



THE GST (COMPENSATION TO STATES) ACT, 2017

The Act for the levy of compensation cess on certain supplies, to provide for the compensation to be given to the States by Center for loss of revenue

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BACKGROUND

- During the introduction of the GST, the states had to relinquish their powers to levy tax on goods, and they feared loss of revenue to them. They wanted an assurance that they will not have to bear any losses due to the introduction of GST. So, the Central Government proposed that it will compensate any losses to any state that accrues after the introduction of GST. To give effect to that proposal, this Act has been enacted, and here we will understand how the loss is calculated and compensated.



SECTION 8: LEVY & COLLECTION OF CESS

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|---|---|
| There shall be levied a cess on → | Such Intra-State supplies (as per Sec 9 of the CGST Act), and Inter- State supplies (as per Sec 5 of the IGST Act), as specified in the Schedule, at notified rates not exceeding that mentioned in the Schedule. |
| Levied wef date on which CGST Act comes into force, and <u>for 5 years</u> from that date (or such other period as prescribed), and collected in prescribed manner. | Purpose: For providing compensation to the States for loss of revenue |
| No Cess leviable on supplies by <u>Composition Taxable Person</u> . | |

- **Value** of supply shall be determined as per Sec 15 of the CGST Act.
- **Cess on goods imported** into India shall be levied and collected as per Sec 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied under Sec 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

THE SCHEDULE (AS AFTER AMENDMENT VIDE ORDINANCE DT. 02/09/17)

| S. No. | Description | HSN | Maximum Rate of Compensation Cess |
|--------|---|--------------------|--|
| 1 | Pan Masala | 2106 90 20 | 135% ad valorem |
| 2 | Tobacco and manufactured tobacco substitutes including tobacco products | 24 | Rs. 4170 per 1000 sticks, or 290% ad valorem, or a combination thereof, but not exceeding [Rs. 4170 per thousand sticks + 290% ad valorem] |
| 3 | Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated | 2701, 2702 or 2703 | Rs. 400 per tonne |
| 4 | Aerated waters | 2202 10 10 | 15% ad valorem |
| 4A | Motor vehicles for the transport of not more than 13 persons, including the driver | 8702 10, 20, 30 | 25% ad valorem |
| 5 | Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for the transport of 10 or more persons, including the driver), including station wagons and racing cars | 8703 | 25% ad valorem |
| 6 | Any other supplies | - | 15% ad valorem |

SECTION 1: SHORT TITLE, EXTENT AND COMMENCEMENT

| | |
|---------------------|--|
| Short Title | This Act may be called the <u>Goods and Services Tax (Compensation to States) Act, 2017</u> . |
| Extent | It extends to the whole of India. |
| Commencement | It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (Notified wef 01/07/2017 vide - <u>Notification No. 1/2017</u> – Goods and Services Tax Compensation, dated 28 th June 2017) |

SECTION 2: SOME IMPORTANT DEFINITIONS

(HERE, ONLY SELECTED DEFINITIONS HAVE BEEN DISCUSSED. FOR ALL AND EXACT DEFINITIONS, ONE CAN REFER THE ACT.)

| | |
|--|--|
| (g) “input tax” in relation to a taxable person, means → | (i) cess charged on any <u>supply</u> of goods/ services/ both <u>made to him</u> |
| | (ii) cess charged on <u>import</u> of goods and includes the cess payable on <u>reverse charge</u> basis |
| (k) “<u>projected growth rate</u>” means the <u>rate of growth projected for the transition period</u> as per section 3 | |
| (m) “<u>State</u>” means – | (i) for the purposes of Sec 3, 4, 5, 6 and 7 → the States as defined under the CGST Act; and (ii) for the purposes of Sec 8, 9, 10, 11, 12, 13 and 14 → the States as defined under CGST Act (+) the Union territories as defined under UTGST Act |
| (p) “<u>taxable supply</u>” means a <u>supply</u> of goods/ services/ both, which is <u>chargeable to the cess</u> under this Act; | |
| (q) “<u>transition date</u>” shall mean, in respect of any State, the date on which the SGST Act of that State comes into force | |
| (r) “<u>transition period</u>” means a <u>period of 5 years from the transition date</u>; and | |
| The words/ expressions used and <u>not defined</u> in this Act, but <u>defined in the CGST/ IGST Act</u> shall <u>have</u> the <u>meanings</u> respectively <u>assigned</u> to them <u>in those Acts</u>. | |

SECTION 3 – GROWTH RATE

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be **14% p.a.**

SECTION 4 – BASE YEAR

For calculating compensation amount payable in any FY, the **FY 2015-16** shall be taken as the **base year**.

