

Bird Eye View of Revised Model GST Law

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This article covers the aspects of revised GST Model Law (**26th Nov. 2016**) for understanding what GST is all about. It does not cover the dispute resolution mechanism as that stage shall come later.

I. Introduction

The present system of indirect taxation has multiplicity of taxes levied by the Centre and State. This has led to a complex / conflicting principles in indirect tax structure, adding to the multiple compliance and administrative costs. There is no uniformity of tax rates and structure across States. There is cascading of taxes due to 'tax on tax'. There are too many restrictions on seamless credit available, i.e., No credit of excise duty and service tax paid at the stage of manufacture is available to the traders while paying the State level sales tax or VAT, and vice-versa. Further, no credit of State taxes paid in one State can be availed in other States. (CST)

Goods and Service Tax, which subsumes a large number of Central and State taxes into a single tax, was meant to mitigate the cascading effect of taxes, provide seamless credit and make way for a common market. However, achievement of all the foregoing objectives appears to be doubtful..

Why GST is necessary for India?

- GDP Growth go Up by about 1%
- International Competitiveness by about 5%
- Increased FDI-
- Common Market- Tax distorted locations and check post delays would not be there.
- Lower transaction cost – reduced corruption
- Increased IDT + Direct Tax Revenue

II. GST Concepts

1. Power to tax GST

Under Article 246A (in the proposed Constitution Amendment Bill), the Parliament has exclusive power to make laws with respect to GST where the supply of goods or services or both take place in the course of inter-state trade or commerce. Subject to the above, every State would have powers to make laws with regard to GST imposed by the Union or that State.

2. What is GST (Goods and Service Tax)?

GST is a destination based tax and levied at a single point at the time of consumption of goods or services by the ultimate consumer. GST is based on the principle of value added tax. GST law would emphasize on voluntary compliance and on accounts based reporting and monitoring system. It is a comprehensive levy and envisages tax collection on both goods and services at the same rate.

Internationally, GST was first introduced in France and now more than 160 countries have introduced GST. Most of the countries, depending on their own socio-economic formation, have introduced National level GST or Dual GST.

Definition of Good and Service Tax (GST) - The term GST is defined in Article 366 (12A) to mean *“any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption”*.

In terms of Section 2 (49) of the CGST Act “Goods” means every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and other things attached to or forming part of land which are agreed to be severed before supply or under a contract of supply.

In terms of Section 2(92) of the CGST Act “Service” means anything other than goods. Further, Explanation 1 to aforesaid Section 2(92) provides that Services include transactions in money but does not money and securities. Besides, Explanation 2 to aforesaid Section 2(92) provides that Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form,

currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Thus, all supply of goods or services or both would attract CGST (to be levied by Centre) and SGST (to be levied by State) unless kept out of purview of GST.

There is no requirement of actual sale of goods under GST. The alternative methods of supply of goods could be in the form of:

- ➔ sale of goods,
- ➔ stock transfer,
- ➔ captive consumption in another location,
- ➔ supply done on consignment basis or any other basis by the Principal to his Agent
- ➔ supply on job work basis, (if working under returnable basis- no tax need be paid)
- ➔ any other supply such as donation, sample etc.

3. Structure and type of taxes:

India is proposing to implement dual GST'. In dual GST regime, all the transactions of goods and services made for a consideration would attract two levies i.e. CGST (Central GST) and SGST (State GST).

- **Central Goods and Service Tax (CGST)**

The Central GST (CGST) is expected to replace the existing central excise duty and service tax. CGST would also cover sale transactions.

The Constitutional Amendment Bill, 2014 contains suitable proposals to enable Centre to tax sales. CGST would be administered by the Central Government. The Cenvat credit balance available under Cenvat Credit Rules with the manufacture or service provider, as on the date of transition into GST, could be carried forward. The tax paid goods in stock as on date of transition not availed in the past or not eligible at that point of time, available under GST could also be availed and used towards disbursing CGST (Central GST) liability. There could be a time bound transition for carry forward of credit availed prior to GST introduction. The declaration of closing stock as on the date of transition to claim credits, which were not earlier captured, would also be time bound.

- **State Goods and Service Tax (SGST)**

State GST would replace State VAT, Entry tax, Octroi, Luxury tax, Entertainment tax etc. SGST would be levied on services as well. To enable taxing of services by the State, the Constitutional Amendment Bill, 2014 contains suitable proposals. SGST is to be administered by the State Governments. SGST could be at a bit higher rate than CGST as per press reports. The SGST payable could be set off from the SGST credit or the IGST credit available. The closing input VAT balance available under VAT Act would also be made available to the dealer, as on the date of transition into GST, and could be set off towards SGST (State GST) liability. Further it is expected that the duty and tax paid on closing stock would also be available as credit, which may not have been claimed as set off in the VAT regime.

- **Inter-State Goods and Service Tax (IGST)**

IGST (expected to be equal to CGST + SGST) would be levied on all supplies of goods and/or services In the course of inter-state trade or commerce .IGST would be applicable to import of goods or services from outside country as well, which is indicated in the Constitutional Amendment Bill, 2014. Further it is expected that the duty and tax paid on closing stock would also be available as credit, which may not have been claimed as set-off.

4. What are the taxes expected to be subsumed and NOT subsumed into GST

State taxes

Likely to be subsumed	NOT likely to be subsumed
Value Added Tax	State Excise Duty
Purchase tax.	Stamp Duty.
Entry Tax, Octroi, Local Body Tax.	Profession Tax.
Sales tax - partially.	Motor Vehicle Tax
Entertainment Tax.	Electricity Duty –Doubtful because of inclusion of electricity in the definition of term “goods”
Luxury Tax.	Sale tax on five petroleum products namely Petroleum Crude, Motor Spirit (petrol), High Speed Diesel, Natural Gas and Aviation Turbine Fuel for a period of time. GST Council would decide the date of including them in GST

Betting, Gambling and lottery tax.	
Surcharges and State cesses.	

Central taxes

Likely to be subsumed	NOT likely to be subsumed
Central Excise Duty	Customs Duty.
Additional Duties of Excise.	Research & Development Cess
Excise on Medicinal and Toiletries Preparation Act.	
Additional Customs Duty (CVD) – equal to central excise on like goods manufactured in India	
Special Additional Duty – Supposed to be equal to CST which was earlier 4%. Not changed in spite of drop in CST rate to 2%.	
Surcharge and Cesses.	
Central Sales Tax	

III. Broad Principles of GST

A. Levy and Collection of CGST/SGST (Section 8):

In terms of Section 8(1) Central/State Goods and Services Tax (CGST/SGST) shall be levied on all intra-State supplies of goods and/or services on the value determined under in section 15 and at the rate notified by the Central/State Government in this behalf, on the recommendation of the Council. However, aforesaid rate of CGST/SGST shall not exceed 14%. Further, aforesaid CGST/SGST shall be collected in the prescribed manner.

