | Special additional duty of customs (SAD) |

# MODEL IGST LAW

- **Import of Goods**

- **High Sea Sales**

- Currently under section 5 (2) of CST Act exempts high sea sales
  - Whether High-Sea Sales is exempt under GST?...
  - Eg: Situation I
  - 'A' of Mumbai imports goods from 'D' of Dubai. Bill of lading is transferred when the goods are in High Sea in favour of 'B' of Mumbai.
  - Whether tax can be levied on Supply of goods from 'A' to 'B'...?
  - Whether tax can be levied in case the transfer of document to title in goods takes place
    - When the vessel is within 12 nautical miles...?
    - When the vessel is in Exclusive Economic Zone or Maritime Zone.....?
    - When the vessel is Beyond the territorial Waters...?

# MODEL IGST LAW

- **Import of Goods**

- **High Sea Sales**

- Eg: Situation II

- An intending agent located in Mumbai booked goods from three parties located in Mumbai, Gujarat and Madhya Pradesh respectively. The total quantity of goods equaled a container load. Pursuant to which he imported the goods and upon clearing goods from customs transferred the goods to respective parties.

- Whether the sale could be treated as sale in course of Import...?

- Import and transfer to Bonded Warehouse

- The liability to pay IGST shall be as and when the goods are cleared from the Bonded Warehouse.

- **Exempted Goods under Model GST Law**

- Whether exemption on supply of goods, as prescribed in the schedule, will be available on imported goods...?



# MODEL IGST LAW

- **Import of Goods**

- Import – Point of Sale – Location of the Importer.

As per Sec 8 – Interstate – POS shall be the location of the Importer

- Does this mean that if 'G' of Gujarat imports at JNPT – Maharashtra –
  - He has to give registration of Maharashtra or is it ok if he gives registration certificate of Gujarat? If he is not registered in Maharashtra?
  - He may give of Gujarat but if he is also registered in Maharashtra and the address on the bill of import is Maharashtra – then there may be an issue in this respect

# MODEL IGST LAW

- **Import of Goods**
- **Transitional Provisions**

Eg:

- Order for Import of goods is place on 20<sup>th</sup> May 2017 and same is shipped on 25<sup>th</sup> June 2017.
- Bill of lading is submitted on 5<sup>th</sup> July 2017.
- The GST Law comes into force on 1<sup>st</sup> July 2017.
  - Taxability as per the New Law?

# MODEL IGST LAW

- **Export**

- Export is defined under section 2(5) of the IGST Act 2016 as

“export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

- **Section 3(5) of IGST Act states**

**Supplies of goods and/or services in the course of inter-State trade or commerce.....**

- .....(5) Supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

- **Zero rated supply u/s 16 (1) (a)**

“zero rated supply” means any of the following taxable supply of goods and/or services, namely -

- (a) export of goods and/or services;

# MODEL IGST LAW

## • **Export**

- Explanation to rule 18 of Central Excise Rules 2002 provides that-
- 'Export' means taking goods out of India to a place outside India and includes shipment of goods as provision of stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.
- The words "includes shipment of goods as provision of stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft" are missing in the current definition of Export.
- The place of supply rules in sub-clause 6 of section 7 states that

"Where the goods are supplied on board or conveyance, such as vessel, an aircraft train or motor vehicle the place of supply shall be location at which the goods are taken on board."

- In view of the above the goods as provisions or stores supplied for use on board will not be treated as export

# MODEL IGST LAW

## • **Export**

- **Contents of taxable invoice for Export**
- Provided further that in case of exports, the invoice shall carry an endorsement
- “SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST” or
- “SUPPLY MEANT FOR EXPORT UNDER BOND WITHOUT PAYMENT OF IGST”, as the case may be, Invoice shall contain the following details:
  - name and address of the recipient;
  - address of delivery;
  - name of the country of destination; and
  - number and date of application for removal of goods for export [ARE-1].

# MODEL IGST LAW

- **Export**

Eg: Situation

- As per section 48 (3) proviso
  - Provided further that no refund of unutilized input tax credit shall be allowed in cases where the good exported out of India are subjected to export duty.
  - What will happen if ITC of goods which are exported with payment of export duty.
  - Deemed Export to be notified & refund available to them.

