

ICAI Workshop on GST

Taxation of Inter-State Branch Transfers, Goods sent on approval, Job Work and E-Commerce Transactions

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The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

Taxability of Inter State Branch Transfers

Branch Transfers – Position under Current Regime

- Charging Section 6 under CST Act: Levy of tax on sale of goods effected in course of inter-State trade
- The term 'Sale' has been defined to mean any transfer of property in goods by one person to another for consideration
- One of the basic and obvious conditions of Inter-State sale is that there should be a *sale*. If a manufacturer sends goods to his branch in other State, it is not a 'sale' as you cannot sell to yourself.
- **Burden of Proof** on the Dealer to substantiate transfer of property in goods other than by way of sale by submission of Form F
- **Presumption in Law** – If dealer fails to submit Form F, movement of goods deemed to have occasioned as a result of sale

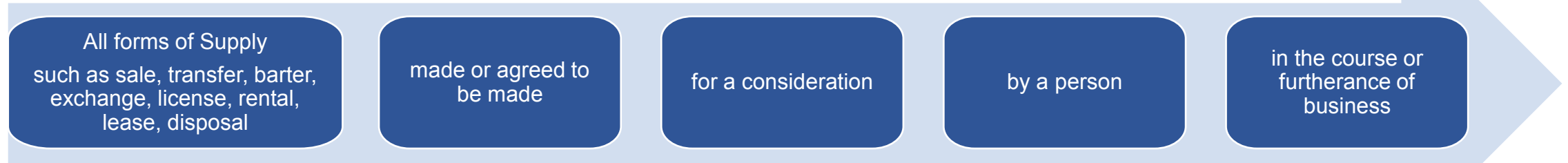
Issues under Current Regime on Stock transfers:

1. Pre-determined sale
2. Reversal of VAT Input tax credit on branch transfers
3. Non-furnishing of F-forms
4. Branch not covered in the registration certificate – rejection of stock transfer claim

Branch Transfers - Taxing entry under GST

Section 3 of the Revised MGL: Meaning and Scope of Supply

▪ Supply includes:



▪ Also covers:

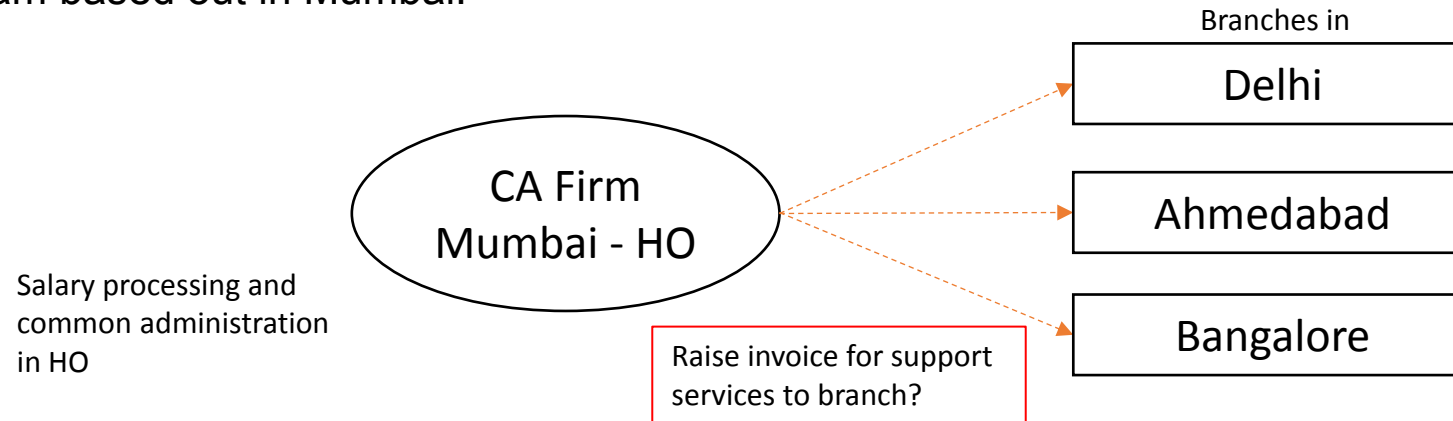
- Import of services for consideration whether or not in course of furtherance of business
- **Supplies without consideration (Schedule I)**
- Deemed supply of goods / deemed supply of services (Schedule II)

