

## Valuation & Job-work

[www.IndiaGST.com](http://www.IndiaGST.com) |

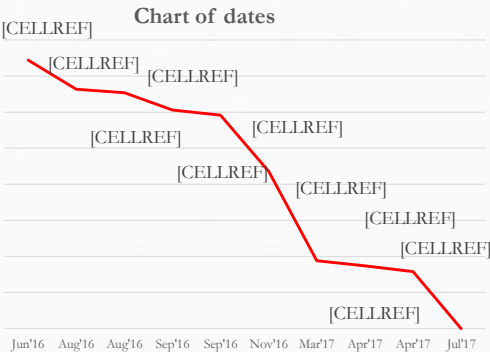
**Deepak Kumar Jain B**  
B.Com., FCA., ACS., LLB

### IndiaGST, distinctive features

- Merges different transactional taxes into a unified levy for both State and Centre, taxing supply of both goods and services
  - Important provisions regarding levy, charge, valuation, place of supply have been borrowed from one of other prominent statutes getting subsumed – May give rise to conceptual imbalance
  - Seeks to borrow international principles and applies to the unique taxing systems in India
  - Moves away from the concept of aspect theory
- Removes the concept of originating tax to a destination based taxing system
  - Creates distinction between B2B and B2C transactions
  - Brings impact on pricing and causes change in business structure
- Broadens the base, checks evasion and would increase compliance

# Implementation Maths

Time Line
Issue of Model Law: 24-Jun-16
CAB in Rajya Sabha: 03-Aug-16
CAB ratified (Lok Sabha): 08-Aug-16
CAB Ratification (States): 01-Sep-16
CAB Presidential assent : 08-Sep-16
Revised GST Model Law: 25-Nov-16
GST bill by Lok Sabha: 29-Mar-17
Rajya Sabha: 05-Apr-17
Presidential Assent: 13-Apr-17
Training
Trade & Industry Deliberations
Migration & Registrations into GST
Implementation of GST: 01-Jul-17



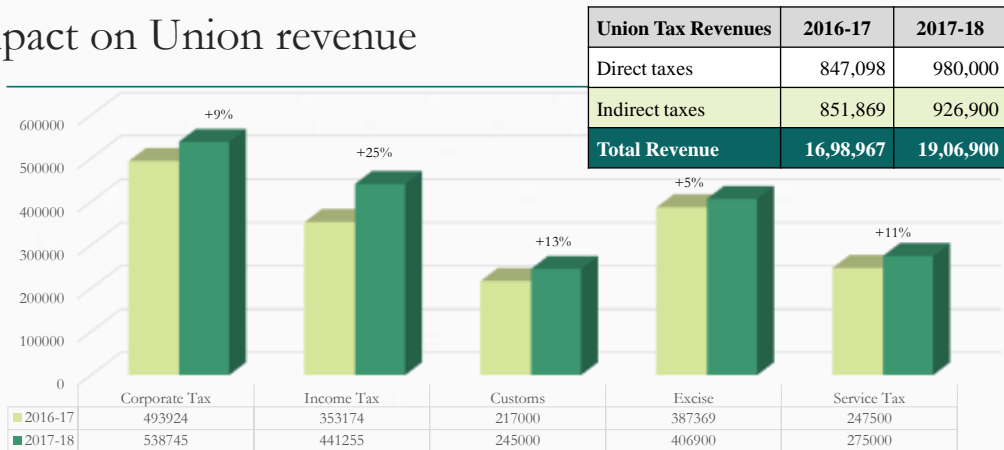
Sl.	State Assembly	Passed on
1	Telanganana	09-Apr-17
2	Bihar	24-Apr-17
3	Rajasthan	26-Apr-17
4	Jharkhand	27-Apr-17
5	Chhattisgarh	28-Apr-17
6	Uttarakhand	02-May-17
7	MP	03-May-17
8	Haryana	04-May-17
9	Gujarat	09-May-17
10	Odisha	11-May-17
11	Assam	11-May-17
12	Arunachal	12-May-17
13	Maharashtra	
14	Puducherry	
15		

