

Revised model GST law vis-à-vis Old Model GST Law: Part II-Valuation and Input tax Credit

**Value of taxable supply**

Heading	Draft Model GST Law dated 7.6.2016 [Section 15]	Revised model GST law dated 25.11.2016 [Section 15]	Impact
<b>Value of supply</b>	The value of a supply of goods and/or services will be the 'transaction value'	The value of a supply of goods and/or services will be the 'transaction value'	The value of supply continues to be the <b>transaction value</b> . It is important to note that <b>service providers</b> , who were hitherto taxable on the basis of 'gross amount', will, under the GST regime, be subjected to tax on the ' <b>transaction value</b> ' <b>concept</b> ; which concepts are <b>un-tested in the context of provision of services</b> .
<b>Definition of transaction value</b>	The price actually paid or payable for the said supply of goods and/or services where : <ul style="list-style-type: none"> <li>the supplier and the recipient of the supply are not related and</li> <li>the price is the sole consideration for the supply</li> </ul>	The price actually paid or payable for the said supply of goods and/or services where : <ul style="list-style-type: none"> <li>the supplier and the recipient of the supply are not related and</li> <li>the price is the sole consideration for the supply</li> </ul>	The definition continues to be the <b>same</b> . However, <b>clarity is needed with respect to exchange rate</b> to be applied for import of services. It may be specified whether the rate notified for customs duty has to be applied, or whether the conversion per GAAP will be acceptable.
<b>Taxes and Duties</b>	Any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act.	Any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient	Revised version has increased the scope by <b>including CESS</b> as well. Further the revised version has excluded taxes levied under the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016. Also, it makes it clear that

			<p>tax to be included only when they are <b>charged separately</b>.</p> <p><b>Inclusion of taxes will compromise the calculation of effective tax rate.</b> Hence, we propose that the sub-section should <b>explicitly set out the taxes that will be includible</b></p>
<b>Value of taxable supply</b>	To include the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable	Not included specifically	<p>The old version specifically included the value of goods/services supplied by recipient free of cost or at concessional rate. Revised version <b>does not include such clause</b>.</p> <p>Revised GST valuation rules are still awaited and we hope clarity with respect to this inclusion. Also, <b>we recommend inclusion only when such inclusion is contracted</b>.</p>
<b>Interest or late fees for delayed payment</b>	Not mentioned	Includes interest or late fee or penalty for delayed payment of any consideration for any supply.	<p>Transaction value relates to price paid or payable for supplies and interest/delayed payment charges are nothing but interest on price of supplies not paid during normal credit period. Hence, <b>Inclusion of interest or late fees for delayed payments is not in line with general business practices</b>.</p>
<b>Incidental expenses</b>	Incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods	Same as old version	<p>We feel that <b>the valuation provisions should exclude the costs of delivery, which is a separate supply of service</b>.</p>

	or, as the case may be, supply of the services		
<b>Subsidies</b>	Subsidies provided in any form or manner, linked to the supply.	Subsidies directly linked to the price excluding subsidies provided by the Central and State governments. <i>Explanation-</i> The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.	<b>Subsidies provided by Central and State Government specifically excluded</b> from value of supply.  Clarity needed with respect to <b>what is implied by word 'subsidies' and expression 'linked to supply'</b> .
<b>Royalties and licence fees</b>	Royalties and licence fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable	No such mention	The old version specifically included the value of royalties and licence fees as a condition of supply.  Revised version <b>does not include such clause</b> .  Revised GST valuation rules are still awaited and we hope clarity with respect to this inclusion.
<b>Reimbursable expenditure</b>	Any reimbursable expenditure or cost incurred by or on behalf of the supplier and charged in relation to the supply of goods and/or services	No such clause	The old version specifically included the value of reimbursable expenditure or cost incurred by supplier. As regards reimbursable expenditure or cost being included in the transaction value, this was in line with the amendment of definition of consideration to Section 67 of the Finance Act  Revised version <b>does not include such clause</b> .  Revised GST valuation rules are still awaited and we hope clarity with respect to this inclusion.
<b>Pre-supply discounts</b>	Pre-supply discounts allowed in the course of normal trade practice and	Pre-supply discounts duly recorded in the invoice issued in respect of the	The exclusions relating to pre-supply discounts are concurrent and the