Schedule 1: Supply without consideration
1. Permanent disposal of goods
2. <u>Supply of goods and / or services between related persons or between distinct persons [when made in the course or furtherance of business]</u>
3. <u>Supply of goods between Principal and an agent</u>
4. Import of Services by taxable person from a related person, in the course or furtherance of business

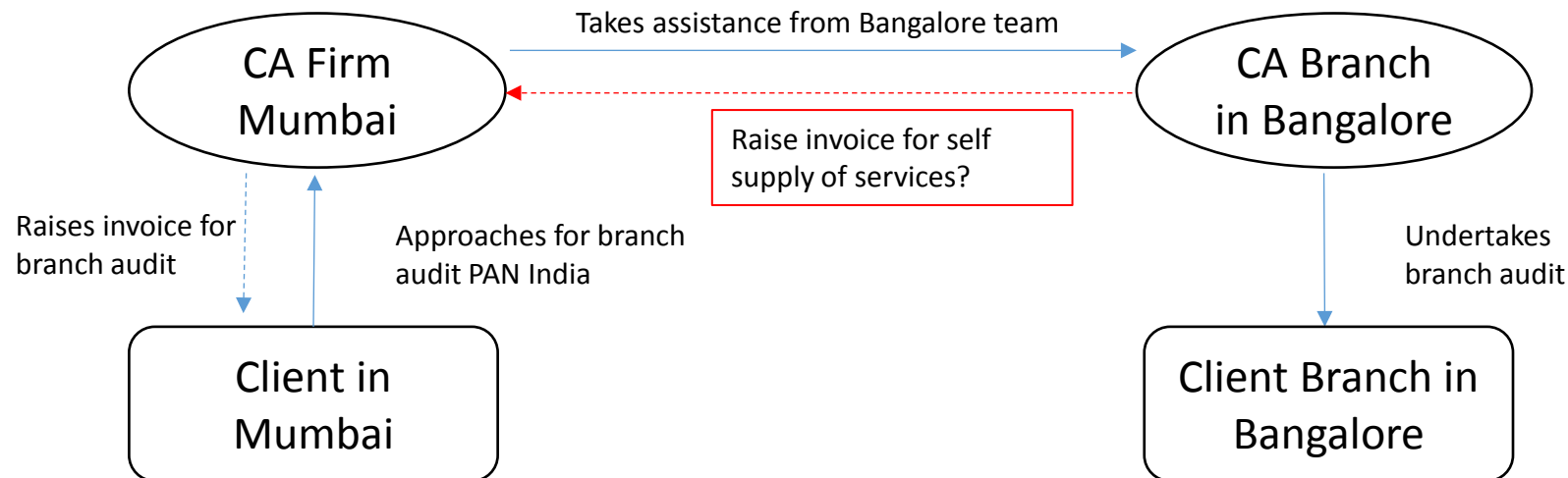
Expression 'one person to another' absent under GST

Branch Transfers – Potential Issues – Self supply of Services

- Example 1: A Chartered Accountant Firm having offices in Mumbai – HO, Delhi, Bangalore and Ahmedabad and back office team based out in Mumbai.



- Example 2: Client approaches CA firm in Mumbai to undertake PAN India branch audit.



