SUGGESTED CHANGES IN MODEL GST LAW (MGL)

As directed by the GST Council, the Law Committee has examined certain provisions (Issue No. 1 to 5) in the MGL which came up for discussions in the meetings of GST Council.
In addition, certain issues (Issue No. 6 to 13) have been noticed while re-examining / re-drafting the GST Rules (relating to Registration, Payments, Refunds and Composition) earlier approved by the GST Council.
The changes proposed by the Law Committee are given hereunder:

Issue No. 1 - Definition of Agriculture and agriculturist:

Section 2(7) – Original definition of 'agriculture' as amended in the light of earlier discussions in GST Council is as follows:

"agriculture" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, *pisciculture*, ~~the~~ raising of crops, grass or garden produce, ~~and also~~ grazing, ~~but does not include~~ dairy farming, poultry farming, stock breeding, *piggery, apiculture,* ~~the mere~~ cutting of wood or grass, gathering of fruit, *collection of minor forest produce,* raising of man-made forest or rearing of seedlings or plants;

Section 2(8) r/w 2 (106) – Original definition of 'agriculturist' as amended in the light of earlier discussions in GST Council is as follows:

"agriculturist" means ~~a person~~ *an individual or a Hindu Undivided Family,* who ~~cultivates land personally, for the purpose of agriculture;~~ *carries on any agricultural operation on his own account –*

(a) by one's own labour, or

(b) by the labour of one's family, or

(c) by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Explanation. - For the purposes of this Act,

(a) *a widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.*

(b) *in the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.*

Proposal by Law Committee:

It is proposed that definition of 'agriculture' may be deleted and definition of 'agriculturist' may be provided as follows:

"agriculturist" means an individual or a Hindu Undivided family who undertakes cultivation of land on one's own account–

(a) by one's own labour, or

(b) by the labour of one's family, or

(c) ***by servants on wages payable in cash or kind or by hired labour under one's personal supervision or the personal supervision of any member of one's family;***

Issue No. 2 – Contradiction in Section 4 and 5 of MGL:

Present Section 4 (2) - The Commissioner shall have jurisdiction over the whole of the State of (….). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

Present Section 5 (2) - The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government may specify.

Proposal by Law Committee:

It is proposed that section 4 (2) may be deleted and section 5 (2) may be amended as follows:

Section 5 (2) - The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the ~~State Government~~ ***Commissioner*** may**,** ***by order,*** specify.

Issue No. 3 – Proposal to have new section so as to provide powers to waive penalty:

Power to waive penalty (Section 87A): Draft discussed in last meeting of GST Council:

Section 87A. Power to waive penalty: Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, no penalty may be imposed on an assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure or that he had made a reasonable attempt to comply with the provisions of this act to avoid such failure.

Power to waive penalty (Section 87A): Alternative draft discussed in meeting of the Law Committee:

Notwithstanding anything contained in the provisions of section 85 or 86 of this Act, any of the penalty referred to in the said sections may be waived in part or full by the proper officer for such class of the taxpayers, under such mitigating circumstances as may be notified by the Central (or State in case of SGST) Government in this regard, on the recommendation of the Council.

Proposal by Law Committee:

In view of lack of consensus, it is proposed that the proposed section may not be included and issue may be revisited post implementation of GST, if felt necessary.

Issue No. 4 – Proposal to examine the need for Schedule –IV in MGL:

During discussions on MGL, it was felt that there is no need to have Schedule-IV in MGL and the same purpose may be achieved by granting exemptions by issuance of a notification.

Proposal by Law Committee:

It is proposed that Schedule IV may be deleted and section 3 may be modified as under:

3. Meaning and scope of supply

(1) Supply includes—

(a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

(b) importation of services, for a consideration whether or not in the course or furtherance of business, and

(c) a supply specified in Schedule I, made or agreed to be made without a consideration.