In terms of Section 8(3) the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services. Consequently, all the provisions of the CGST Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods and/or services.

In terms of Section 8(4), the Central or a State Government may specify categories of services the tax on which shall be paid by the Electronic Commerce Operator if such services

are supplied through it. Consequently, all the provisions of the CGST Act shall apply to such Electronic Commerce Operator as if he is the person liable for paying the tax in relation to supply of such services.

B. Composition Levy(Section 9)

In terms of Section 9(1) on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a manufacturer to pay an amount (not tax) **not less than 2.5% and others 1%** of the turnover in a State during the year. The benefit of aforesaid composition levy shall be available to only those registered taxable persons whose “aggregate turnover” in the preceding financial year i did not exceed **fifty lakh of rupees**

The above mentioned composition levy shall not be granted to a taxable person-

- Who is engaged in the supply of services; or
- Who makes any supply of goods which are not leviable to tax under the CGST Act; or
- Who makes any inter-state outward supplies of goods ; or
- Who makes any supply of goods through an Electronic Commerce Operator who is required to collect tax at source ; or
- Who a manufacturer of such goods is as may be notified on the recommendation of the Council.

Further, no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the Composition Levy.. Resultantly, if a registered taxable person, having the same PAN has obtained more than one Registration, whether in the same State or in different two different states as Head Office and Branch, then Head Office and Branch can not opt for Composition Levy Scheme in isolation. Both will have to opt for Composition Levy.

In terms of Section 9(2), the permission granted for Composition Levy Scheme shall stand withdrawn from the day when the aggregate turnover of the registered taxable person during a financial year exceeds Rs. 50,00,000/-

In terms of Section 9(3) a taxable person who pays tax under composition levy shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

It is also worth highlighting here that in terms of Section 9(4) if the proper officer has reasons to believe that a taxable person was not eligible to pay tax under Composition Levy Scheme, the concerned taxable person shall be liable to pay the following:

- (a) Any tax which may be payable by him under other provisions of the Act; **and**
- (b) Penalty equivalent to the amount of tax payable

It is to be noted carefully that since Composition Levy Scheme can not be availed by a taxable person who is engaged in the supply of services, works contractors who shall be providing Works Contract Services shall not be eligible for Composition Levy Scheme. Consequently, aforesaid Works Contractors would be forced to maintain proper Books of Accounts and Records. Traders doing B2B activity may not find composition economically viable.

C. Taxable person(Section 10)

Taxable Person means a person who is registered or required to be registered under Schedule V of this Act. One who is required to obtain multiple registrations in different States or within one State would be considered as **distinct person** in each State.

Following persons shall not be liable to registration in terms of Schedule V:

- (a) Any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under CGST Act.
- (b) An agriculturist for the purpose of agriculture. It is necessary to add that term “agriculturist” means a person who cultivates land personally, for the purpose of agriculture
- (c) Any supplier if his aggregate turnover in a financial year does not exceed **Rs. 20 lakh.**
- (d) Any supplier if his aggregate turnover in a financial year does not exceed Rs. 10 lakh from Special Category States. Following is the list of aforesaid “Special Category States”

S.No.	Special Category States	S.No.	Special Category
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			States
1.	Arunachal Pradesh	7.	Nagaland
2.	Assam	8.	Sikkim
3.	Jammu & Kashmir	9.	Tripura
4.	Manipur	10.	Himachal Pradesh
5.	Meghalaya	11.	Uttarakhand
6.	Mizoram		

Following persons shall be required to be registered under CGST Act:

- (a) Every supplier shall be liable to be registered under the CGST Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds Rs. 20 lakh. However, in respect of Special Category States, the aforesaid threshold registration limit has been reduced to Rs. 10 lakh.
- (b) Person making any inter-state taxable supply (no threshold limit).
- (c) Causal Taxable Persons (No threshold limit).
- (d) Persons liable to pay GST under reverse charge (no threshold limit).
- (e) Electronic Commerce Operator in respect of specified categories of services if such services are supplied through it.
- (f) Non-Resident Taxable Persons.
- (g) Persons who are required to deduct tax at source
- (h) Persons who are required to collect tax at source
- (i) Persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise (no threshold limit).
- (j) Input Service Distributor.
- (k) Persons who supply goods and/or services through Electronic Commerce Operator who is required to collect tax at source (No threshold limit).
- (l) Every Electronic commerce Operator (No threshold limit).
- (m) Every person supplying Online Information and Database Access or Retrieval Services (OIDAR Services) from a place outside India **to a person in India, other than a registered taxable person.**
- (n) Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

D. Meaning and scope of supply (Section 3)

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 service, whether or not for a consideration and whether or not in the course or furtherance of business, and
- c. In terms of Schedule I to the CGST Act, **following matters to be treated as supply even if made without consideration:**
 1. Permanent transfer or disposal of business assets where input tax credit has been availed on such business assets.
 2. Supply of goods or services between **related persons** or between **distinct persons** as specified in **Section 10**, when made in the course or furtherance of business. In terms of Section 10, following are deemed distinct persons

(i) Deemed Distinct Persons in Case of Multiple Registrations- Section 10(2)

A person who has either already obtained or is required to obtain more than one registration under this Act shall be treated as distinct persons in respect of each such registration. It is immaterial whether the aforesaid multiple registrations have been obtained or are required to be obtained **in one State or more than one State**.

Example

Mr. Ravi is engaged in supply of Chartered Accountant Services. He has obtained a Registration in the State of West Bengal in respect of his Head Office. In addition, he has obtained registration in the State of Delhi in respect of his branch.

In the above case, in respect of each registration at West Bengal and Delhi, Mr. Ravi shall be treated as distinct persons.

(ii) Deemed Establishments of Distinct Persons in case of Multiple Registration in Different States –Section 10(3)

An establishment of a person who has either obtained or is required to obtain registration in a State and any of his other establishments in another State shall be treated as establishment of distinct persons for the purposes of this Act.

Example

Raj Ltd. is engaged in supply of specified goods. It has obtained a Registration in the State of **Haryana** in respect of its Head Office. In addition, it has obtained registration in the State of Punjab in respect of its branch located at **Jalandhar**.

In the above case, Establishment of Haryana and Establishment of Punjab shall be treated as establishments of distinct persons.