Branch Transfers – Potential Issues - Valuation

Existing scenario

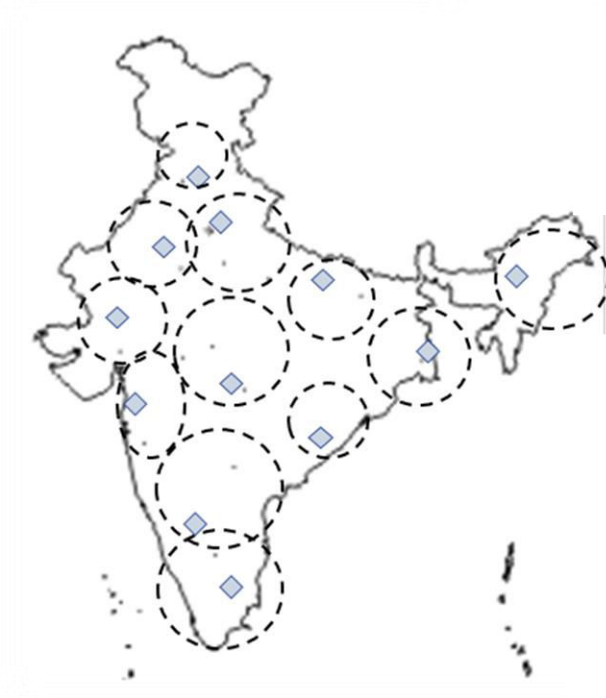
- Value of goods in case of branch transfers?
- COGS or Sales price
 - Industry Practice vary
- Not relevant considering exemption against Form F
- Self supply of services outside Service tax ambit

GST scenario

- Valuation of branch transfers becomes relevant
- No clarity under the revised Model GST Law
- Whether at COGS or at Sale price less depot / distributor margin or Value of identical goods sold on Inter-State basis?
- Valuation of self supply of services to become litigious under GST

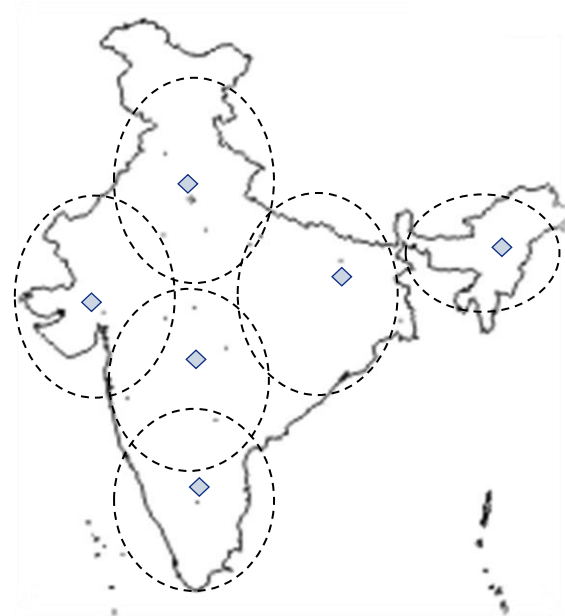
Branch Transfers – Reconfiguration of Supply chain

Existing scenario



- Interstate sale attracts tax (CST) which is non creditable
- Depots/ warehouses required in each state for stock transfer
- Distributors discouraged to sell interstate as no VAT set off available

GST scenario



- Seamless credit of input tax on interstate sales by company or distributors
- Common tax across each state prevents any artificial arbitrage

With levy of GST on Inter State branch transfers, organizations having PAN India presence may look at reducing its stocking points based on the consumer demand

Taxability of Goods
sent on approval

Goods sent on approval – Position under Current Regime

- The concept of 'Goods sent on approval' not present under existing VAT or CST Laws

- **Goods sent to Customer for Inspection & Approval**

Liability to pay VAT triggers only when property / ownership in goods is transferred to the buyer. Hence, in case goods are sent on approval, VAT becomes payable only when buyer, upon inspection, confirms the delivery of goods. Till then, property vests with seller

- **Goods sold to Customer on returnable basis**

In cases where goods sold on returnable basis, Section 8-A of the CST Act provide deductions of sales price of goods returned with six months. Similarly, Rule 3 of the MVAT Rules provide time-limit of six months from the date of sale for deduction of turnover of sales for the purpose of discharging VAT

Goods sent on approval – Taxability under GST

- **Relevant Extract of Section 28 of the Revised MGL – Tax Invoice**

(1) A registered taxable person supplying taxable goods shall, before or at the time of,-

(a) removal of goods for supply to the recipient, where the supply involves movement of goods, or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

.....

*(8) Notwithstanding anything contained in sub-section (1), **where goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place**, the invoice shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.*

Goods sent on approval – Instances?

- What type of transactions would be covered under this clause?
- Whether the scope of the clause only to cover goods sent to customer and supplier is not sure about whether sale would take place i.e. where buyer takes delivery of goods only upon inspection and approval?
- Or would it include goods supplied on returnable basis within specified period – for example, goods sold through Amazon / Flipkart where buyer has option to return goods within 15 days?

