

ATHENA NEWSLETTER



GST 10-point Series

A quick and efficient mode to understand important aspects of the biggest tax reform in India

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01

E-COMMERCE

The Model GST law brings in the neglected e-commerce business within its ambit. This in a way is regularization of the e-commerce businesses in indirect tax alley. Thus, providing much needed relief to the sector. However, the draft provisions are required to be analyzed and dealt with a pinch of salt.

02

The Model law defines 'e-commerce', 'e-commerce operator', 'aggregator', 'brand name or trade name' and 'branded services'. The definitions are clarifying but also bring in some cloudiness. Even though Section 43B state that the definitions are chapter specific, borrowing of the definitions for the purpose of non e-commerce sectors is debatable.

03

Each e-commerce operator is required to be registered under GST, irrespective of the turnover threshold. Considering the wide definition of *e-commerce operator*, a large number of businesses shall fall within the ambit.

04

Each e-commerce operator shall also fall within the definition of 'taxable person' u/s 9 and thus thresholds for taxability of INR 10L/ INR 05L (North-East States) shall not apply. Thus, when these provisions are read with Section 7 'Levy and Collection of CGST/SGST', tax liability on e-commerce operators shall arise from the very first rupee of revenue. This set of provisions shall not be central to many litigations, only if, the departments maintain that the e-commerce operators are made to register for imposing tax liability and compliance on the 'concerned suppliers'.

05

There is no clarity on taxability of the transaction of 'facilitation of trade by e-commerce operators'. Any e-commerce transaction shall consist of two transactions:

- a. of sale-purchase; and
- b. of facilitating of the sale-purchase.

The second transaction of facilitation which is also for a consideration has not been dealt with under the law, leaving scope for huge litigation in future.

06

Section 43C prescribes that all e-commerce operators shall be required to collect tax at source, i.e., at the time of credit of any amount to the supplier of goods/ services as consideration towards supply of goods/ services through the e-commerce operator. The rate of collection shall be prescribed through notification. The amounts so collected shall be required to be deposited with the appropriate governments by 10th of next month.

07

As the amounts deposited as TCS shall be allowed as input credit to the supplier of goods/ services, the e-commerce operator shall also be required to submit a monthly electronic statement containing details of the supplies and collections so made in prescribed manner. In case of discrepancy/ mismatch, opportunity of rectification shall be granted.

08

In case of any shortfall in the value declared by the supplier, the supplier may be asked to rectify its return and in case of non-rectification the value may be added to the turnover of supplier and liability for tax along with interest from the due date may arise. This provision has been devised to avoid any short disclosure of supply of goods/ services by the suppliers but does give necessary exclusion to cases of genuine mismatches such as due to time lag and imposes automatic liability.

09

Details from the e-commerce operators may be sought by the department regarding the following, on issuance of notice:

- a. supplies of goods/ services effected through such operators; or
- b. stock of goods held by the suppliers in godowns/ warehouses managed by the operator and added as additional place of business by the supplier.

10

The details so sought shall be required to be provided within 05 working days from the date of service of notice. On non-compliance a penalty of Rs. 25,000/- may be imposed on the e-commerce operator. Maintenance of such records shall bring in high levels of compliance and reduction of tax leakage in the e-commerce segment.

ABOUT THIS PUBLICATION

This publication forms part of 10-point series by Athena Law Associates, to help readers quickly understand key provisions of the Model Goods & Services Tax (GST) law proposed to be implemented in India, starting April 2017.

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