	which has been duly recorded in the invoice issued in respect of the supply are to be excluded	supply are to be excluded.	requirement that pre-supply discounts should be reflected in the invoice is currently envisaged under various VAT statutes.
<b>Post-supply Discounts</b>	Post-supply discounts to be included in transaction value <b>except</b> such post-supply discount which is established as per the agreement and is known at or before the time of supply and specifically linked to relevant invoices.	Post-supply discounts to be included <b>except</b> where such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices and input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.	Revised version <b>adds one more condition</b> for adjusting post-supply discounts that ITC attributable to the discount portion should have been reversed by the recipient of the supply. <b>This implies that it is important to establish that the discount has actually been passed on to the recipient of the supply.</b>
<b>Reference to prescribed rules</b>	<p>GST valuation rules to be referred to in following cases:</p> <ul style="list-style-type: none"> <li>• The consideration, whether paid or payable, is not money, wholly or partly;</li> <li>• The supplier and the recipient of the supply are related;</li> <li>• There is reason to doubt the truth or accuracy of the transaction value declared by the supplier</li> <li>• Business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;</li> <li>• Such other supplies as may be notified by the Central or a State Government in this behalf on the</li> </ul>	Where the value of the supply of goods or services cannot be determined, the same shall be determined in such manner as may be prescribed.	<p>Revised version <b>leaves an open though restricted room</b> for reference to prescribed rules.</p> <p>The older version included more situations to refer rules such as <b>reason to doubt the accuracy of TV, specific business transactions etc. which are not specified in revised version.</b></p> <p>Revised GST valuation rules are still awaited and we hope clarity with respect to these cases.</p>

	recommendation of the Council.		
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### Input tax credit

Heading	Draft Model GST Law dated 7.6.2016 [Section 2,16,18]	Revised model GST law dated 25.11.2016 [Section 2, 16,17,18,19, 21, 22]	Impact
<b>Inputs</b>	The definition required that the inputs should be used by a supplier for making an outward supply in the course or furtherance of business.	No such restriction in revised version	Scope of "inputs" now broadened <i>by removing</i> the restriction that inputs should be used or making the outward supply".
<b>Input service</b>	The definition required that the input services should be used by a supplier for making an outward supply in the course or furtherance of business	No such restriction in revised version	Scope of "input service" now broadened <i>by removing</i> the restriction that input service should be used or making the outward supply".
<b>Input tax</b>	Means the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under sub-section (3) of section 7	Means the IGST, including that on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under sub-section (3) of section 8, but does not include the tax paid under section 9	The definition has been amended to make it compatible with the revised definition of inputs and input services.
<b>Staggering input tax credits</b>	No staggering input tax credit	Staggering input tax credit over 3 years in respect of pipelines & telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto.	Staggering tax credit has been introduced for pipelines & telecommunication tower keeping in view the amount of expenditure involved in them and accordingly to straight line the tax credit.
<b>Items not eligible for ITC</b>	Motors vehicles subject to some exceptions	Motor vehicles and <b>other conveyances</b> subject to other exceptions.	Revised version <b>excludes other conveyances also in addition to motor vehicles.</b> "Other conveyances" has not been defined in the draft which means <b>it is open to</b>

			<b>interpretation.</b>
<b>Items not eligible for ITC</b>	<p>Goods/services provided in relation to:</p> <ul style="list-style-type: none"> <li>• Food and beverages,</li> <li>• outdoor catering,</li> <li>• beauty treatment,</li> <li>• health services, cosmetic and plastic surgery</li> </ul> <p>not eligible for ITC <i>used primarily for personal use or consumption of any employee</i></p>	<p>Goods/services provided in relation to:</p> <ul style="list-style-type: none"> <li>• Food and beverages,</li> <li>• outdoor catering,</li> <li>• beauty treatment,</li> <li>• health services, cosmetic and plastic surgery</li> </ul> <p>not eligible for ITC <i>except where such inward supply of goods or services of a particular category is used by registered taxable person for making an outward taxable supply of the same category of goods or services</i></p>	<p>Revised version is <b>rightly amended</b> to render only those goods/services provided in relation to</p> <ul style="list-style-type: none"> <li>• Food and beverages,</li> <li>• outdoor catering,</li> <li>• beauty treatment,</li> <li>• health services, cosmetic and plastic surgery</li> </ul> <p><b>which are not used for making outward supply of goods/services of same type.</b></p> <p>This is a welcome step.</p>
<b>Items not eligible for ITC</b>	<p>Membership of a club, health and fitness centre not eligible for ITC used primarily for personal use or consumption of any employee.</p>	<p>Membership of a club, health and fitness centre not eligible for ITC</p>	<p>Revised version has broadly rendered "<i>Membership of a club, health and fitness centre</i>" <b>ineligible for ITC.</b></p> <p>Such item is personal in nature and such an amendment is welcome.</p>
<b>Items not eligible for ITC</b>	<p>Life insurance, health insurance used primarily for personal use or consumption of any employee.</p>	<p>Rent-a-cab, life insurance, health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force</p>	<p>Revised version has broadly rendered "<i>goods/services in relation to rent-a-cab, life insurance, health insurance</i>" <b>ineligible for ITC.</b></p> <p>Again these items are meant for personal consumption and justified to be excluded.</p> <p><b>It has provided an exception where such services are legally obligatory for employer to provide to employees.</b></p>
<b>Items not eligible for ITC : Works contract</b>	<ul style="list-style-type: none"> <li>• Credit not available in respect of goods / services acquired by a</li> </ul>	<p>Works contract services when supplied for construction of</p>	<p>There had been some ambiguity with respect to interpretation of term</p>