- What could not happen in the last 10 years, was made to happen in previous 9 months
- Implementation of GST is certain between Jul'17 to Sep'17
- Telanganana becomes the first States to enact GST, on 13-Apr-17, leading way for other States to follow suit
- Model GST law is complex and may be inviting litigation on various aspects

www.IndiaGST.com

3

# Impact on Union revenue



Source: Finance Bill, 2017 | Rs. in Crores

- Revenue from indirect taxes except duties on petroleum products and basic customs duty to be subsumed under GST. Tobacco would suffer GST and continue to be taxed under Central Excise.
- 30% to 35% of the indirect tax revenue earned by the union is from petroleum products

www.IndiaGST.com

4

## Impact on State revenue

2015-16(BE) | Rs. in Crores | Source: RBI

Year	All States Revenue	%	Karnataka Revenue	%
VAT/CST	594,332	64%	41,329	54%
Tax on Property	117,229	13%	8,421	11%
State Excise	109,262	12%	15,200	20%
Tax on Vehicles	46,380	5%	4,800	6%
Electricity Duties	28,415	3%	1,151	2%
Entry Tax/ Octroi	22,868	2%	3,101	4%
Profession Tax	6,115	1%	986	1%
Other taxes & duties	5,193	1%	1,238	2%
Entertainment tax	2,417	0%	220	0%
<b>Total</b>	<b>932,212</b>	<b>100%</b>	<b>76,445</b>	<b>100%</b>

### State taxes which are not subsumed under GST

- Tax on Property including stamp duty
- State Excise + VAT on Alcohol
- VAT & Entry Tax on Petroleum Products (30% to 35% of States Revenue)
- Tax on Vehicles
- Electricity Duties
- Profession Tax

Sl.	State	Own Tax Revenue	Centre Share	Non-Tax Revenue	Total Revenue	%
1	Uttar Pradesh	91,915	86,729	71,236	249,880	12%
2	Maharashtra	130,576	29,120	38,534	198,231	10%
3	Tamil Nadu	96,083	21,150	25,448	142,681	7%
4	Karnataka	76,445	24,790	15,125	116,360	6%
5	Madhya Pradesh	43,448	30,450	40,526	114,423	6%
6	West Bengal	46,497	31,966	34,637	113,100	6%
7	Rajasthan	47,096	28,925	35,341	111,362	6%
8	Gujarat	68,416	13,000	27,879	109,295	5%
9	Bihar	30,875	50,748	21,566	103,189	5%
10	Telangana	46,495	12,823	34,814	94,132	5%
11	Andhra Pradesh	44,423	22,638	23,064	90,125	4%
12	Kerala	45,428	13,122	18,877	77,427	4%
13	Odisha	21,280	19,580	30,080	70,941	4%
14	Chhattisgarh	20,086	16,213	21,657	57,956	3%
15	Assam	12,892	16,667	27,504	57,064	3%
16	Haryana	33,249	5,680	13,383	52,312	3%
17	Jharkhand	14,701	12,000	21,326	48,027	2%
18 to 29	Other States	62,304	49,918	93,162	205,384	10%
	<b>Total</b>	<b>932,212</b>	<b>485,519</b>	<b>594,159</b>	<b>2,011,890</b>	<b>100%</b>

www.IndiaGST.com

5

## Valuation under current law

Statute	Valuation Principles	Meaning & Inclusions	Exceptions
Central Excise & Customs (CVD Portion)	• Transaction Value	Price actually paid or payable for goods	• Price not being the sole consideration for sale • Related Party
	• Maximum Retail Price, less prescribed abatement	Maximum price at which packaged goods are sold to end-customer	
	• Other Valuation Principles	Specific Duty, Tariff Value, Compounded Levy or based on Production Capacity	
Statute	Valuation Principles	Meaning & Inclusions	Exceptions
Service Tax	• Gross Value	Gross amount charged for provision of taxable services	• Pure Agent

www.IndiaGST.com

6

## Valuation under current law

Statute	Valuation Principles	Meaning & Inclusions	Exceptions
VAT	<ul style="list-style-type: none"> <li>Taxable Turnover</li> </ul>	Total price charged for sale including freight charged (under VAT but not under CST) for delivery of goods	<ul style="list-style-type: none"> <li>Deductions such as discounts on invoice, labour value, etc.</li> </ul>
	<ul style="list-style-type: none"> <li>Composition Scheme</li> </ul>	Total consideration charged including labour value	<ul style="list-style-type: none"> <li>Restrictions on interstate purchases</li> </ul>
Statute	Valuation Principles	Meaning & Inclusions	Exceptions
Entry Tax	<ul style="list-style-type: none"> <li>Landed Price</li> </ul>	Price paid for entry into local area	
Statute	Valuation Principles	Meaning & Inclusions	Exceptions
Others illustrative examples	<ul style="list-style-type: none"> <li>Highest rack rate for stay in hotel</li> <li>Maximum seat capacity of Movie halls</li> </ul>	Gross amount charged	<ul style="list-style-type: none"> <li>Limited</li> </ul>

## Valuation under GST

### Section 15

- Supply to be taxed on transaction value, unless
  - Supply made to a related party
  - Price is not the sole consideration for supply
  - Absence of consideration
- In case transaction value is not acceptable, then value to be determined based on rules

## Schedule I & II

- Permanent transfer or disposal of business assets on which input credit is availed
- Free supply of goods or services between related persons and distinct persons as specified in Section 25
  - Free supplies to employees [cap of INR 50K]
  - Stock transfer of goods and services
- Supply of goods by principal to agent or vice-versa where agent undertakes the transaction on behalf of principal
- FOC import of services from a related person or any of his establishment outside India.