3. Supply of goods-

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4.Importation of services by a taxable person from a **related person** or from any of his other establishments outside India, in the course of business.

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

1. Transfer

(a) Any transfer of title to goods is a supply of goods. Normal sale.

(b) Any transfer of goods or right in goods or undivided share without transfer of title is supply of services. Example- Renting of laptops.

(c) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed is a supply of goods. Example – Supply of Refrigerators under Hire- purchase Agreement

2. Land and Building

(a) Any lease, tenancy, easement, license 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 comer, either wholly or partly, **is a supply of services**

3. Treatment or process

(a) 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 taxable person. However, aforesaid provision of deemed supply of goods shall not apply in the following cases:

(i) Where the business is transferred as a going concerned to another person; **or**

(ii) Where the business is carried on by a personal representative who is deemed to be a taxable person

5. The declared services under the present ST Law shall be treated as supply a service.

6. The following shall be treated as supply of goods

(a) Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration

3. The Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

- (i) a supply of goods and not as a supply of services; or
- (ii) a supply of services and not as a supply of goods; or
- (iii) neither a supply of goods nor a supply of services.

4. 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**. **Example** Supply of food during the course of transportation of passengers by air services shall be treated as supply of transportation of passengers by air.

(b) a **mixed supply** two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

E. Meaning of inter-state and intra-state supply [Section 3 and 4 of the IGST Act]

In terms of Section 3(1) of the IGST Act supply of goods in the course of inter-state trade or commerce means any supply where the location of the supplier and the place of supply are in different States.

Similarly, in terms of Section 3(2) of the IGST Act, supply of services in the course of inter-state trade or commerce means any supply where the location of the supplier and place of supply are in different States.

On the other hand, in terms of Section 4(1), intra-State supply of goods means any supply of goods where the location of the supplier and place of supply are in the same State. However, the intra-State supply of goods shall not include:

- (i) Supply of goods to or by a SEZ developer or to or by an SEZ unit;
- (ii) Supply of goods brought into India in the course of import till they cross the customs frontiers of India.

Similarly, in terms of Section 4(2) of the IGST act, intra-State supply of services means any supply of services where the location of the supplier and the place of supply are in the same

state. However, intra-State supply of services shall not include supply of services to or by a SEZ developer or to or by an SEZ unit.

F. Classification under GST

The classification of goods is to be done with reference to the broad category as per the GST Tariff Act. In case there is a doubt then the specific coverage within the alternative entries is to be chosen. The Harmonized System of Nomenclature (HSN), issued by the World Customs Organization, Brussels, could be adopted for classification of goods and with respect to services it would be in line with WTO classification. This would integrate Indian trade and industry with global trade even at each State level. Further it would ensure that there is uniformity amongst Union and the States in the matter of classification of goods. Where the entry is not clear or more than one classification appears to be relevant, then reference could be made to the rules of interpretation contained in the HSN to resolve such a conflict.

Where there are still some doubts the decisions of the Courts laying down certain principles (like trade parlance theory, function based classification, ISI glossary etc.) could be referred. Classification of service would probably be based on the service tax definitions as they exist presently as also the provisions as they existed prior to 2012.

G. Exemptions under GST (Section 11)

1. Exemption in Public Interest by Notification –Section 10(1)

Central Government may exempt goods and/or services of any specified description from the tax leviable thereon. However, following cumulative conditions need to be satisfied:

- (a) Exemption is to be granted in public interest only;
- (b) Exemption is to be granted on the recommendation of the GST Council;
- (c) Exemption is to be granted by a **Notification** in the Official Gazette;
- (d) Exemption to be granted either absolutely [i.e. without any condition] or subject to specified conditions;
- (e) Exemption can be from the whole or any part of the tax leviable thereon; **and**
- (f) The effective date of exemption may either be from the date of issue of notification or any date subsequent thereto as may be specified in the relevant Notification

Further, in terms of **Explanation to Section 11(1)**, where an **exemption** in respect of any goods and /or services from the whole of the tax leviable thereon has been **granted**

absolutely, the taxable person providing such goods and/or services is not required to pay the tax on such goods and/or services.

2. Exemption in Public Interest by Special Order under Circumstances of an Exceptional Nature –Section 11(2)

Central Government may exempt from payment of tax any goods and/or services on which tax is leviable. However, following cumulative conditions need to be satisfied:

- (a) Exemption is to be granted in public interest only;
- (b) Exemption is to be granted on the recommendation of the GST Council;
- (c) Exemption is to be granted by a **special order** in each case; **and**
- (d) Exemption is to be granted under circumstances of an exceptional nature to be specified in the aforesaid special order.

3. Insertion of an Explanation in the Notification or Order –Section 11(3)

The Central Government may insert an explanation in the **Notification or Order issued under Section 11(1) or Section 11(2)** respectively. However, following conditions need to be satisfied cumulatively:

- (a) Explanation is to be inserted only if the Central Government considers it necessary or expedient to do so;
- (b) Explanation is to be inserted with a view to clarify the scope or applicability of any Notification or Order; and
- (c) Explanation is to be issued within one year of issue of the Notification or Order.

Further, inserted Explanation shall have the effect as if it had always been the part of the original /first relevant Notification or Order.

4. Effective date of Notification or order –Section 11(4)

Every Notification [issued under Section 11(1) or Section 11(3)] and every Order [issued under Section 11(2)] shall, unless provided otherwise, become effective either:

- (a) On the date of its issue by the Central Government for publication in the Official Gazette; **or**
- (b) From any date subsequent to the date of its issue as may be specified in the relevant Notification

Further, according to **Section 11(4) (b)** every Notification [issued under Section 11(1) or Section 11(3)] and every Order [issued under Section 11(2)] shall be made available on the official website of the Department of the Central Government.

H. Registration Decision (Section 23)

The decision for registration as a supplier of goods or service would be made when GST is payable. The intermediate goods supplier should not claim the exemption and take the registration from the start of the enterprise to ensure competitiveness due to availability of input credit set off.

The supplier [whether an importer, distributor or retailer] who wishes to pass on the input tax credit in respect of the GST paid on goods traded/imported by him to customers, would be required to register under the GST law. The prescribed accounts and records would have to be maintained by them and they have to issue a proper invoice for the supply of goods and services.

I. Place of Supply (Section 7- 10 read with Section 3& 4 of the IGST Act)

The place of supply would determine first as to whether the transaction is in India or outside India. If it is outside India it would not be liable to GST.

It would also determine the place of levy. Most transactions are expected to be liable at the rate prevailing at the destination. There would be some exceptions in regard to services and a few in regard to goods.