<p><b>and other construction services resulting in immovable property (other than plant and machinery)</b></p>	<p>principal in the execution of works contract resulting in the construction of an immovable property</p> <ul style="list-style-type: none"> <li>• Goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, used in the construction of immovable property</li> </ul>	<p>immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.</p> <ul style="list-style-type: none"> <li>• Goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business.</li> </ul>	<p>principal in older version which has been passed away with in revised version.</p> <p>It is pertinent to note here that <b>revised version has specifically required transfer of property to qualify as works contract. This amendment is in line with concept of “deemed sale’ under existing VAT laws.</b></p> <p>Revised version has now clarified that:</p> <ul style="list-style-type: none"> <li>• CGST / SGST / IGST paid on various inputs and input services used for the supply of works contract service should be allowed as Input Tax Credit without any restriction.</li> <li>• <b>No credit to the end users</b> of tax paid on construction related activities relating to immovable property. This is concurrent with current service tax law. This could greatly impact the renting business.</li> <li>• There is no sound logic to deny the credit of tax paid on goods/services used in integral activities for furtherance of business for e.g. construction of factory or office building.</li> </ul>
<p><b>Items not eligible for ITC</b></p>	<p>-</p>	<p>Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples</p>	<p>This is perhaps a new addition by revised version where <b>no credit is available for GST paid on goods lost or stolen or destroyed or written off</b></p>

			<b>or goods disposed of without any consideration.</b>
<b>Items not eligible for ITC</b>	-	Any tax paid in terms of sections 67, 89 or 90.	ITC now specifically <b>ineligible</b> for <ul style="list-style-type: none"> <li>• tax paid as a consequence of recovery of ITC wrongly availed</li> <li>• Tax paid on detained or seized goods</li> <li>• Confiscated goods</li> </ul>
<b>Condition for claiming ITC</b>	Receipt of goods and or services is an essential requirement to claim ITC	Concurrent with old version	Condition of <b>“receipt of services”</b> for availment of credit is a <b>departure from the present CENVAT Credit provisions</b> which, for input services, allows availment of credit on the basis of <b>“receipt of invoice / bill.”</b>
<b>Impact of Non-payment of consideration on ITC</b>	No such clause.	Where a recipient fails to pay to the supplier of services, the amount towards the value of supply of services along with tax payable thereon <i>within a period of three months from the date of issue of invoice by the supplier</i> , an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed.	The restriction brought in revised version is in alignment with current Rule 4(7) of CENVAT Credit Rules, 2004.
<b>Credit apportionment option</b>	No specific apportionment criteria for banking company or a financial institution including a non-banking financial company	Option granted to : <ul style="list-style-type: none"> <li>• banking company or</li> <li>• financial institution including a NBFC engaged in supplying services by way of accepting deposits, extending loans or advances to either apply the general apportionment formula or avail every month <b>ITC equal to fifty per cent of the eligible</b></li> </ul>	As per Current CENVAT Rules, 2004, credit of the whole of service tax paid on <b>banking and other financial services</b> as shall be allowed unless such service is used exclusively in providing exempted services. Banking and other financial services cover a variety of activities.



