

## **GST Guidance Note -3**

### **Time of Supply**

#### **What this Guidance Note contains?**

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#### **3.01 Significance of Time of Supply**

The tax rates, exchange rate, exemptions and abatements keep changing from time-to-time. It is thus necessary to know the precise date and time when the charging event takes effect. This in tax parlance is known as time of supply. Sections 12 and 13 of the CGST Act provides for determination of time of supply of goods and services respectively. This chapter discusses these provisions.

### **3.02 Default provision of time of supply of goods**

The default provision for time of supply of goods is the earliest of the following dates:

- Date of issue of invoice by the supplier;
- If invoice is not issued the last date on which supplier is required to issue the invoice;
- The date on which supplier receives the payment with respect to supply

### **3.03 Time of supply of interest, late fees or penalty for delayed payment of consideration for goods or services**

Section 15 of the CGST Act provides for value of taxable supply. Section 15(2)(d) provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. However the time of supply for such interest, late fees or penalty has been segregated from the original time of supply. If time of supply of the original supply was retained, interest would become payable on tax paid on such payments.

Sections 12(6) and 13(6) of the CGST Act provide that the time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value in respect of goods and services respectively.

### **3.04 Default provision of time of supply of services**

The default rule for time of supply of services is the earliest of following dates:

- Date of issue of invoice by the supplier;
- The date on which supplier receives the payment with respect to the supply.

It has also been provided that, if invoice is not issued within a period of thirty days from the date of supply of service, the time of supply shall be the date of provision of service.

### **3.05 Taxability of advances**

As per provisions of time of supply for goods and/ or services, in case of advance received by a supplier, time of supply is fixed at the point the advance is received. This is irrespective of the fact whether supply is made or not. For e.g. Mr.A receives an advance of Rs. 10 lacs for

supply of goods worth Rs. 1 crore to be made in future. The time of supply to the extent of advance received of Rs. 10 lacs will be date of receipt of advance & for the balance Rs. 90 lacs, it shall be the date of issue of invoice or the last date on which supplier is required to issue invoice.

However, the Government vide Notification no. 66/2017 CGST dated 15.11.2017 has exempted suppliers of goods from payment of GST on advances received. This exemption is only for supplier of goods. The supplier of services are liable to discharge GST liability at the time of receipt of advance.

### 3.06 Provisions other than default Rule for the time of supply of goods and services

| Nature of Supply   | In respect of goods   | In respect of services  |
|--|---|---|
| Supply of vouchers when the final supply is identifiable (single purpose vouchers) | Date of issue of voucher  | Date of issue of voucher  |
| Multi-purpose vouchers i.e. the precise supply is not identifiable                 | Date of redemption of voucher   | Date of redemption of voucher   |
| Reverse charge taxation  | <p>Earlier of the following dates:</p> <p>a) receipt of goods;</p> <p>b) payment;</p> <p>c) date immediately following <b>30</b> days of invoice date</p> <p>If cannot be done as above: the date of entry in the books of accounts of the recipient of supply.</p> | <p>Earlier of the following dates:</p> <p>a) payment;</p> <p>b) date immediately following <b>60</b> days of invoice date</p> <p>If cannot be done as above: the date of entry in the books of accounts of the recipient of supply.</p> |

|  |  |   |
|--|--|---|
| In case of 'associated enterprises' located outside India                    | Not applicable   | Earlier of the following:<br>a) date of entry in books of accounts; or<br>b) date of payment; |
| Levy of interest, late fees or penalty for delay in payment of consideration | Date on which the supplier receives such addition to value | Date on which the supplier receives such addition to value                                    |

If it cannot be done by any of the above rules the time of supply will be:

- a) When a periodical return has to be filed, the date on which such return is to be filed;
- b) In any other case the date of payment of tax.

### **3.07 Point of time when payment will be said to have been made for reverse charge taxation**

The date of payment will be the date on which such payment is recorded in the books of account of the recipient of supply or the date on which the payment is debited in the bank account of recipient of supply, whichever is earlier.

### **3.08 Meaning of continuous supply of goods or services**

Continuous supply of goods is defined under section 2(32) of the CGST Act to mean supply of goods on continuous or recurrent basis for which the supplier invoices the recipient on a regular or periodic basis. It also includes such supply of goods which government may specifically notify. However, till date, the government has not notified any supply as deemed continuous supply of goods.

Continuous supply of services is defined under section 2(33) of the CGST Act to mean supply of services continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations. It also includes any service which government may specifically notify. However, till date, the government has not notified any supply as deemed continuous supply of services.

### **3.09 Difference between continuous supply and supply on recurrent basis**

Generally supply of goods through wire (ropeway), cable (electricity), pipelines (liquids and gas) or other conduit (e.g. conveyor belt) is considered as a continuous supply. A contract by a transporter with a petrol pump for supply of fuel for its trucks on regular basis or a contract by an office with a drinking water supplying firm for supply of water jars on all working days are examples of recurrent supply. A contract for providing security on 24 X 7 basis is continuous supply of service whereas a contract for sale of under-construction property with construction-linked-payment obligations is a contract for recurrent supply of services.