Goods sent on approval – Transition Provisions

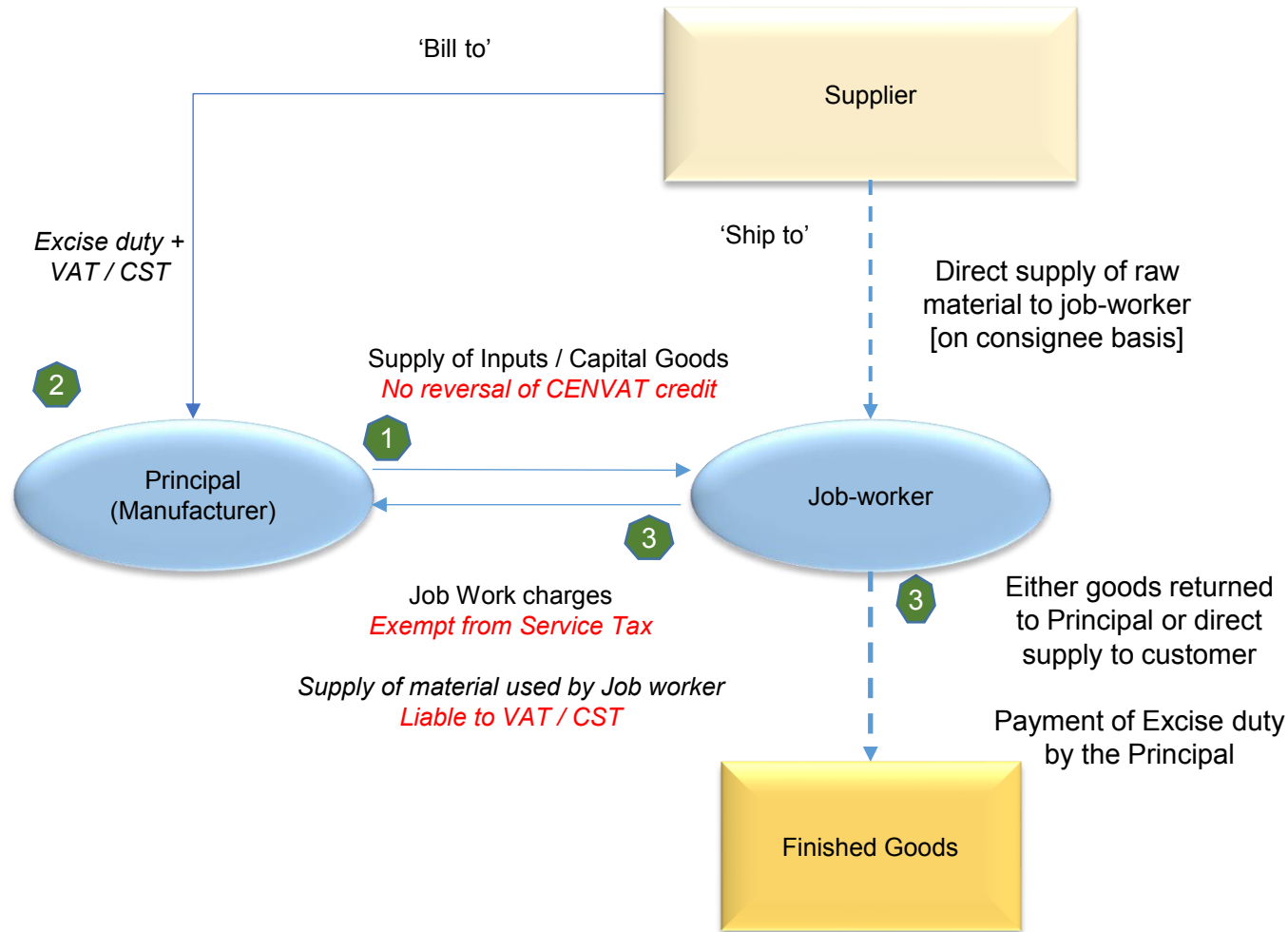
- **Section 195 of the Revised MGL – Goods sent on approval basis on or after the appointed day**