Section 3 of the IGST Act provides that place of supply of goods shall, **depend** on the **location of the supplier** and **place of supply**. In terms of Section 3(1) of the IGST Act inter-state supply of goods means any supply of goods where the location of the supplier and the place of supply are in different States, On the other hand, in the Section 4(1) intra-State supply of goods means any supply of goods where the location of the supplier and the place of supply are in the same state.

In terms of Rule 9 & 10 of the IGST Act place of supply for services is quite elaborate and based partially on the present place of provision of services rules under service tax. Place shall be decided by way of location of immovable property, place of performance of services, place of event, location of supplier of service, location of recipient of service etc.

J. Time of Supply (Section 12 & 13 of the CGST Act)

The liability to pay CGST/SGST on the goods shall arise at the time of supply. The time of supply of goods would be earlier of the following dates, namely:

- (a) The date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply; or
- (b) The date of receipt of payment by the supplier

However, in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following date, namely:-

- (a) The date of receipt of goods, or
- (b) The date on which payment is made; or
- (c) The date immediately following 30 days from the date of issue of invoice.

In case of service, time of supply shall be earlier of the following dates, namely:-

- (a) The date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply; or
- (b) The date on which the supplier receives the payment with respect to the supply.

K. Rate of GST

The rates could be as under:

- | | |
|--|--------------------|
| a. Revenue Neutral Rate (RNR) | - 18% |
| b. Products/ service which are basic necessities | - 12% |
| c. Essential Goods | - 5% |
| d. Demerit goods | -28% + some Cesses |

The State has sought a small band of flexibility. Therefore it may happen that when the CGST rate would be 9% the SGST could be 7, 8 or 9.

L. Valuation (Section 15)

GST would be normally be payable on the 'transaction value'. Transaction value is the **price actually paid or payable** for the said supply of goods and/or services between un-related parties and price is the sole consideration. The transaction value is also said to include:

- Taxes other than GST
- Expenses incurred by recipient in relation to supply
- Incidental expenses charged at the time or before the supply
- Interest etc. for late payment

- Subsidies directly linked to the price excluding subsidies provided by the Central and Governments

As regards **discounts/ incentives**, it will form part of ‘transaction value’, if it is allowed **after** supply is effected. However, discounts/ incentives given **before or at the time** of supply would be permissible as deduction from transaction value. This would be indicated in the invoice itself.

Volume / quantity discounts would be passed on by way of credit notes.

MRP based valuation may not be there.

The law also would provide for Valuation Rules to help determine value in certain cases. The Valuation Rules should be as per VAT laws but the possibility of borrowing few provisions from current Valuation provisions in vague in Excise (for e.g. concept of transaction value‘), Service Tax (for e.g. concept of pure agent‘) and Customs (for e.g. concept of goods of like kind and quality) can not be ruled out.

The valuation provisions envisaged may result in disputes is the understanding as on date.

M. Input Tax Credit (Section 16 – 22)

Current CENVAT Credit regime disallows CENVAT Credit on various services such as motor vehicle related services, **catering services, employee insurance, construction of civil structure** etc. Similarly, State VAT laws restrict input tax credit in respect of construction, motor vehicle etc. Currently, this denial of credits leads to un-necessary cost burden on assessee though they are used in furtherance of business.

It was expected that in GST regime, seamless credit would be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use and not for official use (something similar to Unite Kingdom VAT law).

However, surprisingly, inter-alia, many of the aforesaid credit restrictions would continue to remain (in respect of both goods or services). Further, credit is proposed to be denied on goods and/or services used for private or personal consumption, to the extent they are so consumed. This continuation of denial will lead to substantial tax cascading (as rate of GST would be higher than the current rate of service tax). Also, another round of litigation as interpretation issues would crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

The credit on the inputs and the input services, pertaining to Central GST, Integrated GST and State GST should be accounted separately. There is likely to be a restriction on cross utilization i.e. credit pertaining to CGST would not be allowed for set-off against SGST and vice versa. However this restriction would not be applicable to inter-State transactions. Further, the rules for taking and utilization of CGST, IGST and SGST credit would be aligned. The credit on the capital goods could be aligned with inputs and services and would be available for set off 100% in the first year itself

The provision of supply of goods or services interstate between the same organisations would be subject to GST. When there is no supply but input services are commonly used then the concept of **Input Service Distributor** would apply. ISD registration could be taken from places where one does not have registration. Thus, ISD Registration can be obtained from any place, whether one has the registration or not.

Credit doubts/ issues would continue to be confusing and arbitrary and illogical leading to disputes as in the past.

N. Set off of input Credit (Section 16 – 22)

The input tax credit would be eligible for set off as under:

1. The CGST and SGST paid on supply of service to be set off against the output CGST and SGST respectively.
2. When an item is procured for resale, then credit of CGST and SGST is available for all items.
3. When inputs and consumables are procured for the manufacture of goods on which CGST/ SGST is paid, then credit of CGST and SGST is available for all items.
4. SGST would be allowed first to be utilised against SGST and then IGST.
5. CGST similarly for CGST and then IGST.
6. IGST would be allowed for IGST, CGST and then SGST in that order.

The SGST would not be allowed to be adjusted to the CGST and vice versa. This may lead to accumulation of credit in some places.

O. There would be 33 GST laws in India In GST regime, there would be 1 CGST law and 31 SGST law for each of the States including two Union Territories and 1 IGST law governing inter-State supplies of goods and/ or services.

P. Whether branch transfer liable?

At present, the transfer of goods without payment of CST is permissible when one transfers it to self or agent under Form "F". Many States have input tax reversal to be made in such cases On value of goods purchased locally For Example 2% in Karnataka, 5 % In Tamil Nadu etc. Under GST, the movement of goods or services from one State to another on transfer basis would be leviable to IGST [total of CGST+SGST]. Therefore tax would not cascade to the extent of restriction. However, it will have issues of increased working capital, storage and logistic

The transfer of goods or services within a State with a separate business vertical would be leviable to SGST and CGST. In case there is only one registration in the State then there would be no GST [CGST+SGST] on the stock transfer.

Q. Whether it is Supply in the course of Import? (Section 8 of IGST)

At present import of goods is leviable to Customs Duties comprising of Basic Customs duty [BCD], Additional duty of customs equal to Excise duty on like goods manufactured in India [CVD], Special Additional duty (SAD). Service tax is leviable on services which are provided from outside India and received in India and payable by the service receiver under reverse charge mechanism.

The import of goods or services would be deemed as inter-State supply of goods or service and be subjected to the levy of Inter-state GST (IGST). The import of goods would continue to attract Basic Customs Duty (BCD) and also IGST.

