

## *INDIA MOVING TOWARDS GOODS AND SERVICES TAX*

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| <p><a href="#">1. Introduction</a></p> <p><a href="#">2. Rationale</a></p> <p><a href="#">3. Present Indirect Tax Structure</a></p> <p><a href="#">4. Need of GST (Why GST)</a></p> <p><a href="#">5. Proposed GST Scheme and Structure there of</a></p> <p><a href="#">6. Salient Features of proposed GST model</a></p> <p><a href="#">7. Gist of various reports issued by the Joint Committee</a></p> <ul style="list-style-type: none"><li>○ Registration process under GST;</li><li>○ Payment procedure under GST;</li><li>○ Proposed return related compliances under GST;</li><li>○ Refund Mechanism under GST.</li></ul> <p><a href="#">8. Input Tax Credit Mechanism</a></p> <p><a href="#">9. GST on import and export transactions</a></p> <p><a href="#">10. Recent Developments</a></p> <p><a href="#">11. Our Comments</a></p> |
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### **1. INTRODUCTION**

It is relevant to mention here that no authoritative details about the GST regime and implementation thereof by the Government have been issued so far. However, based on the information available in public domain and taking references from The Constitution (One Hundred and Twenty second amendment) Bill, 2014 passed by the Lok Sabha on May 06, 2015 and various draft reports issued and available in public domain seeking comments from public, we have compiled this short note with an underlying idea to make concerned people aware about the proposed structure of GST.

### **2. RATIONALE**

Indian Constitution is based on the federal system, wherein residual powers of legislation remain with the Central Government. The Constitution of India also provides for comprehensive lists bifurcating the powers, duties, responsibilities between the Central and States Governments. Therefore, both the Central and States Governments require funds at their own disposal for discharging their respective duties and responsibilities and to fund their budgets. The Central Government is empowered to make law and levy taxes with respect to the matters enumerated in List I (Union List) in the Seventh Schedule of the Constitution. The Legislature of any State has an exclusive power to make law 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 Governments can make laws and levy taxes.

### 3. **PRESENT INDIRECT TAX STRUCTURE**

Present Indirect Tax structure of India provides various levies and taxable events in respect of such levies vary, depending upon the nature of tax. The four major constituents of present Indirect Tax structure and taxable events thereof can be described as under :

| <i>Nature of Levy</i>       | <i>Taxable Event</i>           | <i>Respective Entry under Schedule VII</i>          |
|-----------------------------|--------------------------------|---|
| Excise Duty                 | Manufacture/Deemed Manufacture | Entry No. 84-List I                                 |
| Service Tax                 | Provision of Service           | Residuary Entry 97-List I                           |
| Sales Tax/VAT/CST           | Sale                           | Entry No. 54- List II (VAT) and 92A of List I (CST) |
| Entry Tax/Entertainment Tax | Entertainment & Entry of Goods | Entry No. 52 and 62- List II                        |

### 4. **NEED OF GST (WHY GST)**

The indirect taxation system is currently mired in multi-layered taxes (discussed above) levied and administrated by the Central and State Governments at different stages of the supply chain. Due to the multiplicity of the statutes, the assessee is required to comply with the provisions of the applicable laws concerning, deposit of the taxes at different rates, filing of forms under the various statutes, filing of statutory returns, maintenance of records and books, interaction with various authorities for clarification(s) etc. Consequently, the cost of compliances is also very high under the existing indirect taxation regime due to such multiplicity both at the Central as well as the State levels .

With the introduction of the proposed GST, it is expected that not only the tax administration would undergo a dramatical change but the compliance cost would comparatively come down. The industry is actually looking forward to simple business processes with low compliance cost and seamless flow of input credit and of information between the supplier, buyer and tax administration.

### 5. **PROPOSED GST SCHEME AND ITS STRUCTRE THEREOF**

The Government of India has proposed the new indirect tax regime i.e. Goods & Services Tax (“GST”) which was originally to be introduced in India with effect from April 01, 2016. GST was pegged as the greatest tax reform in the Country. The aim of introducing this new tax regime was to simplify and rationalise the indirect tax structure in India. The intention is to convert the Country into a unified market and at the same time replace most indirect taxes and subsume all the existing indirect taxes into a single tax regime.