Sl. No	Schedule II	Goods/Services
1	Temporary transfer or permitting the use of any intellectual property	• Services
2	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software	• Services

## Related person

Section 2(84): Person & Explanation to Section 15(5): Related Persons

Person shall be deemed to be **“related persons”** if only –

- they are officers or directors of one another's businesses;
- they are legally recognized partners in business;
- they are employer and employee;
- any person directly or indirectly owns, controls or holds twenty five per cent or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are members of the same family;

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

## Associated enterprise

### Section 2(12)

“**Associated enterprise**” shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961

- a. one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or
- b. any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or
- c. a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or
- d. one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or
- e. more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
- f. more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or
- g. the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

## Associated enterprise

### Section 2(12)

“**Associated enterprise**” shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961

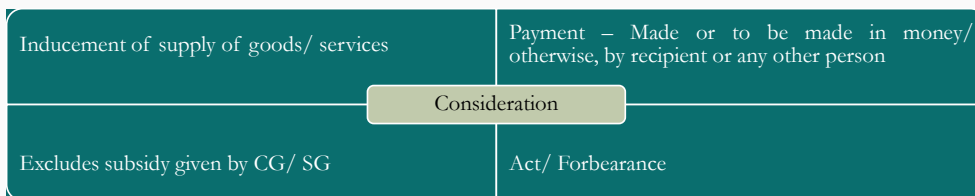
- h. ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- i. the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- j. where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- k. where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or
- l. where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
- m. there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

# Consideration

## Section 2(31)

“**Consideration**” in relation to the supply of goods or services includes

- any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government



# Goods

## Section 2(52)

“**Goods**” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

**Would the following be goods?**

- Electricity
- Carbon credits
- DEPB/ SFIS Scrip
- Brand Name
- Customized Software

# Goods

## Section 2(1)

“**Actionable claim**” shall have the meaning assigned to it in Section 3 of Transfer of Property Act, 1882;

Section 3 of the Transfer of Property Act, 1882:

“**Actionable Claim**” is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognise as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent.“

### **Illustration:**

A borrows INR 5000/- on 01-Apr-2016 from B at interest of 12% per annum and promises to pay back the amount with interest before 01-Jul-2016. Until 01-Jul-2016, the debt would be an actionable claim

- Actionable claim is money equivalent
- Is excluded in the definition of service under the current law
- May impact securitization of debt

# Services

## Section 2(102)

“**Services**” means anything other than goods money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

- Excludes money and securities
- Includes transactions in money relating to use of money/ conversion by cash/ any other mode from one form to another for which a separate consideration is charged



## Composite Supply

### Section 2(30)

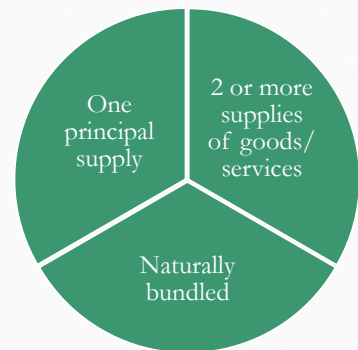
“**Composite supply**” means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a **principal supply**;

### Section 2(90)

“**Principal supply**” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

### **Illustration:**

Indian Airlines provides passenger transportation service. They also supply food on board to passengers. Supply of transportation services would be the principal supply and the service as a whole would qualify as composite supply.

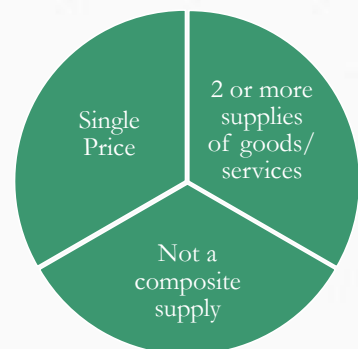


## Mixed Supply

### Section 2(74)

“**Mixed supply**” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately



## Continuous Supply

### Section 2(32)

**“Continuous supply of goods”** means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify.

Example: Open purchase orders with an understanding of fortnightly billing, Supply of gases through pipelines with a weekly billing schedule

### Section 2(33)

**“Continuous supply of services”** means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such service as the Government may, subject to such conditions, as it may, by notification, specify.

