

## **GOODS AND SERVICE TAX (COMPENSATION TO STATES) ACT, 2017**

The Goods and Service Tax (Compensation to States) Act, 2017 provides for a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (one Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, inter-alia provides:

- (a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;
- (b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the CAG;
- (c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum;
- (d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;
- (e) That the revenue foregone on account of grant of exemption in the 11 special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;
- (f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;
- (g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;
- (h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;
- (i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year;

**Relevant Sections of the GST Compensation Act warranting attention are reproduced below:**

### **2. Definitions:**

- (c) *“cess” means the goods and service tax compensation cess levied under section 8;*
- (g) *“input tax” in relation to a taxable person, means:*
  - (i) *the cess charged on any supply of goods or services or both to him;*

(ii) *the cess charged on import of goods, and includes the cess payable on reverse charge basis;*

(p) *“taxable supply” means a supply of goods or services or both which is chargeable to the cess under this Act;*

#### **8. Levy and Collection of Cess**

(1) *There shall be levied a cess on such intra-State supplies of goods or services or both as provided for in Section 9 of CGST Act and such inter-State supplies of goods or services or both as provided for in Section 5 of IGST Act, 2017 and collected in such manner as may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the Central Goods and Service Tax Act is brought into force for a period of five years or for such period as may be prescribed on the recommendations of the council.*

*Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Service Tax Act.*

(2) *The cess shall be levied on such supplies of goods and services as are specified in column 2 of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set-forth in the corresponding entry in column 4 of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazetted, specify.*

*Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Service Tax Act for intra-State and inter-State supplies of goods or services or both.*

*Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975(51 of 1975), at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.*

#### **9. Returns, Payments and Refunds**

(1) *Every taxable person registered making a taxable supply of goods or services or both, shall –*

(a) *Pay the amount of cess as payable under this Act in such manner;*

(b) *Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and*

(c) *Apply for refunds of such cess paid in such form, as may be prescribed.*

*(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Service Tax Act and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of Central Tax on such supplies under the said Act or the rules made thereunder.*

**10. Crediting proceeds of Cess to Fund**

*(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.*

*(2) All amounts payable to the States under section 7 shall be paid out of the Fund.*

*(3) Fifty per cent. 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 fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.*

*(3A) Notwithstanding anything contained in sub-section (3), fifty per cent. Of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:*

*Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two months' period, fifty per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5."<sup>1</sup>*

*(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India 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 to the Comptroller and Auditor-General of India.*

*(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament*

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<sup>1</sup> Inserted vide The Goods And Services Tax (Compensation To States) Amendment Bill, 2018 w.e.f. 01.02.2019

**11. Other Provisions Relating to Cess**

*(1) The provisions of the Central Goods and Services Tax Act and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the intrastate supply of goods and services, as they apply in relation to the levy and collection of Central Tax on such intra-state supplies under the said Act or the rules made thereunder.*

*(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-state supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods Tax on such inter-state supplies under the said Act or the rules made thereunder.*

*Provided that the input tax credit in respect of Cess on supply of goods and services leviable under Section 8, shall be utilised only towards payment of said Cess on supply of goods and services leviable under the said Section.*

**Note: The CGST Rules, 2017 would apply mutatis mutandis to the GST Compensation Act, 2017 other than the rules relating to Composition (Rule 3 to 7) and Transitional Provisions (Rule 117 to 121)**

**Relevant circulars, notifications, clarifications, flyers issued by Government: -**

1. Notification No. 1/2017 dated 28.06.2017 - GST Cess Rate notifying the rates of cess on goods (as amended from time to time)
2. Notification No. 2/2017 dated 28.06.2017 - GST Cess Rate notifying the rates of cess on services (as amended from time to time)
3. Notification No. 4/2017 dated 20.07.2017 - GST Cess Rate regarding exemption to intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods
4. Notification No. 7/2017 dated 13.10.2017 - GST Cess Rate regarding reduced rate of cess on the leasing of motor vehicles (purchased and supplied on lease before 01.07.2017)
5. Notification No. 1/2018 dated 25.01.2018 – GST Cess Rate regarding exemption from cess on all old and used motor vehicles on which supplier has not availed any credits
6. Circular No. 1/1/2017-Compensation Cess dated 26.07.2017 regarding applicability of Section 16 of the IGST Act, 2017 (zero rated supply) for the purpose of Compensation Cess on exports