GST regime is proposed to subsume all taxes into one destination based tax at agreed rates with set-off available along the value chain. GST will be applicable on both goods and services. It is at present proposed to consist of two primary components namely the CGST (Central Goods and Service Tax) and the SGST (State Goods and Services Tax). Besides these there shall be an IGST (Integrated Goods and Services Tax) applicable to inter-state transactions, where the tax amount shall be transferred to the state where the taxable goods / services originated in the first instance. Though the original intention was to have a single GST, however, taking into account the transitional issues and the opposition from various States due to their apprehensions on revenue collection, GST at present has been proposed to have aforesaid three components (CGST, SGST & IGST).

This unified tax structure is designed as a dual system, wherein both the centre and the states may impose taxes based on their respective constitutional mandate.

Various economies across the globe have introduced GST in some or other form. It is also a widely accepted and preferred form of indirect tax in the Asia Pacific region. It is interesting to note that there are over 40 models of GST currently in force, each with its own distinct peculiarities. The Indian GST model proposed by the Empowered Committee and accepted by the Centre will be a dual model for imposing the tax. The dual model will have both the Centre and the concerned State imposing GST on a single transaction.

#### 6. ***SALIENT FEATURES OF PROPOSED GST MODEL***

As discussed above, under the existing model of indirect taxation there are multiple taxes. By virtue of the multiple levies/taxes, the manufacturers or the traders have to comply with the various applicable laws at the same time, which becomes a cumbersome activity for them. Also, under the existing model, the continuous chain of set-off benefits, right from the stage of manufacture to ultimate retail sale and consumption is not available which results in the cascading effect (leading to payment of tax on tax at different stages). Such cascading effect apart from imposing compliance challenges to the assesses, also results in higher product / service cost to the ultimate consumer. We have summarised the salient features of the proposed GST model as under for your understanding :

- To simplify the tax structure relating to goods and services and also to simplify the tax compliance burden;
- Removal of cascading effect of multiple taxes which will make the manufacturing sector more competitive and cut down the tax compliance burden;
- To ensure a point to point tax credit mechanism;
- To widen tax base of the Country followed by reduction in tax rates leading to lower cost to consumers;
- Various Central/State levies would be subsumed under GST<sup>1</sup>;
- To minimise the indirect tax disparities across various taxable events and sectors;
- 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<sup>2</sup> on supply of goods for two years;

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<sup>1</sup> 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.

<sup>2</sup> UPA has recommended to drop 1 per cent additional duty and BJP has given its nod

- There will be one CGST [Central Goods and Services Tax] law at all India level and multiple SGST [State Goods and Service Tax] laws for the different 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).

#### **7. *GIST OF VARIOUS REPORTS ISSUED BY THE JOINT COMMITTEE***

A Joint Committee, in consultation with the Government of India, was constituted on April 07, 2014 for researching/developing the processes under GST. Till date the Joint Committee has circulated the following four reports :

- Registration process under GST;
- Payment procedure under GST;
- Proposed Return related compliances under GST;
- Refund Mechanism under GST.

We have attempted to provide you with the brief background of all the four reports issued by the Joint Committee, as hereunder:

- ***Registration process under GST***
    - ✓ Persons with All-India Gross Turnover more than a threshold (which will be specified in due course), Persons making inter-state supplies, Casual and Non-resident Suppliers would be required to obtain registration under GST;
    - ✓ Suppliers with turnover below a particular threshold would be eligible for composition scheme and will pay tax on turnover with no input tax credit;
    - ✓ Taxpayers will have to obtain State-wise registration. Even within a State, the taxpayer may either opt for a single registration or multiple registrations for different business verticals;
    - ✓ Government has proposed that a system would be designed to migrate cleaned and verified data from the existing database(s) (i.e. State VAT(s), Central Excise and Service Tax database) to the GST Common Portal and a Goods and Service Tax Identification Number
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(“GSTIN”) shall be generated. Every assessee would be required to file fresh registration form under GST and fill the gaps in order to complete the particulars already filed with various authorities.

○ ***Payment procedure under GST***

- ✓ Under GST, a single challan for all 4 types of Taxes i.e. (1) Central GST (CGST), (2) Integrated GST (IGST), (3) 1% Additional Tax and (4) State GST (SGST) will be generated;
- ✓ Three Modes of Payment have been proposed- Electronic including CC/DC (Mode I), Over The Counter Payment (for Payments upto Rs. 10,000/-) (Mode II) Payment through RTGS/NEFT (Mode III);
- ✓ Workflow for payment under various modes (discussed above) has been provided under the payment procedure;
- ✓ The question pertaining to utilisation of existing Input Tax credit of VAT and Cenvat under Cenvat Credit Rules 2004, still needs to be answered.