Example: AMC, lease of goods

## Valuation under GST

---

- Price is not the sole consideration for sale
  - Supply of goods below cost
  - Unusual discounts or abnormal discounts
  - Supply of goods or services by the recipient
  - Supplier is liable to incur but paid by the recipient
  - Additional consideration is received in imputed form

# Valuation under GST

## • Illustrative Issues

- ABC rents his premises for commercial use to XYZ. The monthly rent is INR 100,000/- and security deposit is INR 12,00,000/-. Whether notional interest will have to be imputed?
- What happens when the ABC gives the property on lease for INR 110,00,000/-. In a lease, the land-lord refunds the amount after the period of lease
- PQR undertakes audit of INFY and INFY provides free use of cab, food, use of conference room facility in INFY for conduct of audit?
- Similar would be a case when INFY provides to and fro air-tickets to its lawyer in Bangalore for representing a matter in New Delhi
- AB buys a new phone in exchange of old phone. Whether AB will be liable to GST and also, whether seller will need to include notational value of used mobile on sale of new phone

# Valuation under GST

## • Value to include

- Any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than CGST, SGST, UTGST or GST Cess,
- Reimbursement of expenses
- Incidental expenses
- Interest or Late Fee or Penalty for delayed payment of consideration
- Subsidies Directly linked to Price (excluding provided by Govt)
- Price charged at the time of supply or any other time
- Discounts (before, at or after supply) unless either given on invoice or provided under an agreement and known at the time of supply, linked to supply and the recipient reverses the input tax credit
- Consideration in kind

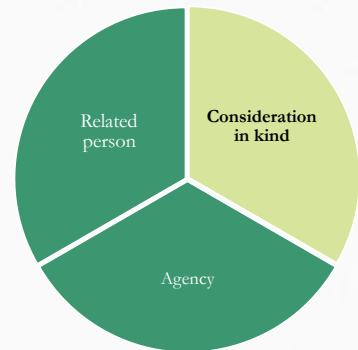
### Illustrative Issues

- Tips collected while serving food by steward or paid by recipient to taxi driver

# Valuation

## Consideration is not wholly in money

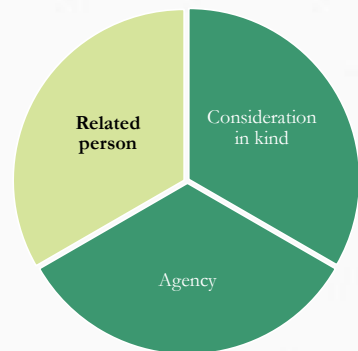
- Value in the open market
- Value of consideration in money and money's worth, to be known at the time of supply
- Money's value of like kind and quality of supply
- 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services (supplier of service may choose not to apply this option)
- Reasonable means consistent with the principles and general provisions



# Valuation

## Related party transactions

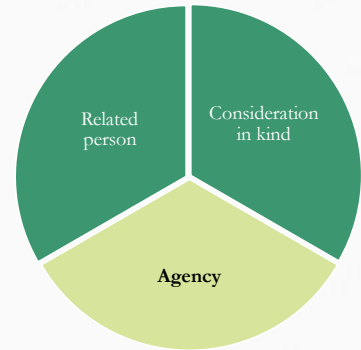
- Value in the open market
- Money's value of like kind and quality of supply
- 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services (supplier of service may choose not to apply this option)
- Reasonable means consistent with the principles and general provisions
- In case of resale by related party, at the option of supply, the value equivalent to 90% of selling price to unrelated person
- Invoice value to be accepted if the recipient is eligible for full input tax credit



# Valuation

## Transactions with agents

- Value in the open market or
- At the option of supplier be 90% of selling price of agent to unrelated person, procured for further supply by agent
- 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services (supplier of service may choose not to apply this option)
- Reasonable means consistent with the principles and general provisions



# Valuation

## Other transactions

- 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services (supplier of service may choose not to apply this option)
- Reasonable means consistent with the principles and general provisions

## Valuation: special transactions

- Purchase or sale of foreign currency including money changing [1%, 0.50%, 0.10% plus fixed amount]
- Booking of tickets for travel by air provided by an air travel agent [5% domestic/ 10% foreign]
- The value of supply of services in relation to life insurance business
- Person dealing in buying and selling of second hand goods [Margin or profits made]
- Value of redeemable token, or a voucher, or a coupon, or a stamp (other than postage stamp)
- Rate of exchange for transactions in foreign currency

## Valuation: pure agent deduction

- a. The service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- b. The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- c. The recipient of service is liable to make payment to the third party;
- d. The recipient of service authorises the service provider to make payment on his behalf;
- e. The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- f. The payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- g. The service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- h. The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

## Job-work

---

### Input tax credits: sent to job-worker

#### Section 19:

- The principal is entitled to take credit on inputs sent to a job worker for job work if the said inputs, after completion of job work, are received back within one year of their being sent.