(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(3) Notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in schedule III; or

(b) activities or transactions undertaken by the Central Government, a State Government or any local authority**,** in which they are engaged as public authorities**,** ***as may be notified by the Central/State Government on the recommendation of the Council*** ~~**specified in Schedule IV**~~,

shall be treated neither as a supply of goods nor a supply of services.

(4) Subject to sub-section (2) and sub-section (3), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods**.**~~**; or**~~

~~**(c) neither a supply of goods nor a supply of services.**~~

(5) The tax liability on a composite or a mixed supply shall be determined in the following manner —

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;
(b) a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

Issue No. 5 – Proposal to treat supplies mentioned in clause 5 (f) and (h) of Schedule – II as composite supplies:

During discussions in the GST Council, it was suggested that these two clauses presently treated as supply of services may be treated as composite supplies.

Proposal by Law Committee:

It is proposed to amend the Schedule –II as follows:

	SCHEDULE II [Section 3 (2)]
	~~MATTERS~~ *ACTIVITIES* TO BE TREATED AS SUPPLY OF GOODS OR *SUPPLY OF* SERVICES
	1. Transfer (a) any transfer of the title in goods is a supply of goods; (b) any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services; (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods. **2. Land and Building** (a) any lease, tenancy, easement, licence to occupy land is a supply of services; (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services. **3. Treatment or process**

	Any treatment or process which is ~~being~~ applied to another person's goods is a supply of services. **4. Transfer of business assets** (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person. (b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services. (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person. **5. The following shall be treated as "supply of service"** (a) renting of immovable property; (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier. *Explanation*. —For the purposes of this clause— (1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for

	the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: – (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 *(-- of 1972)*; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority; (2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure*;* (c) temporary transfer or permitting the use or enjoyment of any intellectual property right; (d)development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software; (e)agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; ***and*** ~~(f) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;~~ (g) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. ~~and~~ ~~(h) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.~~ **6. The following shall be treated as supply of goods** Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

	7. The following composite supplies shall be treated as a supply of services— ***(a) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and*** ***(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*** *(Note: To be consulted with Law Ministry)*

Issue No. 6 – Definition of deemed export:

The definition of 'deemed export' in MGL is at variance with the definition contained in Foreign Trade Policy. It is proposed to align the said definition and definition of "deemed exports" may be modified accordingly.

Proposal by Law Committee:

It is proposed to amend the definition of 'deemed exports' as follows:

Section 2(37)

"deemed exports", as notified by the Central Government/State Government on the recommendation of the Council, refer to those transactions in which the goods supplied do not leave India, and payment for such supplies is received either in Indian Rupees or in convertible foreign exchange***, provided such goods are manufactured in India***.

Issue No. 7 – Submission of final return:

It has been noticed that final return is required to be submitted by normal taxpayers only and therefore section 40 need to be amended accordingly.

Proposal by Law Committee:

It is proposed to amend section 40 as follows:

40. Final return

Every registered ~~taxable~~ person ***required to furnish a return under sub-section (1) of section 34 whose registration has been cancelled*** ~~**who applies for cancellation of registration**~~ shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in such form and in such manner as may be prescribed.

Issue No. 8 – Amendment in Section 48:

While examining the Refund Rules, it has been noticed that certain changes are required in section 48.

Proposal by Law Committee:

It is proposed that section 48(3) and 48(8) may be amended as follows:

Section 48(3):

Subject to the provisions of sub-section (10), a taxable person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than exports including zero rated supplies or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies:
Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:
Provided also that no refund of input tax credit shall be allowed if the supplier of goods or services ***avails of drawback allowed under the applicable Drawback Rules or*** claims refund of output tax paid under the IGST Act, 2016.

Section 48(8):

Notwithstanding anything contained in sub-section (5) or sub-section (6), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India;

(b) refund of unutilized input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued ***or where credit note has been issued***;

(d) refund of tax in pursuance of section 70;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Central or a State Government may, on the recommendation of the Council, by notification, specify.