○ ***Proposed Return related compliances under GST***

- ✓ Self-assessment of tax liability by the tax payer;
- ✓ Common e-return for CGST, SGST, IGST and 1% Additional Tax;
- ✓ Following are the proposed returns to be filed as per the status of the assessee:

| <b><i>Form Number</i></b> | <b><i>Assessee Type</i></b> | <b><i>Details to be filed</i></b>  | <b><i>Due date for filing</i></b>        |
|---------------------------|-----------------------------|--|--|
| GSTR-1                    | Normal/Regular assessee     | <p>Details regarding export, local sale, inter-state sales and debit/credit note.</p> <p>In case of B2B sales, an assessee has to upload details of every invoice.</p> <p>In case of B2C sales, assessee has to upload detail of only those invoices which are of a value more than INR 50,000 in case of inter-state sales and INR 2,50,000/- in case of intra-state sales.</p> | 10 <sup>th</sup> day of succeeding month |

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| GSTR-2 | Normal/Regular assessee  | Details to be Auto-populated from GSTR-1 of counterparty supplier and other invoices not declared by the Counterpart. Details regarding import (Bills of entry), local purchase, inter-state purchase and debit/ credit note.      | 15 <sup>th</sup> day of succeeding month                |
| GSTR-3 | Normal/Regular assessee  | Details to be auto-populated from GSTR-1 & GSTR-2. Further, details of ITC (Input Tax Credit) availed, ITC utilized, credit reversible on account of invoice mismatch and other adjustments, details of gross & net tax liability. | 20 <sup>th</sup> day of succeeding month                |
| GSTR-4 | Compounding Tax payer/ Composite tax payer                                     | Details regarding import, inter-state-purchase/sale, export along with Tax paid etc  | 18 <sup>th</sup> day of succeeding month of the Quarter |
| GSTR-5 | Return by Non-resident Foreign Tax Payers (at the time of closure of business) | Details regarding imports with HSN, outward Supplies, ITC availed, tax paid and closing stock  | within 7 days after expiry of registration              |
| GSTR-6 | Input Service Distributor  | Details to be Auto-populated from GSTR-1 of counter-party supplier, Information about ITC available in the month for distribution, etc.  | 15 <sup>th</sup> day of succeeding month                |
| GSTR-7 | Tax Deducted at Source return  | Details of Tax deducted, GSTIN of supplier, Invoice details, Payment details, Amount of TDS on account of CGST, SGST & IGST, Details of payments of any other amount   | by 10 <sup>th</sup> of succeeding month                 |
| GSTR-8 | Annual Return  | Details of all expenditure, details of all income, details of all  | 31 <sup>st</sup> December following the                 |

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|--------------------------|---|---|---|
|                          |   | other tax liability, other reconciliation statements  | end of the financial year   |
| Reconciliation Statement | Reconciliation statement to be filed by taxpayers who are required to get accounts audited under Section 44AB of the Income Tax Act, 1961 | Annual Return to be accompanied with a statement showing reconciliation of information as per Returns with information as per annual audited accounts | 31 <sup>st</sup> December following the end of the financial year |

- ✓ The contents of various returns have been provided in detail under the said report;
  - ✓ The records such as cash ledger, ITC ledger and liability ledger etc., to be maintained in electronic form
- ***Refund Mechanism under GST***
- ✓ Any excess payment may be on account of, wrong mention of nature of tax (CGST / SGST / IGST), wrong mention of GSTIN, or wrong mention (deposit) of tax amount shall be at the option of the assessee, would either be automatically carried forward for adjustment against future tax liabilities or be refunded;
  - ✓ Various situations where refund would arise have been discussed in detail and the simplified mechanism thereof is also provided under the said report.

## 8. ***INPUT TAX CREDIT MECHANISM***

In relation to the input tax credit, the CGST and SGST are to be treated separately. In general, taxes paid against the input CGST shall be allowed to be taken as input tax credit and could be utilized only against the payment of output CGST. The same principle will be applicable for SGST. As per our understanding, 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 applicable in case of SGST also.