SECTION 5 – BASE YEAR REVENUE

INCLUSIONS

The base year revenue for a State = Sum of revenue collected by the State and the local bodies during the base year, through the following taxes levied (net of refunds) -

1. VAT, sales tax, purchase tax, Works Contract Tax, or any other tax levied under Entry 54
2. CST levied under the Central Sales Tax Act, 1956;
3. Entry tax, Octroi, Local Body Tax, any other tax levied under Entry 52
4. Luxury Tax, Entertainment tax, tax on amusements, betting and gambling or any other tax levied under Entry 62
5. Advertisement tax, or any other tax levied under Entry 55
6. Excise duty on medicinal and toilet preparations under Article 268
7. Cess/ Surcharge/ Fee leviable under Entry 66 read with Entries 52, 54, 55 and 62 through any Act, enacted prior to constitution amendment

EXCLUSIONS

Following taxes shall **not be included** -

1. Any taxes levied under Entry 54 (VAT), CST, Cess - on the sale/ purchase of → petroleum crude, high speed diesel, petrol, natural gas, aviation turbine fuel and alcoholic liquor for human consumption.
2. Entertainment tax levied by the State but collected by local bodies under Entry 62.

SPECIAL PROVISIONS FOR CERTAIN STATES

- For **Jammu and Kashmir**, Base year revenue shall include - Service tax collected by it during the base year.
- For the “**Special Category States**” [mentioned in Article 279A(4)(g)], Base year revenue shall include → Amount of revenue foregone by such states, due to ‘exemptions or remission’ given by them to promote industrial investment in their States, with respect to the taxes which are included in Base Year Revenue. [Means, the taxes they lost due to giving exemptions during the base year, shall also be considered as included in “Base Year Revenue”]

ROLE OF CAG

Base year revenue shall be calculated as above, on the basis of the figures of revenue (net of refunds given in that year), collected and audited by the CAG of India.

OTHER POINTS

- In respect of any State, if any part of revenues mentioned above are not credited in the Consolidated Fund of the respective State → it shall be included in the total base year revenue of the State, subject to prescribed conditions.
- The Acts under which the specific taxes are being subsumed under GST shall be as such as may be notified.

SECTION 6 – CALCULATION OF PROJECTED REVENUE

The projected revenue for any year in a State = Projected growth rate (x) Base year revenue.

Illustration.—If the base year revenue for 2015-16 = Rs. 100,

$$\rightarrow \text{Projected revenue for FY 2018-19} = \left[100 \times \left(\frac{(1+14)}{100} \right)^3 \right]$$

SECTION 7 – COMPENSATION

CONCEPT

- The **compensation** shall be **payable during the transition period** (for 5 years).
- **Every 2 months**, the compensation shall be **provisionally** calculated and **released**.
- **Every FY**, after the receipt of final revenue figures as audited by the CAG, the **compensation** shall be **finally** calculated.

| CALCULATION AT END OF EVERY 2 MONTHS | CALCULATION FOR WHOLE FY |
|---|---|
| The loss of revenue at the end of every 2 months period shall be calculated in the following manner – | The total compensation payable for any FY shall be calculated in the following manner – |
| (a) Projected revenue <u>till end of period</u> , calculated on a <u>pro-rata basis as a % of Total Projected revenue</u> for FY as per Sec 6. <i>Illustration.</i> —If total projected revenue = Rs. 100 → Projected revenue till end of 10 months = $100 \times \frac{10}{12} = \text{Rs. } 83.33$ | (a) Projected revenue <u>for FY</u> , calculated <u>as per Sec 6</u> . |
| (b) Actual revenue collected will be sum of — (i) Actual revenue from <u>SGST</u> (net of refunds) till end of period (ii) <u>IGST</u> apportioned to that State till end of period, as certified by the Principal Chief Controller of Accounts of the CBEC (iii) Any collection of <u>other taxes</u> levied by State under Acts specified in Sec 5(4) (net of refund) till end of period, as certified by CAG. | (b) Actual revenue collected, will be the sum of - (i) Actual revenue from <u>SGST</u> (net of refunds) (ii) <u>IGST</u> apportioned to that State (iii) Any collection of <u>other taxes</u> levied by State under Acts specified in Sec 5(4) (net of refund), as certified by CAG. |
| Provisional compensation payable = [<u>Projected revenue</u> till end of period (-) <u>Actual revenue</u> till end of period] (-) <u>Provisional compensation paid</u> till end of previous 2 months period. | (c) Final Compensation = <u>Projected revenue</u> (-) <u>Actual revenue</u> . |
| If any difference between Final compensation payable and total provisional compensation released at the end of the 2 month periods, then it shall be <u>adjusted against</u> release of compensation in the <u>subsequent FY</u> . | |
| For the last year of the transition period (5 th year), since it there will be no compensation payable in the next year to it, so it can't be adjusted as above. Thus, any <u>excess</u> amount paid to the state shall be <u>refunded</u> by the state, to the center. | |