- No GST payable if
 - Goods rejected or not approved by buyer are returned within six months from the appointed day
 - If sufficient cause available, further period not exceeding two months to be granted

- GST payable in following cases
 - A. If goods returned after six months - person returning the goods liable to pay GST
 - B. If goods not returned within six months – person who sent goods liable to pay GST

Job Work under
GST

Job Work – Position under Existing Regime



Job Work Procedure –

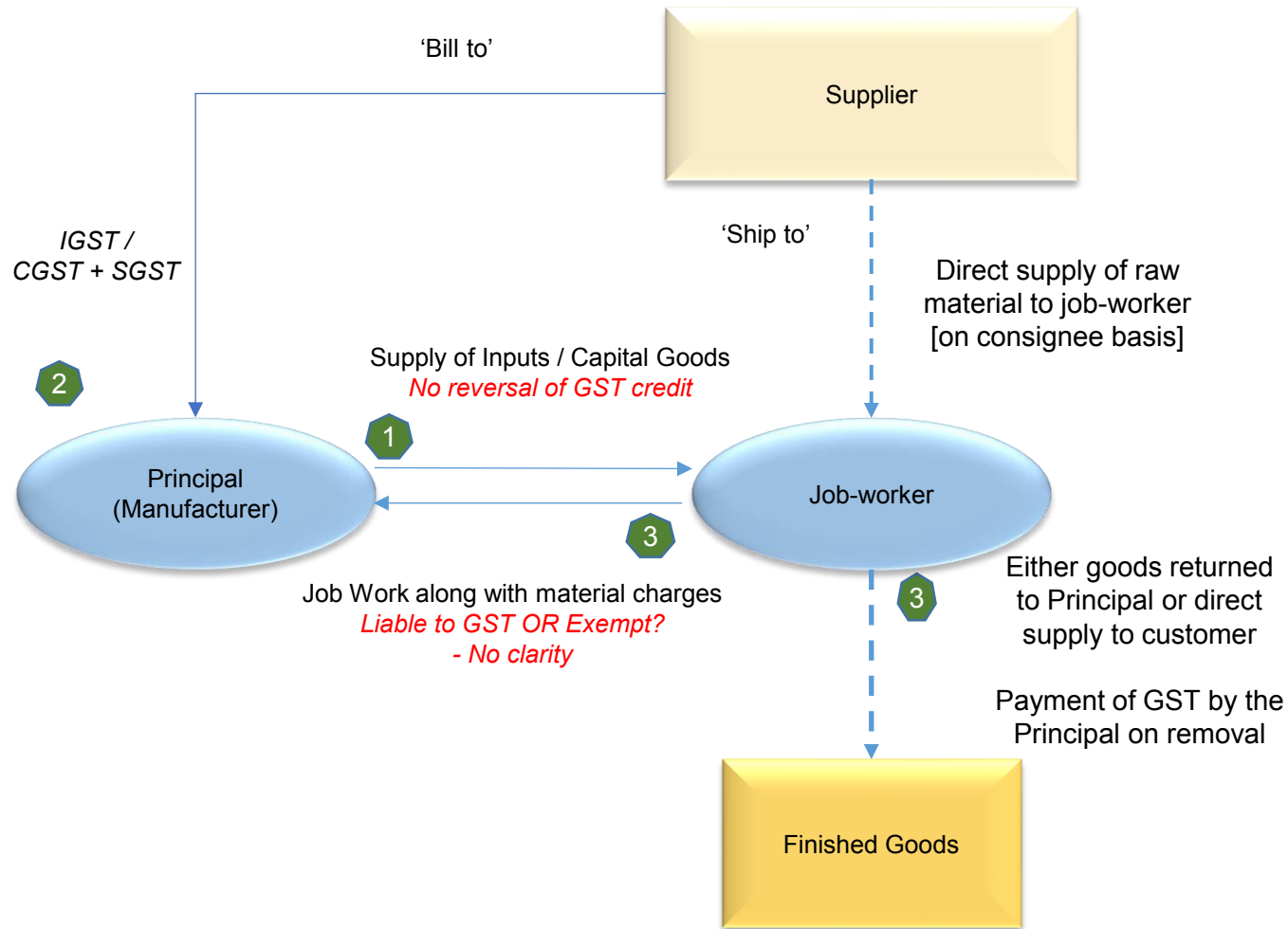
Rule 4(5) & Rule 4(6) of the CENVAT Credit Rules