### Salient features of the GST Compensation Act:

#### I. Levy of cess:

- GST Compensation Cess (under Section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods.
- The following supplies will be liable at the rate specified below:
  - Pan Masala ( 60% *ad valorem*)
  - Tobacco and Tobacco products (Rs. 4,170 per 1,000 sticks or 290% *ad valorem* or a combination thereof)
  - Coal, briquettes and similar solid fuels (Rs. 400 per tonne)
  - Aerated Water (12% *ad valorem*)
  - Used and old Motor vehicles, Ambulance, Cars for physically handicapped persons, Electrically operated vehicles, Three wheeled vehicles, Motor vehicles of engine capacity not exceeding 1500cc and of length not exceeding 4000 mm (NIL)
  - Motor cars and passenger motor vehicles (15% *ad valorem*), SUVs (22% *ad valorem*)
  - *Caffeinated Beverages* (12% *ad valorem*)
  - Note :Caffeinated beverages has been included by way of Notification no.2/2019 – Compensation cess (Rate) dated 30<sup>th</sup> September 2019
- The Cess would not be leviable on supplies made by a person who has opted for composition levy.
- Those supplies that are liable to tax with reference to their value (i.e. all supplies except coal, briquettes and similar solid fuels), are to be determined based on the Valuation provisions under Section 15 of the CGST Act.
- The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on. Cess would be levied on whole value exclusive of GST i.e. for Transaction value as per Section 15 is Rs. 100 and GST Rate is 18% then Cess would be levied on Rs. 100 Calculation would be Rs. 100+18% GST+ % Compensation Cess (as specified).
- **Dealer of second-hand goods:** The levy of Cess has been exempted on intra-State procurement of second hand goods from an un-registered supplier when purchased by a registered person dealing in buying and selling of second hand goods and who pays the Cess on the margin basis of computation envisaged under rule 32(5) of the CGST Rules.
- The Central Government reduced the rate of Cess at 65% of the Cess which is otherwise payable on supply of motor vehicles which are purchased or leased before

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July 1, 2017 subject to the condition that such supplier has not availed input tax credit of Central Excise Duty or VAT or any other taxes paid thereon w.e.f. 13.10.2017.

- As a further relief measure, the Central Government has prescribed 'NIL' rate of Cess on supply of all old and used motor vehicles on which supplier has not availed CENVAT or VAT credit under the earlier regime or input tax credit in GST regime w.e.f. 25.01.2018.
- The scope and applicability of the notifications issued in respect of old and used motor vehicles (MV), can be better understood by a comparative analysis as summarised below:

Particulars	Notification No. 7/2017– Compensation Cess (Rate) dated 13th October, 2017	Notification No. 1/2018 Compensation Cess (Rate) dated 25th January, 2018
Scope	a. MV purchased and leased prior to July 1, 2017 which are continued to be leased in GST regime b. MV purchased prior to July 1, 2017 and supplied in GST regime	All old and used MVs Note: 1. Not applicable on lease transactions. 2. Can be purchased either before or after July 1, 2017
Rate of Cess	65% of Cess payable	NIL
Condition	Input tax credit (ITC) of Central Excise duty, VAT or any other taxes paid is not taken	ITC not taken in GST regime or CENVAT credit or VAT credit not availed in earlier regime

### Refund of Cess upon Export:

- Exporter will be eligible to claim refund of Cess paid under the Act on export of goods on the similar lines as refund of IGST paid on exports. Further, Cess will not be charged on goods exported by an exporter under bond / LUT and refund of input tax credit of Cess relating to goods exported will be available on similar lines as refund of input taxes in relation to zero-rated supplies.
- As per Notification No.3/2019 – Compensation Cess(Rate) dated 230<sup>th</sup> September , 2019 for Tobacco and manufactured tobacco substitutes, no refund of unutilised input tax credit of compensation cess shall be allowed, where the credit has accumulated on account of rate of compensation cess on inputs being higher than the rate of compensation cess on the output supplies of such goods (other than nil rated or fully exempt supplies). Therefore, in case of inverted duty structure no refund is allowed.

**II. Determination of Base Year Revenue:**

- The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.
- The provisions of Section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxes detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue;
- The revenue collected would always be reckoned as 'net of refunds';
- The transition period will be the period of 5 years from the date when the respective SGST Acts commence.

**III. Input Tax Credit and returns:**

- Input Tax Credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act.
- A taxable person effecting supplies chargeable to cess is required to file returns along with the returns prescribed under the CGST Act.

**IV. General**

- All provisions of CGST Act and IGST Act including input tax credit, assessment, offences, penalties, interest, non-levy and short-levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively.

***Note: The relevant notifications on Compensation Cess have been provided in forthcoming pages of this publication***