SECTION 9: RETURNS, PAYMENT AND REFUNDS

1. **Every taxable person** making a taxable supply shall -
 - a) Pay the amount of cess as payable under this Act in prescribed manner.
 - b) Furnish Returns, along with the returns to be filed under the CGST Act.
 - c) Apply for Refunds of such cess in prescribed form.
2. **For** furnishing of **returns** and claiming **refunds** (except for the form to be filed), the provisions of the CGST Act and the rules made thereunder, shall apply, as they apply in relation to the levy and collection of CGST.

SECTION 10: CREDITING PROCEEDS OF CESS TO FUND

1. The **proceeds** of the Cess collected, shall be credited to a non-lapsable Fund known as the 'GST Compensation Fund', which shall form part of the public account of India.
2. All amounts payable to the States under section 7 (**compensation**) shall be paid out of this Fund.
3. **50% of the amount remaining unutilised** in the Fund at the end of the transition period, shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance 50% shall be distributed amongst the States in the ratio of their total revenues from the SGST/UTGST in the last year of the transition period.
4. The **accounts** relating to Fund shall be **audited by the CAG** (or any person appointed by him) at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government.
5. The accounts of the Fund, as certified by the CAG (or any other person appointed by him in this behalf), together with the audit report thereon shall be **laid before each House of Parliament**.

SECTION 11: OTHER PROVISIONS APPLICATION

The provisions of the CGST Act/ IGST Act, and the rules made thereunder, including those relating to -

| | | | |
|---------------------|--------------------|--------------------------|---|
| • assessment | • input tax credit | • non-levy/ short-levy | shall mutatis mutandis apply for Intra-State/ Inter-State supplies leviable to Cess respectively. |
| • interest | • appeals | • offences and penalties | |

Input tax credit in respect of cess shall be utilised only towards payment of said cess.

SECTION 12: POWER TO MAKE RULES

1. **CG shall**, on the recommendations of the Council, **by notification** in the Official Gazette, **make rules** for carrying out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - a) The **conditions**, under which the exemption amounts were **included in the total base year revenue** of the Special Category States, under Sec 5(3).
 - b) The **conditions** subject to which any part of **revenues not credited in the Consolidated Fund** of the respective State **shall be included in the total base year revenue** of the State, Sec 5(6).
 - c) The **manner of refund of compensation by the States** to the CG Sec 7(6).
 - d) The **manner of levy and collection of cess** and the period of its imposition under Sec 8(1).
 - e) The **manner and forms for payment** of cess, furnishing of **returns** and **refund** of cess under Sec 9(1).
 - f) **Any other matter** which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

SECTION 13: LAYING OF RULES

- **Every rule made** under this Act by the CG shall be **laid** as soon as may be after it is made or issued, **before each House of Parliament**, while it is in session, for a total period of 30 days (which may be comprised in one session or in two or more successive sessions).
- **If before the expiry** of the **next session** (the session after the session(s) in which it was laid down), both Houses agree in making any modification in the rule, or that it should not be made, the rule shall henceforth be so modified/ annulled. But anything previously done under that rule shall remain valid.

SECTION 14: POWER TO REMOVE DIFFICULTIES

- If any difficulty arises in giving effect to any provision of this Act, the Government may, **make such provisions (not inconsistent** with the provisions of this Act or the rules or regulations made thereunder) as may be necessary or expedient for the purpose of removing the said difficulty, by order published in the Official Gazette.
- **No** such **order** shall be made **after the expiry of 3 years** from the commencement of this Act.
- **Every** such **order** made, as soon as may be after it is made, be laid before each House of Parliament.

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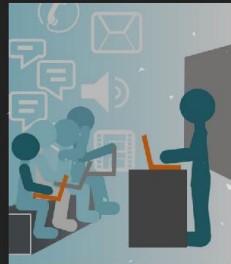
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