		<p><b>input tax credit on inputs, capital goods and input services in that month.</b></p> <p>The option once exercised shall not be withdrawn during the remaining part of the FY</p>	<p>Revised version provides an option to specific banking Co. / FIs / NBFCs to avail 50% GST paid as credit where services include both taxable and exempt supplies.</p>
<p><b>ITC in case of Cessation of levy under Composition scheme</b></p>	<p>In event of cessation of levy under composition scheme, <i>credit is eligible</i> in respect of input tax in respect of :</p> <ul style="list-style-type: none"> <li>• inputs held in stock and</li> <li>• inputs contained in semi-finished or finished goods held in stock</li> </ul> <p>on the day immediately preceding the date from which he becomes liable to pay tax under section 7.</p>	<p>Aligned with older version. In addition, credit now available on <b>capital goods</b> as well.</p>	<p>Revised version allows credit of GST paid on capital goods in addition to inputs when a composition levy ceases to apply.</p>
<p><b>ITC in case of exempt goods/services becoming taxable</b></p>	-	<p>In the event of exempt supply becomes a taxable supply, credit is eligible for input tax in respect of :</p> <ul style="list-style-type: none"> <li>• inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and</li> <li>• capital goods exclusively used for such exempt supply</li> </ul> <p>on the day immediately preceding the date from which such supply becomes taxable:</p>	<p>Introduction of such clause is welcomed to fill gaps in law.</p>
<p><b>Time limit for availing ITC</b></p>	<p>Time limit for availing ITC on :</p> <ul style="list-style-type: none"> <li>• inputs held in stock and</li> <li>• inputs contained in semi-finished or finished goods held in stock</li> </ul> <p>before the expiry of one</p>	<p>Aligned with older version. Additionally, time limit extended to case of exempt supply becoming taxable supply</p>	<p>Perhaps the revised version has introduced additional clause for treatment of ITC on event of exempt supply becoming taxable supply and hence the extension of time limit as a consequence.</p>

	<p>year from the date of issue of tax invoice relating to such supply applies for following cases:</p> <ul style="list-style-type: none"> <li>• First time registration under GST</li> <li>• Voluntary registration under GST</li> <li>• Cessation of Composition levy.</li> </ul>		
<b>Calculation method</b>	<p>Revised version requires determination of credit on opening stock to be carried forward in case of :</p> <ul style="list-style-type: none"> <li>• First time registration under GST</li> <li>• Voluntary registration under GST</li> <li>• Cessation of Composition levy</li> </ul> <p>In accordance with GAAP in manner as may be prescribed.</p>	<p>Revised version does not make any reference to GAAP for determination of such credit. It only says <i>"In manner as may be prescribed"</i></p>	<p>We look forward to the method which may be prescribed to determine if there is any difference.</p>
<b>Supply of capital goods on which input tax credit has been taken</b>	<p>In case of supply of capital goods on which input tax credit has been taken, an amount equal to</p> <ul style="list-style-type: none"> <li>• the input tax credit taken on the said capital goods reduced by the percentage points as may be specified in this behalf or</li> <li>• the tax on the transaction value of such capital goods</li> </ul> <p>whichever is higher, to be paid</p>	<p>Aligned with older version. In addition, revised version specifically adds <b>"plant and machinery"</b> with capital goods.</p>	<p>Revised version specifically adds <b>plant and machinery</b> with capital goods. <b>The intent is not clarified as it does not define P&amp;M separately.</b></p> <p><b>It is important to note here that</b> GST draft talks about supply of capital goods on which credit has been taken. It does not mention whether such provision shall apply where <i>"capital goods are removed as such"</i> or <i>"after being used"</i>.</p>
<b>Supply of capital goods as scrap on which input tax credit has been taken</b>	-	<p>Revised version provides that where:</p> <ul style="list-style-type: none"> <li>• refractory bricks,</li> <li>• moulds and dies,</li> <li>• jigs and fixtures</li> </ul>	<p>The new proviso added in revised version is in consonance with CENVAT Credit Rules, 2004(CCR) <b>except</b> that as against CCR, <b>under GST, it applies to</b></p>

		are supplied as scrap, tax to be paid on the transaction value of such goods.	<b>only few specified items.</b>
<b>Input service distribution</b>	Proportionate distribution of credit of tax paid on input services attributable to more than one supplier on the basis of the turnover during the relevant period and operationality.	Proportionate distribution of credit of tax paid on input services attributable to more than one recipient on the basis of the turnover during the relevant period and operationality.	<p>Revised version uses the word 'recipient' in place of supplier used in older version which is more apt.</p> <p>Further it clarifies who is "recipient of credit (that is units under same PAN) which was definitely needed to remove any ambiguity.</p> <p>This is different from current regime which allows distribution of input service credit to an outsourced manufacturing unit also.</p> <p>Please note that remaining provisions relating to ISD under GST are aligned to ISD provisions under Service Tax.</p>
<b>Manner of recovery of credit distributed in excess</b>	Where the credit distributed by ISD is in excess of the credit available for distribution by him, the excess credit so distributed shall be recovered from such distributor along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.	-	This clause does not exist under the revised version as it is a redundant clause.