

NOTE ON GOODS AND SERVICES TAX (GST)

RATIONALE

Indian Constitution is based on the federal system in which residual powers of legislation remain with Central Government. The Constitution of India also provides comprehensive lists bifurcating the powers, duties, responsibilities between Central and States government. Therefore, both the Central and States Government require funds for discharging their respective duties. Central Government is empowered to make laws and levy taxes with respect to the matters enumerated in List I (Union List) in the Seventh Schedule. The Legislature of any State has exclusive power to make laws and levy taxes for such State with respect to any of the matters enumerated in List II of the said Schedule. However, for the matters stated in List III (Concurrent List), both Central and State Government can levy taxes.

INTRODUCTION OF GST BILL

The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 (**GST Bill**) which was placed before the Parliament on December 19, 2014 has been passed by the Lok Sabha on May 06, 2015, however, the same is yet to be passed by the second house (Rajya Sabha) of Parliament.

The proposed GST is in consonance with the fiscal federalism in India and one of the biggest tax reforms in the country which is aimed to simplify and rationalize indirect tax structure in India. Once both the houses pass the said Bill, at least half of India's 29 states must ratify it, before sending it for the Presidential assent. The Central Government will set up a GST Council.

Later, the Centre and State Governments will have to pass separate bills so that the new tax regime takes effect.

Let's understand why we need GST. In India the existing taxation regime on goods and services is plagued by several difficulties. For instance, there are multiple taxes, multiple tax rates for different goods and services, at the same time there are multiple agencies which administer such taxes on goods and services. Further, the benefit of credit utilisation of taxes paid on inputs is not uniformly available for all taxes paid by the tax payer. Therefore, the existing tax structure is cumbersome and there is a lack of transparency resulting in increased costs of products and services and at the same time it enhances the cost of compliances.

As per our understanding, basis the Constitutional Amendment and the prospective of Modi's Government, by having a single tax rate (GST), it will be doing away with multiple tax rates. Also, the tax collection system would be as a single unified mechanism backed by a countrywide robust IT system called GSTN.

We have tried to capture our views on GST under the following heads:

- (1) LEVIABILITY OF GST
- (2) SALIENT FEATURES OF GST
- (3) REGISTRATION, INPUT CREDIT AND OTHER COMPLIANCES UNDER GST
- (4) GST ON IMPORT AND EXPORT TRANSACTIONS

LEVIABILITY OF GST

The Constitutional 122nd Amendment Bill, 2014 inserted a new clause in article 366 extracted as under which defines the meaning of GST:

*“(12A) **“goods and services tax”** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.”*

On perusal of the above it can be inferred that GST would be levied on the supply of goods and services except the alcoholic liquor for human consumption. However, by virtue of clause (5) of Article 279A as inserted by Amendment Bill, 2014, it has been decided that the levy on petroleum and petroleum products would be decided by the Goods and Services Tax Council to be formed. The same has also been provided under an explanation to Article 246A.

SALIENT FEATURES OF GST

- Removal of cascading effect of multiple taxes which will make the manufacturing sector more competitive and cut down the tax compliance burden;
- To simplify the tax structure relating to goods and services;
- To simplify the tax compliance procedure;
- To ensure a point to point tax credit mechanism;
- Various Central/State levies would be subsumed under GST¹;
- To be collected on value added at each stage in the supply chain;
- Full tax credit on inputs;
- Allowing manufacturing States to levy an additional 1 per cent tax on supply of goods for two years;

¹ Central Levies- Central Excise Duty; Service Tax; Additional Duty of Customs (CVD); Cesses and Surcharges; Various product specific Cesses (like automobile cess) etc.;
State Levies- State VAT; CST; Luxury Tax; Entry Tax; Entertainment Tax; Taxes on lottery; betting and gambling; etc.

- There will be one CGST [Central Goods and Services Tax] and one SGST [State Goods and Service Tax] law each for the States;
- Inter-state supply of goods and services will attract Integrated Goods and Services Tax [CGST+SGST];
- Import of goods will be subject to Integrated Goods and Services Tax (IGST) & Basic Customs Duty, however, import of services will attract IGST;
- Both CGST and SGST would be levied on the same price or value unlike State VAT which is presently levied on the value of the goods inclusive of CENVAT (Excise Duty).

REGISTRATION, INPUT CREDIT AND OTHER COMPLIANCES UNDER GST

As mentioned above GST would have two components CGST and SGST, therefore, as per our best understanding a taxpayer may be required to register himself under both CGST and SGST. Further, if the taxpayer has branches in various States then he may be required to register himself under SGST of each respective State. Hence, the taxpayer may also be required to submit his periodical returns to both CGST authorities and respective SGST authorities. Though GST is being implemented for the purpose of single tax based regime and also to mitigate the compliance burden on the assessee, however, no discussion has been placed with respect to the centralised registration in the event of multiple tax units at various states.