The principal is entitled to take credit on inputs even if the said inputs are directly sent to job worker without being brought to his place of business, and in such case the period of one year shall be counted from the date of receipt by job worker.

- The principal is entitled to take credit on capital goods sent to a job worker for job work if the said capital goods, after completion of job work, are received back within 3 years of their being sent.

The principal is entitled to take credit on inputs even if the said capital goods are directly sent to job worker without being brought to his place of business, and in such case the period of 3 years shall be counted from the date of receipt by job worker.

- The restriction of period shall not apply to moulds and dies, jigs and fixtures, or tools sent to job worker for job work

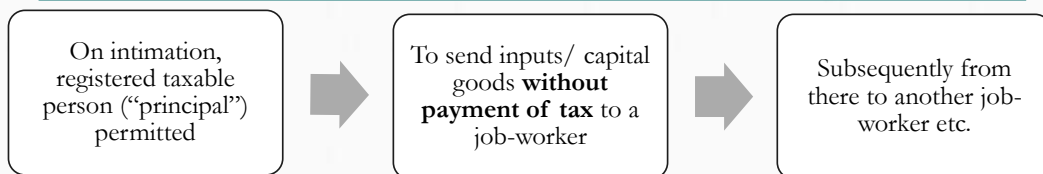
## Input tax credits: sent to job-worker

### Section 19:

where the inputs or capital goods are not received back within the time limit specified, he shall pay an amount equivalent to the input tax credit availed of on said goods along with the interest specified in Section 50.

Particulars	Time Limit (Inputs)	Time Limit (Capital Goods)
Input/capital goods sent to job worker for job work (including when sent directly to the job worker by the supplier on behalf of the principal)	One year from the date of their being sent	3 years from the date of their being sent

## Section 143 – Job Work



Principal, after completion of job-work or otherwise, can :-

- Bring back inputs/ capital goods (other than moulds and dies, jigs and fixtures, or tools) to any place of business without payment of tax for further supply **within 1 year/ 3 years of they being sent out**
- Directly supply inputs/ capital goods (other than moulds and dies, jigs and fixtures, or tools) from job-worker premises on payment of tax within India or without payment of tax for export **within 1 year/ 3 years of they being sent out**



## Section 143 – Job Work

---

- Direct supply from job-worker premises not permitted unless such premise is declared as an additional place of business of the 'principal'
- Direct Supply is permitted if:
  - Job-worker is registered under the GST laws
  - Principal is engaged in supply of certain goods (to be notified)
- 'Principal' is responsible for payment of tax and accountability of the goods.
- If inputs/ capital goods (other than moulds and dies, jigs and fixtures, or tools) are not received back by the principal within one or 3 years of they being sent out
  - Deemed that such inputs/ capital goods had been supplied by principal to job-worker on the day when they were sent out
- Any waste/ scrap generated during job-work may be supplied by job-worker directly from his place of business on payment of tax by job-worker if he is registered. If job-worker is unregistered, Principal will have to pay tax

eCommerce

---

## Electronic Commerce

**Section 2 (44):**

“electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network”

**Section 2 (45):**

“electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce”

## Electronic Commerce

**Section 9 (5):**

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax

## Electronic Commerce: TCS

### **Section 52:**

Shall collect an amount calculated at such rate not exceeding 2% (1% CGST and 1% SGST), as may be notified on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

"net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

## Electronic Commerce: compliance

- File return in Form GST-8, within 10 days from end of month
- File annual statement within 9 months from the end of financial year, giving details of outward supplies (net of returns)
- Needs to compulsory register under GST
- Supplier through electronic commerce operator who is required to collect tax at source u/s. 52, cannot opt for composition and needs to compulsory register under GST

# TDS

## Section 51

- The Government may mandate, the following persons to deduct tax:
  - Department or establishment of the Central Government or State Government;
  - Local authority
  - Governmental agencies
  - Such persons or category of persons as may be notified by the Government on the recommendations of the Council
- File return in Form GST-7, within 10 days from end of month, for taxes deducted
- If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day