### **3.10 Significance of supply on continuous basis**

As the name suggests, continuous supply is opposite to supplies in batches. In case of supply in batches, a definite point of time can be prescribed for issuance of invoice and payment of tax linked with the happening of taxable event. In the case of continuous supply, whether for goods or for services, as the process of provision of supply remains uninterrupted, it is necessary to provide a separate cut off point of time when the invoice should be issued and payment of tax should be made. Continuous supply is different from ordinary supply only to this extent. Otherwise all provisions of the Act, which apply to ordinary supplies are applicable to supplies on continuous basis.

### **3.11 Time of issue of invoice for supply of goods or services**

Section 31 of the CGST Act provides for time of issue of invoice. An invoice for supply of goods needs to be issued before or at the time of removal of goods for supply to the recipient where the supply involves movement of goods. If supply does not involve movement of goods invoice needs to be issued before or at the time of delivery of goods or making available goods to the recipient.

An invoice for supply of services needs to be issued before or after the provision of service but not later than thirty days from the date of provision of service.

### **3.12 Time of supply when the tax rate undergoes a change**

Whenever the rate of tax changes it affords an opportunity for taking undue advantage of beneficial tax rates. To counter this, the normal rules for time of supply are suspended. The rule in these cases is called 2/3 rule i.e. two out of the three events define the precise time of supply, the three events are:

- i. The date of issue of invoice
- ii. The date of payment
- iii. The date of supply of goods and/or services

The situations that emerge are as follows:

| <b>Situation</b>                       | <b>Invoice issued before date of change in the tax rate tax?</b> | <b>Payment received before date of change in the tax rate tax?</b> | <b>Impact</b>   |
|--|--|--|---|
| Supply completed before change in rate | N  | N  | Time of supply is earliest of the date of invoice or payment i.e. after change in rate -Changed rate will apply       |
| —do—                                   | Y  | N  | Time of supply is date of issue of invoice -Changed rate will not apply   |
| —do—                                   | N  | Y  | Time of supply is the date of receipt of payment -Changed rate will not apply   |
| Supply completed after change in rate  | Y  | N  | Time of supply is the date of receipt of payment -Changed rate will apply   |
| —do—                                   | Y  | Y  | Time of supply is earliest of the date of invoice or payment i.e. before change in rate - Changed rate will not apply |
| —do—                                   | N  | Y  | Time of supply is date of issue of invoice -Changed rate will apply   |

### 3.13 Time of receipt of payment in case of change in rate of tax

The date of receipt of payment shall be the date of credit in the bank account of the supplier of goods or services or the date on which receipt of the payment is entered into the books of account of the supplier of goods or services whichever is earlier.

### 3.14 Meaning of 'associated enterprise'

Term 'associated enterprise' shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961. It means:

- a. An enterprise, which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- b. In respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

The Income-tax Act provides detailed list of circumstances when an enterprise is said to participate in management or control or capital of other enterprise and when same set of persons can be said to participate in management or control or capital of other enterprise.

The concept of 'associated enterprise' is relevant only for the purpose of determining time of supply of receipt of services where supplier is located out of India.

### 3.15 Examples of associated enterprise

- 1) A Limited holds 100 percent shares of B Limited. A Limited also holds 20 percent shares of C Limited. B Limited holds 10 percent shares of C Limited. Here A Limited holds, directly and indirectly not less than twenty-six percent of voting power in C Limited. A Limited and C Limited are associated enterprises.
- 2) A Limited holds not less than twenty-six per cent of the voting powers in D Limited and E Limited. A Limited, D Limited and E Limited are associated enterprises.
- 3) Mr. A has a business of manufacture and sale of jewellery. Mrs. A has separate business of manufacture and sale of furniture. As two businesses are controlled by an individual and his relative, both enterprises are

associated enterprises. Different line of business is of no consequence.

- 4) XYZ Limited is manufacturing soft-drink concentrates. They have entered into contracts with several bottlers for converting concentrate in drink through a process amounting of manufacture. The bottler is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licenses, specification and secret formula of XYZ Limited. Both these enterprises are associated enterprises.

### **3.16 Meaning of ‘voucher’**

‘Voucher’ has been defined in section 2(118) of the CGST Act to mean an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

### **3.17 Time of supply in case of vouchers**

The time of supply for vouchers has been given in CGST law under provisions relating to both time of supply of goods as well as time of supply of services. The time of supply of vouchers is –

- i. Date of issue of voucher if the supply is identifiable at that time (i.e. single purpose vouchers)
- ii. Date of redemption of voucher in other cases.

The purpose of mentioning the time of supply of voucher both of goods as well as service is that supply of voucher can be treated both on supply of goods or as service depending upon the underlying transactions.

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