R. Whether it is Supply in course of export? (Section 8 of IGST)

GST would not be charged on goods or services exported from India. In case, the supply of goods or supply of services qualifies as export out of India as per the place of supply provisions, the transaction would be zero rated. The supplier would be allowed to export the goods or services without charging any tax, but can avail the CGST/SGST and IGST credits. If they are unable to utilise the credit then they can go for refund of. CGST/ SGST/ IGST paid on procurement of such goods and/or services

S. Transitional Provisions

The key to the success of GST would be when all present tax payers are comfortably migrated to GST so that they can continue their businesses without any difficulty. The

transition should also enable all to start on a level playing field. Briefly summary of the transition provisions are explained hereunder:

- a) All present officers would become GST officers/ authorities. (section 165)
- b) Every person registered under VAT, Central Excise or Service tax etc. having a **valid PAN** would be provisionally registered. (Section 166) Further particulars to be provided (online) to enable final registration. (Section 166)
- c) The Cenvat Credit (manufacturer/ service provider) or the VAT credit (manufacturer/ Trader) or Entry Tax credit (where allowed to be adjusted – few States enable this) can be carried forward if eligible as input credit under GST. It must be ensured that the last return before switching over to GST is made very carefully after proper reconciliation with books of account.(**Section 167**)
- d) . (
- e) The capital goods credit is available to a manufacturer/ service provider normally upto 50% in the year of acquisition and balance 50% in the subsequent year/s. Where one has either not availed though eligible or availed 50% pre GST, the balance can be availed in the subsequent year. (**Section 168**)
- f) All manufacturers/ traders and to smaller extent service providers would have stock of goods which maybe in the form of raw material/ components, semi-finished goods and finished goods. Taxes (central excise duty, Input tax credit, service tax) paid under the earlier regime which are available in GST should be allowed as credit as now the payment would be under GST. Those not liable to be registered in earlier law, claiming exemption, providing works contract service or claiming abatement or 1st and 2nd stage dealer would be eligible to avail the credit on closing stock. The proof of existence of stock may also be retained such as stock taking, entries in the running stock registers.

The claim of taxes paid on stock as eligible can be made for all the above situations along with duty paying documents to maximize the credit. Where no documents are there, Rules are to prescribe how the credit can be availed. (**Section 169, 170**)

- g) The credit of duty/ tax paid for goods in transit within a period of 30 days with the condition that the same has been recorded in the books. A statement as prescribed would require to be submitted. (**Section 171**)
- h) Many dealers and works contractors are under the composition scheme in the local VAT laws as well as the service tax law who are now not eligible or may not find it economically viable especially if they are into Business to Business (B2B). The stocks available with such dealers and contractors shall be eligible for credit under GST (**Section 172**)
- i) Where Goods exempted under the earlier law are sent within 6 months prior to GST date and are returned to the place of business after the appointed day would not be liable to tax if aforesaid goods are returned within 6 months of GST date.. (**Section 173**)
- j)
- k) Where any duty paid Goods under the earlier law are sent 6 months prior to the appointed day i.e. introduction of GST date and are returned to any place of business on or after the aforesaid appointed day, the Registered Taxable Person(RTP) shall be eligible for refund of the duty paid under the earlier law where such goods are **returned by a person, other than a RTP**, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the prop9er officer. However, if the said goods are returned by a RTP, the return of goods shall be deemed to be a supply. (Section 174)
- l) Inputs/ Semi Finished/ finished Goods sent for job work on payment of duty and returned after GST date. If returned within 6 + 2 months of GST date no GST payable. If not returned then the input tax credit would have to be reversed. This provision would apply where the credit on the stock in hand of job worker is claimed by the principal (sender). Enabling provisions for receipt of goods directly by job worker or supply from job workers premises have been made.(**Section 175,176, 177**)

- m) The issue of supplementary invoices, debit/ credit note can be done within 30 days of the date of price revision. In case of credit note, the reversal of the credit by the receiver needs to be confirmed. (**Section 178**)
- n) The claims for refund of any amount of CENVAT credit, duty, tax or interest paid made and pending as well as claims made after GST date but pertaining to period prior would be under the earlier law required to be disposed of as per the earlier law and any amount eventually accruing to him shall be paid in cash. In case of a claim being rejected (subject to appeal in the old law) the amount so rejected would lapse! (**Section 179, 180**)
- o) The claim of Cenvat credit or ITC or output duty or tax liability or dispute on Reverse charge mechanism made under the earlier law which is in adjudication etc. would be disposed of under the old law and any amount found to be admissible to the claimant shall be refunded to him in cash. In case of recovery of credit under old law it would be as per the provisions of GST. (**Section 182, 183, 184**)
- p) The returns under central excise can be revised within the end of the month, service tax within 90 days and under VAT in most States a 6 months' time is provided. If aforesaid revision of returns result in any amount recoverable from the assessee, the same shall be recovered as an arrear of tax under GST Act and the amount so recovered shall not be admissible as input tax credit under GST Act. On the other hand, if pursuant to aforesaid revision of return, any amount is found to be refundable or Cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash. (**Section 185**)
- q) The long term contracts entered prior to GST spilling over to GST would be liable to tax under GST. (**Section 186**)
- r) No tax shall be payable on the supply of goods and/or services made on or after the appointed day where the consideration, in full or in part, has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law. (**Section 187**)

- s) The tax in respect of the taxable services /taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such services/goods arose before the appointed day. However, where the portion of the supply of services/goods is not covered under the earlier law, such portion shall be liable to tax under GST. (**Section 188, 189**)
- t) The common input services for services received before GST by an Input Service Distributor would be available for distribution as credit under GST Act even if invoice(s) relating to such services is received on or after implementation of GST. (**Section 190**)
- u) Where a taxable person having Centralized Registration under the earlier law has obtained a registration under CGST Act, such person shall be allowed to take in his Electronic Credit Ledger, credit of the amount of CENVAT Credit carried forward in a return, furnished under the earlier law by him in respect of the period ending with the day immediately preceding the appointed day. However, the taxable person shall not be allowed to take credit unless the said amount is admissible as input tax credit under the GST Act. Further, such credit may be transferred to any of the registered taxable persons having the same PAN for which the Centralized Registration was obtained under the earlier law.. (**Section 191**)
- v) Where any goods/capital goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of tax paid on such goods/capital goods subject to fulfillment of the following conditions:
- (i)The agent is a RTP under the GST Act;
 - (ii)Both the principal and the agent declare the details of stock of goods/capital goods lying with such agent on the date immediately preceding the appointed day;
 - (iii)The invoices for such goods/capital goods had been issued not earlier than 12 months immediately preceding the appointed day; **and**
 - (iv)The principal has either reversed or not availed on the ITC in respect of such goods. And in the context of capital goods, the principal has either not availed of the ITC in respect of such capital goods or having availed of such credit, has reversed the said credit, to the extent availed of by him.(**Section 192, 193**)