- CENVAT Credit allowed even if Inputs / Capital Goods can be sent to job worker directly or from factory for further processing or any other purposes
- However, subject to condition - goods are returned back within 180 days
- In case not returned, Principal manufacturer to reverse CENVAT credit; can be reinstated once goods are received back
- For direct removal of goods from job worker premises - permission to be taken from Jurisdictional Commissioner which is valid for 3 years

Notification 214/86-CE – Exemption from excise duty to the job worker subject to conditions

Notification 25/2012-ST – Exemption from service tax to job worker subject to Principal manufacturer discharges excise duty

Job Work – Under GST



Job Work Procedure –

Section 55 of the Revised MGL – Special Procedure for removal of goods for certain purposes

- Principal, under intimation, can send any inputs / capital goods without payment of tax to Job-worker
- Condition: bring back inputs within 1 year / capital goods other than moulds and dies, jigs and fixtures or tools, within 3 years, without payment of tax
- Or supply directly from job worker premises within one year / 3 years within India on payment of tax or export the same with / without payment of tax
- If goods not returned back within aforesaid time limit, deemed supply by Principal to Job worker when said inputs / capital goods sent out
- Waste / Scrap generated during Job work – may be supplied by job worker directly by job worker on payment of tax if registered or by the Principal, if job worker is not registered

- **Job-work** means any treatment or process by a person on goods belonging to another registered taxable person [Section 2(61)]
- **Principal** means a person sending goods for job-work [Section 55(1)]

Inputs removed for Job work – Transition Provisions

- **Section 175 / 176 / 177 of the Revised MGL – Inputs / Semi-finished goods / Finished Goods removed for job work and returned on or after the appointed day**

- No GST payable if
 - Goods are returned to the factory within six months from the appointed day
 - If sufficient cause available, further period not exceeding six months to be granted

- Inputs not returned within six months or extended period,, input tax credit to be recovered

- Manufacturer and the job worker would be required to declare details of inputs held in stock by the job worker on behalf of the manufacturer on the appointed day in form as may be prescribed

E-Commerce transactions under GST

E-Commerce Transactions – under GST

Definitions (Section 2(41) & 2(42) of the Revised MGL:

'Electronic Commerce' means supply of goods and / or services including digital products over digital or electronic network

'Electronic Commerce Operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

Levy & Collection of CGST / SGST [Section 8(4)]

- Central / State Government, may by Notification, specify special categories of services where the tax shall be paid by the electronic commerce operator, if such services are supplied through it
- If electronic commerce operator does not have physical presence in India, person representing such operator liable to pay tax
- If electronic commerce operator does not have physical presence or representative in India, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person liable to pay tax

- In line with recent OECD guidelines on VAT treatment of e-commerce transactions.
- Online Information and database retrieval services (OIDR) received from outside India brought to Service tax w.e.f 01 December 2016. Similar provisions incorporated under GST Regime

E-Commerce Transactions – Collection of Tax at Source

Section 56 of the Revised MGL

- Electronic Commerce Operator required to deduct an amount @ 1% of the net value of taxable supplies
- Net Value of Supplies to mean aggregate value of taxable supplies of goods and services made during the month less aggregate value of taxable supplies returned during the said month
- The amount so deducted should be deposited by the operator before 10th of the succeeding month which would be credited to Electronic Cash register of the Supplier
- Every operator required to furnish a statement, electronically of all amounts collected towards outward supplies of goods and/or services effected through it during a calendar month, within 10 days of the end of such month
- Supplier to claim credit, in his electronic credit ledger, of the amount collected and reflected in the statement by the operator
- In case mis-match between outward supplies furnished by the operator and corresponding details furnished by the supplier, discrepancy to be communicated to both parties

Goods / Services sold online through e-commerce operators to attract tax deduction at source @ 1%

Thank You

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