In relation to input tax credit, since the CGST and SGST are to be treated separately, in general, taxes paid against the CGST shall be allowed to be taken as input tax credit for the CGST and could be utilized only against the payment of CGST. The same principle will be applicable for SGST. Cross utilisation of input tax credit between the CGST and the SGST would, in

general, not be allowed. This proposed mechanism is very much similar to the present system of CENVAT and input tax credit of VAT.

However, the cross utilization of credit of CGST between goods and services would be allowed. Similarly, the said practice would be application in case of SGST.

Further, an IGST will be introduced in respect of inter-state trade and commerce. The scope of IGST Model is that **Centre would levy IGST which would be CGST plus SGST** on all inter-State transactions of taxable goods and services with appropriate provision for consignment or stock transfer of goods and services. The cross utilization of CGST and SGST would be permitted in the case of inter-state supply of goods and services under IGST model.

The said arrangement is being made for the purpose of maintaining the credit chain. The accounts will be settled periodically between the Centre and the State in order to ensure that the SGST component is transferred to the destination State where the goods and services are eventually consumed. The said model would be self monitoring model and will reduce the existing compliances.

It can be said that IGST would be a substitution for existing Central Sales Tax (“**CST**”). However, the differences and similarities among both can be better understood with the aid of below table:

Particulars	CST	IGST
Differences	CST is being levied on all inter-state sale transactions.	IGST would be levied on all inter-state sales and service transactions.

	Input credit of CST is not available for payment of output VAT of the importing state. This leads to increase in the cost of product.	Input credit of IGST would be available for payment of output SGST tax of the importing state. This would lead to cost optimization.
Similarities	Input credit of VAT can be utilised for payment of CST.	Input credit of SGST would be utilised for payment of IGST.

GST ON IMPORT AND EXPORT TRANSACTIONS

In respect of import of goods and services GST tends to subsume Countervailing Duty (CVD), Special Additional Duty of Customs (SAD 4%) and Service Tax. The difference and similarities among both are depicted in the table below:

Particulars	Present regime	Proposed regime (GST)
Differences	Levy of Basic Customs Duty, CVD & SAD on goods and Service Tax on import of service under reverse charge mechanism.	Levy of Basic Customs Duty and IGST [CGST & SGST] on goods and IGST on services.
	Input credit of CVD and SAD is available in case the imported goods are used in	Full and complete input credit of duties would be available under GST.

	manufacturing activity subject to the conditions, if any and refund of SAD is also available in case of trading of imported goods subject to conditions laid down.	
Similarities	Incidence of tax based on principle of destination i.e. where the goods and services are consumed	Incidence of tax based on principle of destination i.e. where the goods and services are consumed

CONCLUSION

In the Roadmap of GST, a council will be formed being headed by the Union Minister and composed of all state ministers of Finance. The proposed Council will make recommendations to both Central and State on important issues such as tax rates, exemptions, threshold limits, dispute resolutions etc. The said Council is expected to coordinate and to set the harmonious functioning between the Centre and State.

Further, GST Legislation shall be made after getting the approval of Rajya Sabha and at least half of India's 29 states on the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014. The action with regard to levy of GST can start only after the enactment of GST Law. Five Committees have been constituted by the Empowered Committee of State Finance Ministers (EC) to examine the various issues concerned with the introduction of GST, namely the Committee on the Problem of Dual Control, threshold and Exemptions in GST Regime; the Committee on Revenue Neutral Rates for State GST & Central GST and Place of Supply Rules; the

Committee on IGST & GST on Imports; the Committee to examine Business Processes under GST Regime; the Committee to draft model GST Law.

With the implementation of GST the taxpayers may breathe a sigh of relief from the herculean task of compliances under various statutes, as GST provides for single registration and filing of single return under CGST and SGST. The Central Government has formed a committee to study the constitutional amendment bill for GST. The role of CBEC will be vital in the drafting and finalisation of GST law, procedure, guidance note especially IGST and CGST law which will be exclusively under the control of Centre. The GST law is still evolving and the discussion continues between the Centre and States on various issues. The Centre wants to pass the said Bill in the upper house of Parliament (Rajya Sabha) early in the monsoon session. Various procedural, legal and administrative issues relating to GST are under dynamic discussion which may be concluded before sending the same for the Presidential assent.

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