w) (

- x) In many States the stock transfer are after reversal of input tax credit. No such credit reversed is eligible under GST. (**Section 194**)
- y) In some trades goods are sent on approval. If the goods are returned within 6 + 2 months then no liability to GST for the sender. Beyond that tax is payable by the person returning the goods. If not returned then the sender has to pay the GST of such earlier supplies. (**Section 195**)
- z) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the earlier law and the supplier has also issued an invoice for the same before the appointed day, no tax is to be deducted at source shall be made by the deductor under Section 46 of the CGST where payment to the said supplier is made on or after the appointed day.. (**Section 196**)
- aa) In the service tax law when one had not paid for services within 3 months, the credit was to be reversed. If payment is made within 3 months of GST such credit can be re-claimed [Section 197]

IV. Impact of GST on Trade, manufacture, service:

The GST law in India would be a Dual GST. The Central Government and the State Governments would levy GST concurrently on a common base value. All goods and services, except for a few excluded/ exempted, would be brought into the GST base. There would be no major distinction between goods and services for the purpose of imposition of tax though in case of place of supply there could be some differences. In addition, difference in rate of GST shall also there.

1) Impact on Traders:

- a) **Tax on value addition:** The impact of tax on the wholesaler or retailer would be limited to the value addition. The tax paid at earlier stages (except CGST & SGST of other States) would be available as set off for payment of GST on supplies. Therefore traders would prefer to buy/receive supplies with invoice pre and post GST.

- b) **Reduce cascading:** Cost of products and services would reduce normally due to the cascading effect of tax being reduced. Service tax credits would be available and going forward even the capital goods used for storing, handling etc.
- c) **SGST levy:** CGST and SGST would be levied on the local supply of goods within State. IGST (comprised of CGST and SGST) would be levied on interstate supply of goods.
- d) **No subsequent sale or sale in transit under the CST Act against Forms E-1/2:** This exemption as per section 6(2) of the CST Act is not continued under GST levy. GST would be charged on both transactions.
- e) **Export supplies Under Form H/ Supplies to SEZ under form I:** Not available.
- f) **Stock transfers:** Presently, stock transfer is done without charging CST against Form F. Under GST law, stock transfers from one State to other would be liable to GST. **Stock transfers to branches/consignment agents within the State:** Under GST, these transfers would not be taxed as registration number of transferor and transferee is same. Where the division/ branch or agent has a different registration CGST & SGST would be charged.
- g) **Small Traders:** They would be eligible for the composition scheme upto Rs 50 lakhs provided their aggregate turnover in the preceding financial year did not exceed Rs. 50 lakh. After that normal rate. The essential conditions to be complied for availing the benefit of aforesaid Composition Scheme are as under
 - (i) No credit to dealer/ customer;
 - (ii) No inter-state supply of goods.
 . Only suitable for Business to Consumer transactions.

2) Impact on Manufacturers

- a) **Competitive in market:** There would be a saving in taxes due to less restrictions in taking setoff of taxes paid at various stages of manufactures reducing the cost of goods/ services supplied. This would make them more competitive both in domestic and more so in the international markets.
- b) **Valuation of the supply of goods:** At present, excise duty is paid on the event of manufacture of excisable goods and VAT on the sale of goods. VAT/CST is computed on sale price+ excise duty paid. With the shift of taxable event from manufacture to supply of goods, the valuation of goods could be simplified. Under

GST, actual value received as a consideration for the supply of goods would be subject to GST with some exceptions.

- c) **Cheaper exports:** The exports would be cheaper as taxes paid at earlier stages could be refunded to higher extent. [credit restrictions can lead to tax sticking]
- d) **Corruption:** The corruption faced by the manufacturers would substantially reduce over a period of time due to reduced points of interaction and fewer laws to comply.
- e) **Transaction costs:** The transaction costs of compliance could reduce due to widespread computerization and online filling and filing of forms/payment of taxes and returns. However the huge need to upload all transactions may lead to the compliance cost for medium sector to rise and for small sector it may not be bearable.
- f) **Manufacturers under administration of State VAT officials:** Manufacturers having a value of clearances of less than Rs 150 Lakhs are exempted under present Excise law. The matter of administration has not been resolved as on date.

3) **Impact on Service Providers**

- a) **Present destination based to consumption based levy:** Presently, service tax is levied mainly at origin and is a destination based levy, the burden of which is borne by the end customer. Under GST generally they would be taxed in the same way except that the place of supply would have to be confirmed. Tax would flow to the place of consumption.
- b) **Service tax-SGST levied by States:** Under GST law, the service tax would be levied not just by Centre but also by the States which would be empowered to levy SGST by amendment to the Constitution of India.
- c) **Taxes received by consuming State:** If services are rendered from one State to another, then tax would ultimately go to the consuming State.
- d) **Increase set off with VAT:** The VAT credit for goods which was not available to the service provider would be available under GST.

4) **Impact on the Consumers:**

- a) **Reduction in price:** Generally the purchase price would reduce as tax content of most products would come down. But if a product has hitherto evaded tax completely then the price would increase. Further those items which are now taxable where tax rate earlier was zero may be more expensive as exemption and zero rated list of items may come down in the GST regime.

- b) **Transparency:** The tax paid would be clearly mentioned in the invoice given to the customer.
- c) **Options to customer:** There would be free trade and commerce between States and throughout the country which would provide more options to the consumer.

5) **Central Government:**

- a) **Increased collection of CGST and IGST:** The collection of taxes-CGST and IGST would increase when more and more assesses register and pay taxes due to simplified tax laws under GST regime.
- b) **Loss of CST revenues:** The CST which was 2 % accruing to the State of collection has been subsumed into GST. This revenue would not be available to the States.
- c) **Refunds under GST:** The refunds which under Central excise and service tax law take long time. i, However, in GST Regime, Refunds are expected to be processed faster with 90% of the total refund amount being available on submission of proper documents.
- d) **Reduce corruption:** When the laws are simplified, then the chances of multiple interpretations would reduce, leading to fall in disputes and consequent litigation. Also the automation of the payments/returns filing and other compliances could mean that the interaction between the assessee and the department officers would come down to minimum. This would reduce corruption and increase ethics gradually.
- e) **Compensation for loss of revenues to States:** The compensation of loss of tax revenues to the States on account of implementation of GST would be an outgo.