# MODEL IGST LAW

- **SEZ (Special Economic Zones)**

- Clause 2(23) of IGST Act defines “SEZ” as per specified Economic Zones Act 2005
- Clause 2(24) :”SEZ Developers “ (Includes “Co-Developers”) as person or government who is granted letter of approval as per section 3(10) of SEZ Act
- Sec 3 (6) specifies that all transactions taking place in taxable territory of supply of services /goods to or by SEZ Developers or SEZ Units shall be deemed to be Inter –State trade or commerce

Eg:

- A of Maharashtra sales to SEZ Maharashtra – IGST (Not CGST + SGST)
- G of Gujarat sales to SEZ Chennai - IGST

# MODEL IGST LAW

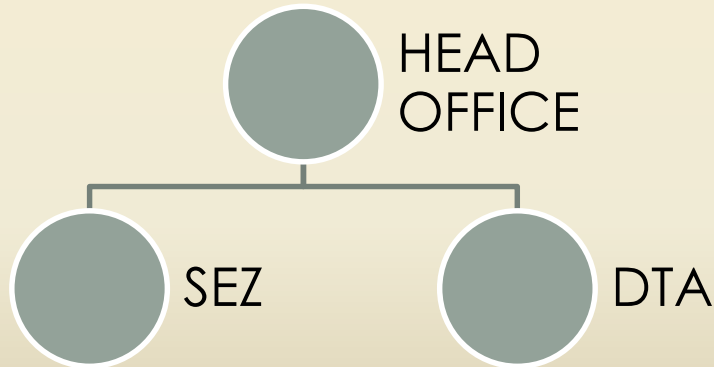
- **SEZ (Special Economic Zones)**
- Sec 16 of IGST defines “Zero –rated supply” of goods or services as
  1. Section 16(1)
    - Export of Goods /Services
    - Supply of Goods/Services to a SEZ developer/unit
  2. Input Tax Credit may be availed for zero rated supply –subject to ITC section 17(2) - Currently section refers to section 17(3) it seems to be typo
  3.
    - a) A registered taxable person may export goods /services under bond without IGST payment & claim refund of ITC under Sec 48 –subject to rules condition safeguards
    - b) A registered taxable person may export goods /services on payment of IGST & claim refund of IGST paid on goods /services exported as per Section 48 subject .....



# MODEL IGST LAW

- **SEZ (Special Economic Zones)**

- 4. An SEZ developers or SEZ Unit Receives zero rated supply as specified in 16(1)(a)(export of goods /services )
  - Subject to conditions safeguards
  - Claim refund of IGST paid by RTP on supply
- Situations in which the refund can be claimed by the SEZ vide the above clause can be as under:



Transfer of Credit Refund u/s 16(4)

# MODEL IGST LAW

- **SEZ (Special Economic Zones)**
- Situations
  - Direct Import by SEZ-5(1) tax payable
  - Supply one SEZ to another SEZ-zero rated 16(1)(b) & 3(b) even if both SEZ are in the same state
  - Supply of EOU, STP, EHTP to EOU-zero rated 16(1)(b) & (3)(b)
  - SEZ supply to EOU – IGST (even if in same state ) 3(b)
  - SEZ supply to DTA - IGST (even if in same state ) 3(b)

(EOU – Export Oriented Unit, STP – Software Technology Park,  
EHTP - Electronic Hardware Technology Park, DTA - Domestic Tariff Area)

# MODEL IGST LAW

- **Refund**

- Refund is covered under section 48 of Model IGST Law

Circumstances in which refund shall be issued subject to conditions ,safeguards etc...

1. Refund of goods /services exported out of India or inputs /inputs services used for exports
2. Refund unutilized ITC lying at end of any tax period subject to conditions only two situations specified.
3. Refund of Tax paid on supply which is not provided either wholly /partially & invoice not issued (Advance Received supply not made Tax paid can claim refund)
4. As per sec 70 if IGST is paid instead of CGST + SGST or vice versa then refund can be claimed under this section

# MODEL IGST LAW

- **Refund**

- Refund is covered under section 48 of Model IGST Law

Circumstances in which refund shall be issued subject to conditions ,safeguards etc...