Further, an IGST will be applicable on 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 utilization of credit of CGST and SGST would be permitted for the payment of IGST and the credit of IGST can be utilised for the payment of IGST, CGST and SGST. For your

ease, we have tabulated different scenarios of input tax credit utilisation under GST as under:

| <i>Credit of</i> | <i>To be adjusted with</i> |
|------------------|----------------------------|
| IGST             | IGST, CGST, SGST           |
| CGST             | CGST, IGST                 |
| SGST             | SGST, IGST                 |

The aforesaid arrangement is being made for the purpose of maintaining the credit chain and to avoid the cascading effect in the entire supply 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(s) where the goods and services are eventually consumed. The said model would be self monitoring model and is likely to 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 the following table :

| <i>Particulars</i>  | <i>CST</i>  | <i>IGST</i>   |
|---------------------|---|---|
| <b>Differences</b>  | 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 neutralisation of cascading effect and cost optimisation. |
| <b>Similarities</b> | Input credit of VAT can be utilised for payment of CST.   | Input credit of SGST would be utilised for payment of IGST.   |

## 9. ***GST ON IMPORT AND EXPORT TRANSACTIONS***

In respect of import of goods and services IGST tends to subsume into itself, the Countervailing Duty (CVD), Special Additional Duty of Customs (SAD 4%) and Service Tax. The differences and similarities among the two regimes are depicted in the following table:

| <i>Particulars</i> | <i>Present regime (BCD + Import CVD/SAD/ST)</i>   | <i>Proposed regime (BCD + IGST)</i>   |
|--------------------|---|---|
| <b>Differences</b> | Levy of Basic Customs Duty, CVD & SAD on import of 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 manufacturing activity subject to the conditions, | Full and complete input credit of duties would be available under GST for all commercial transactions whether manufacture, trading or |



|                     |  |   |
|---------------------|--|---|
|                     | if any and refund of SAD is also available in case of trading of imported goods subject to conditions laid down. | output services.  |
| <b>Similarities</b> | 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 |

## 10. **RECENT DEVELOPMENTS**

It is relevant to mention here that the Select Committee constituted to examine the Constitution (122<sup>nd</sup> Amendment) Bill, 2014 submitted its report to Rajya Sabha (Upper House of Indian Parliament) on July 22, 2015 and recommended certain changes in the clauses of Constitutional Amendment. However, the Rajya Sabha adjourned sine die and the Centre's most important reform Bill remained in the Upper House without being passed and the monsoon session of the Parliament had been a complete washout. The winter session however ended on a better note than the previous monsoon session. It is important to note that the Lok Sabha will have to again pass the amended bill once the Rajya Sabha clears it.

After persistent deliberations, the opposition (UPA) has finally agreed to provide its support to the proposed GST Bill subject to three amendments in the original GST Bill, which are summarised as under:

- A constitutional cap of 18 per cent on GST;
- A Dispute Resolution Authority for resolving all the disputes which may arise between Central Government and State Government(s);
- Dropping of 1 per cent Additional Tax which is proposed on inter-state movement of goods.

The ruling NDA is showing an open mind for dropping of 1 per cent additional tax, which is not eligible for input credit, since the purpose of the GST bill is to remove the cascading effect. However, NDA is opposing the first two suggestions (mentioned above) which were recommended by UPA, on the ground that the constitutional cap will make the GST levy inflexible and any further change will require another alteration in the Constitution. Further, the NDA and the parliamentary standing committee didn't favour the idea of Dispute Resolution Authority by saying that the Dispute Resolution Authority would then have overriding powers over the Parliament and the State legislatures which is not correct *per se*.

## 11. **OUR COMMENTS**

With the implementation of GST the taxpayers will breathe a sigh of relief as they are likely to get free from the requirement of multiple compliances under various statutes, as the proposed GST regime provides for a single registration and a single return. The altercation between the ruling NDA and the opposition UPA w.r.t

Constitutional Cap of 18% GST and establishment of a Dispute Resolution Authority is delaying the GST in India. The Centre (NDA) eagerly wants to pass the said Bill in the upper house of the Parliament (Rajya Sabha) as soon as the next session starts. Lets hope the GST eventually sees the light at the end of a long and tiresome tunnel. Lets also hope that the political dispensations i.e. both the Government as well as the Opposition are able to collectively work in the interest of the Country, instead of one-upmanship and petty politicking.

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