6) **State Government**

- a) **Proliferation of computerization leading to fall in transaction costs:** Due to increase in computerization due to GSTN, the tax administration would be easier and cost of collection would be reduced.
- b) **The Destination Principle:** State which are net consumers would benefit due to the accrual on destination. The producing States may have a comparative disadvantage.

7) **Impact on the country**

- a) **Increased FDI:** The Foreign Direct Investments may flow in an increased manner once GST is implemented as present complicated/ multiple tax laws are one of the reasons foreign Cos are wary of coming to India in addition to high corruption levels.

- b) **Growth in overall revenues:** It is estimated that India could get revenues \$15 billion per annum by implementing the Goods and Services Tax as it would promote exports, raise employment and boost growth. Over period the dilution of the principles may see that only part of this is accruing actually.
- c) **Single point taxation:** Uniformity in tax laws leading to single point taxation for supply of goods or services all over India. This increases the tax compliance and more assesses will come into tax net.
- d) **Simplified tax laws:** This reduces litigation and waste of time of the judiciary and the assessee due to frivolous proceedings at various levels of adjudication and appellate authorities. Present law appears to be much worse and an amalgam of the bad parts of VAT/ ST/ CE.
- e) **Increase in exports and employment-** GST could also bring raise in employment, promotion of exports and consequently a significant boost in overall economic growth and factors of production-land labour and capital.

8) Overall Impact

- a) **Change in law and procedure:** Since it is a major indirect tax reform in India, there would be new legislations and procedures. The entire indirect tax code would be a new one.
- b) **Change in tax-rates:** The standard rate of 12.5 % for central excise, Service tax, along with residuary rate of VAT at 12.5-14.5% brings the overall rate to 25%-30%. But, post GST, the main rate of 18%; a net gain of almost 7%-12%. Most of the dealers and consumers would experience the change in tax rates, either significantly or marginally. When the tax rates are increased for some products it could lead to tax evasion as well.
- c) **GST based on HSN:** The central excise tariff based classification would no longer be applicable. It would reduce the interpretational issues in respect of class of commodities.
- d) **Availment of tax credit:** GST would facilitate near seamless credit across the entire supply chain and across all States under a common tax base. At present no cross credits are available across central excise/service tax to local VAT/sales tax. Under the GST law, the input tax credit (ITC) (set off) would be given for Central GST against CGST and the States would give input tax credit (ITC) SGST to SGST. Cross-utilization of credit between Central GST and State GST would not be allowed.

- e) **Credits availment based on vendors invoices:** The credit of excise duty paid is available based on the excise invoice raised by manufacturer or service provider. The credit is available under the Service Tax law when the payment of invoice is made within 3 months of invoice date. In respect of joint charge and reverse charge, based on receipt of payment basis on basis of payment challans of the assessee. Under State VAT law, it is allowable on the basis of tax invoice. Under GST the credits could be availed based on the invoices of vendors under CGST and SGST. But the onus may shift onto the assessee to ensure that the amount of the CGST/SGST has been deposited to the respective Government treasury by the vendor. This provision has been added to bring in tax discipline but smaller businesses may find transaction cost increasing due to this.
- f) **Avoidance of Double Taxation:** Presently, several transactions suffer VAT as well as Service Tax such as in case of works contract or licensing of software. This could be resolved in GST by redefining what is goods and service.
- g) **Changes in the Accounting Software:** Dealers and service providers need to modify/replace the accounting and taxation software. Though initially there could be investment costs, costs of training in GST of people at each level starting from junior/mid to higher level managerial staff, management group/stakeholders.
- h) **Training:** Comprehensive training would be required to the staff members of the business community, both at senior level and also at junior level across the purchase, sales and finance functions. VAT + CE/ ST officers would also need to understand the law well.
- i) **Competent Professionals:** There are specialized consultants for Excise Duty, Service Tax and VAT. With the GST, only a single consultant maybe required who can handle all GST matters. Compliance for the SME may necessitate competent tax preparers who are semi qualified.
- j) **Amending existing contracts:** Assessee has to put a clause to collect CGST and SGST extra as applicable in respect of existing contracts.

V. Impact on Specific Sector

Impact on Agriculture

1. In India, food items are generally exempt from central excise duty. But many food items, including food grains and cereals, attract State VAT at 4-5%.
2. The exemption under the State VAT laws is restricted to unprocessed food, e.g., fresh

fruits and vegetables, meat and eggs, and coarse grains.

3. These items could be subject to tax in GST at a lower rate, which is likely to be 5% (combined GST rate), which, if so, would certainly make some of these items dearer.

Impact on Works Contract

Works contracts are composite contracts involving material and labour. The material portion involving the supply of goods is taxable to Value Added Tax (VAT). While the service portion is taxable to service tax. If a new commodity comes into existence, in the process of executing a works contract, then, Central Excise duty may be levied.

Under GST law, works contract could be taxed on gross value with ITC on goods and services being available. It would be considered as a service. It could be at 18%. Credit of Steel cement electrical items would more than offset the present net tax in most States. More clarity expected.

Impact on Leasing Companies

1. At present, if there is transfer of right to use goods involving transfer of effective control and possession, then it is subject to VAT; otherwise, it is subject to service tax.
2. Under GST it would be a service.

Impact on International Trade

Importers of goods and services may be affected under the GST regime due to -

1. Change in tax rates leading to higher tax incidence when the goods or services are imported into India from outside India.
2. Exports of goods and services shall continue to be zero rated and eligible to claim refund of input tax credit which could be fast tracked.

Impact on Pure sale of Land or completed building

As they already attract stamp duty maybe kept out of GST purview.

Other Impact:

1. There are indications that certain 5 specified petroleum products namely Petroleum Crude, Motor Spirit (petrol), High Speed Diesel, Natural Gas and Aviation Turbine Fuel as well as electricity shall be outside the ambit of GST. In addition, tobacco

would have other taxes applicable in addition to GST.

2. At present products known as sin goods and luxury are taxable not only at higher rate of tax but also subject to multiple taxes. Under GST they may be taxed at 28% + cesses.

VI. Challenges before the Government

Most concerns expressed about the implementation of GST can broadly be divided into three categories –

- A. Design issues
- B. Operational issues
- C. Infrastructure issues.

A. Design issues

The broad framework of GST is now clear. This is on the lines of the model approved by the Empowered Committee of the State Finance Ministers in much diluted form. The Revised Model GST law in terms of quality is analysed hereunder;

Is it simple? – No, amalgam of CST, VAT, CE, Customs, stringent rules expected.