5. Tax/interest any other amount paid by applicant & tax incidence has not been passed on to any other person (pre-deposit – refund)
6. Tax/Interest borne by class of persons notified by SG/CG approved by Council are eligible to claim refund.
7. Advance tax paid by casual taxable person /Non resident – granted subject to completion of period to the period.

# MODEL IGST LAW

## • Refund

- On refund application –order in 60 days
- In case of exporters sec 48(6) specifies 90% of amount claimed to be granted on provisional basis
  - Excluding ITC provisionally accepted.
- In case of unutilized ITC claimed on refund it shall be subject to payment of all taxes & filing of returns else refund to be adjusted or withhold till filing of return
  - In case pending dues because of appeal unless stay is granted the amount will be adjusted or refund withheld
- Commission is of the opinion that grant of refund likely to affect revenue due to appeal or other proceedings on account of fraud or malfeasance withhold refund till such time we determines opportunity of hearing to be granted

# MODEL IGST LAW

- **Refund**

- Interest to be granted if refund ultimately granted conditions
  - Amount > 1000/-
  - Application to be made within 2 years of relevant period with such documentary & other evidence prescribed
  - Unutilized ITC refund only in case of exports and inverted duty structure
  - No ITC refund if export subject of export duty
  - Refund arising after all tax adjustments as per Sec44(6) shall be c/f in returns

# MODEL IGST LAW

- **Refund**

- Section 20 of the IGST Act, 2016 provides that –

1. The IGST paid on any supply of goods to outbound tourist shall be refunded, in the manner and subject to such conditions and safeguards as may be prescribed, if such goods are taken out of India.
2. The refund under sub section (1) shall be allowed only on such supply of goods that is procured from a registered taxable person who satisfies the conditions and complies with requirements, including relating to issue of invoice in the prescribed manner.

# MODEL IGST LAW

- **Refund**

- Relevant Dates means

- Exports of goods by Sea /Air-date on which ship /Air craft leaves India
- Exports of goods by land -date on which it crosses the customs frontier
- Exports by post -date of dispatch by post office to a place outside India.
- Deemed Exports as notified –date on which return relatives to such deemed exports is filed
- Exports of services –Receipt of con. F. E. after supply OR Issue of Invoice if payment received in advance
- Refund due to judgment of any Tribunal/ Court – date of communication of such judgment
- ITC refund as specified in 48(3)-End of financial year in which claim arises
- Tax is paid provisionally person other than supplier –After adjustment of tax on financial assessment
- Any Other Case- Date of payment

Government by notification entitle refund of Inward supplies to UNO organization, Unilateral Financial Organization under UNO or any other class of person subject to rules



# MODEL IGST LAW

- **Refund**

- Transitional Provisions

- Section 179 Pending refund claims to be disposed of under earlier law
  - Every claim for refund filed by any person before or after the appointed day, for refund of any amount of cenvat credit, duty, tax or interest paid before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):
  - PROVIDED that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse
  - PROVIDED FURTHER that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

# MODEL IGST LAW

- **Refund**
- **Transitional Provisions**
- Section 180: Refund claims filed after the appointed day for goods cleared or services provided before appointed day and exported before or after the appointed day to be disposed off under the earlier law
  - Every claim for refund of duty or tax paid under earlier law , filed after the appointed day , for the goods or services exported before or after the appointed day, shall be disposed of under the earlier law
  - PROVIDED that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse
  - PROVIDED FURTHER that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

# MODEL IGST LAW

- **Refund**
- **Transitional Provisions**
- Section 185 (2) Treatment of the amount recovered or refunded pursuant to revision of returns
- Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the earlier law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

# ***THANKS***

For any Clarification, Please Contact  
Indirect Taxes Committee of ICAI  
Email: [idtc@icai.in](mailto:idtc@icai.in) ; Website: [www.idtc.icai.org](http://www.idtc.icai.org)  
or <https://www.youtube.com/indirecttaxcommittee>