Issue No. 9 – Provision relating to interest on delayed payment:

It has been proposed that interest for delayed payment of tax may be calculated on monthly basis instead of calculating the same on daily basis. This is particularly required as interest would be charged in case of mismatch and consequent reversals of ITC.

Proposal by Law Committee:

Section 45(1) and 45(2) may be amended as follows:

Section 45 - Interest on delayed payment of tax

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to ~~**the account of**~~ the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified, on the recommendation of the Council, by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated, ***in the manner prescribed,*** from the first day on which such tax was due to be paid and ***where the interest payable for the period comprises part of a month, such period shall be taken as a full month.***

Explanation.- For the purposes of this sub-section, the word "month" shall comprise the period between two successive due dates on which tax is payable under the Act.

Note: This principle would apply for taxpayers paying tax on quarterly basis also and a suitable provision would be drafted accordingly.

Issue No. 10 – Amendments to provisions of section 60:

Provisions contained in section 60 are summary procedure to which the rigours of sections 66 and 67 do not apply. Hence, the language of section 60 should be suitably modified.

Proposal by Law Committee:

It is proposed that section 60 may be amended as follows:

Section 60. – Assessment of non-filers of returns

(1) ***Notwithstanding anything to the contrary contained in section 66 or section 67*****, w**here a registered person fails to furnish the return required under section 34 or section 40, even after the service of a notice under section 41, the proper officer may, proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order ***within a period of five years from the due date for filing of the annual return for the year to which the tax not paid relates*****.** ~~**the time limit specified sub-section (8) of section 67.**~~

(2) Where the taxable person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn.

Explanation. - Nothing in this section shall preclude the liability for payment of interest under section 45 or for payment of late fee under section 42.

Issue No. 11 – Amendments to provision of section 67:

As per the present provision in section 67 (1), the proper officer shall have to first establish the mentioned criteria before giving notice. However section 67 (1) doesn't provide the due process for coming to the decision that such criteria exist. It is proposed to amend the said section so as to provide for said process.

Proposal by Law Committee:

It is proposed that section 67(1) may be amended as follows:

Section 67 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

(1) Where ***it appears to the proper officer that*** any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, ~~**the proper officer**~~ ***he*** shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 45 and a penalty equivalent to the tax specified in the notice.

Issue No. 12 – Amendments to provision of section 167:

The proviso to section 167 of the MGL needs to be amended to include two more situations where the credit of input tax available with the manufacturer would not be allowed to be transferred for payment of CGST. These two situations are: Where the factory is closed or where the manufacturer is operating under area based exemption and has been paid refund of Central Excise duty. Transfer of these credits would lead to old and idle credits being used for payment of output tax under GST leading to loss of revenue for the Central Government. Draft for the same is as suggested below-

Proposal by Law Committee:

It is proposed to add one more proviso to section 167 as follows:

167. Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

A registered ~~taxable~~ person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, the amount of cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished, by him under the earlier law in such manner as may be prescribed:

Provided that the registered taxable person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act.

Provided further that the registered person shall not be allowed to take credit in the following circumstances –

- ***(i) where the said amount of credit is not admissible as input tax credit under this Act, or***
- ***(ii) where the factory registered under the Central Excise Act, 1944 of the registered person has not manufactured any goods for more than six months and has not filed any return in the period immediately preceding the appointed date except where the Deputy/Assistant Commissioner has allowed such amount of credit to be transferred or,***

(iii) ***where the said amount of credit relates to goods manufactured and cleared under the exemption notification no ……. and …… claiming refund of Central Excise duty paid thereon (No. of relevant area based exemptions to be inserted).***

Note: Respective States may examine situations where input tax credits are lying with the dealers which should not be transferred to GST regime.

Issue No. 13 – Amendments to provision of section 184 (1):

It is suggested that there should be provision in section 184 (1) for recovery of the dues arisen under the earlier laws, under the present law. It is proposed to amend the said section accordingly.

Proposal by Law Committee:

It is proposed that Section 184(1) may be amended as follows:

Section 184 – Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

(1) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person ~~**after the appointed day**~~, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.