Is it certain? – No. Increased uncertainty as drafted by tax officers

Is it fair? – No. Revenue augmentation/ safety have been focused and business needs have not been addressed fully. Seamless credit is not a reality- restrictions exist in law and also poor drafting will lead to denial.

It is transparent? Yes – due to adoption of information technology- process may be able to keep distance between the tax payer and officers.

The GST would be a dual tax with both Central and State GST component levied on the same base. Thus, all goods and services barring a few exceptions would be brought into the GST base. Importantly, there would be no distinction between goods and services for the purpose of the tax with a common legislation applicable to both.

However, a number of issues remain to be resolved, which are under the consideration of the Empowered Committee. These issues include: -

(a) **Constitutional Amendments.** Completed.

(b) **Enactment of Legislations** - It has been stated by the Hon'ble Finance Minister that

there would be no power to tax is not passed before September 2017. In the budget session of 17 in February it would be passed hopefully. The issue on administration sharing has not been resolved.

(c) GST Rates:

Finalizing the rate structure with clarity and with list of exemptions.

B. Operational issues

- (a) Common approach of the States, i.e., a common law, a common assessment procedure and even a common return.
- (b) Monitoring of inter-State trade by flying squad and have a computer generated number for every supply of goods.
- (c) Sharing of information using comprehensive IT network.
- (d) Improving relations between the Centre and the States.

C. Infrastructural Issues

- (a) **IT infrastructure** - A simple system for inter-State transactions and verification of dealers is essential to ensure tax compliance and check avoidance. Given the volume of such transactions, this system necessarily has to be IT based. GSTN appears to be on the job proactively testing the beta version. It can plug in for States which are not ready.
- (b) **Decision on elimination of Check Posts** to avoid enormous delays in road traffic, and reducing delivery times for goods.
- (c) **Impact on Small Enterprises** - The impact of GST on small enterprises is often cited a concern. On the State GST component, the position would be exactly the same as under the present VAT regime. There may be three categories of small enterprises in the GST regime:
 - ❖ Those below the threshold of Rs. 20 lakhs (10 lakhs In case of specified) need not register for the GST.
 - ❖ Those between the threshold and composition turnover of Rs. 50 Lakhs have the option to pay as manufacturer 2.5% and traders 1%. Given the possibilities

of input tax credit, not all small enterprise who do B2B business may seek the turnover tax option.

❖ The third category of small enterprises above the turnover threshold would need to be within the GST framework.

- (d) **Harmonization** - For GST to be effective there should be identical GST laws across States as well as at the Centre. Moreover, not only the law but also the procedures relating to levy, assessment, collection and appropriation of the GST should be similar across States and the Centre.
- (e) There should be a **thorough re-engineering of the departments of SGST and the CGST**. This is to clearly define the responsibility, accountability and authority of both departments. The day-to-day operations should be assigned to the States. That is the dealers would register and submit their return to the State department where they are located. The dealers should interact with a single tax authority only.
- (f) **Cross-verification of documents must be strengthened** - In the absence of proper cross-verification; the dealers avoid tax payment and claim undue credit for taxable sales. Tax evasion can be prevented by setting up departments similar to centralized and regional anti-evasion organisation as in France.
- (g) **Common procedure for Levy, assessment, collection and appropriation** - For industry to reduce the transaction and compliance costs, it is necessary that apart from a common law, implementation of the law be also similar across States. All stages of the taxation chain from the levy of the tax to its assessment, collection and appropriation should be similar. This would involve similar rules across the States dealing not only with assessments, audit, refunds, but also more basic issues, like registration, filing of returns, treatment of transportation of goods etc.
- (h) **A common dispute resolution mechanism** as well as a mechanism for giving advance rulings would further facilitate trade and industry.
- (i) **Persuasions of the State Government** - Few State Governments have recently

indicated their opposition to the implementation of GST at the present juncture. While their objections need to be carefully examined, it must also be recognized that while implementation of the GST is aimed at being revenue neutral to the States, it would be budget positive for the Government. This is because Governments are large purchasers in the market for their own consumption and their cost of procurement would come down significantly with the implementation of GST.

(j) Role of the Finance Commission - It is possible that some States may want assurances that existing revenues would be protected when they implement GST. The Commission is willing to consider providing for compensation in order to advance the implementation of a “flawless” GST.

(k) Training - Since the dual GST is considerably different from the present indirect tax regime, a massive training initiative would be required at both federal and State levels to familiarize the respective administrations with the concepts and procedures of the dual GST. However, the task is not limited to technical training but also extends to a similar effort to re-orient the attitude and approach of the tax administration in order to achieve a fundamental change in mindset.

(l) Compensation Package to the States for Losses

Another major challenge before the Government is to finalize the compensation package for the States in case of loss due to implementation of the GST.

Centre has provided five year compensation.

Under the GST structure, the tax would be collected by the States where the goods or services are consumed, and hence losses could be unfavorable for the producer States and the Centre would be required to compensate them for loss of revenue.

Therefore, it is now universally acknowledged and recognized that the GST, in whatever form, should be introduced at the earliest as a fundamental fiscal reform measure. If we are really serious about the early introduction policy makers, as also the tax administrations at the Federal and State levels, need to be immediately galvanized into action under a clearly laid-out timetable for introduction and implementation.

VII. GST preparedness –The Way Forward

The revised GST Model law indicates that the Government maybe ahead of the industry and professionals in GST. Once the administrative issues are resolved the possibility of 1st July 2017 for implementation appears to be possible.

The essence of a GST regime is that it removes the cascading effects of CENVAT and Service tax with set-offs. Although a transparent and corruption-free tax administration is yet another purpose of this new Act, its implementation may not be without administrative challenges and legal hurdles. It is just important that in order to accomplish the objectives of such a regime, business entities be prepared. Along with having to comprehend, analyze and comply with the perplexing laws of CGST and IGST, greater challenge could come when each state has its own SGST enactment, which would lead to a multiplicity of the SGST laws and procedures unless all states agree on basic commonalities in the SGST law.

Business entities need to take many actions as part of their preparation. Some of the main actions are listed below:

- a) **Sensitize the business eco-system** - It is an accepted fact that GST is not merely a tax change but a business change as it would impact all functions of an organisation such as finance, product pricing, supply chain, information technology, contracts, commercials etc. Thus, it's imperative that all these functional teams should be aware about the GST. But the underlying question is what should these team members read/refer for GST?

In this regard, it's pertinent to note that most of the key aspects of the proposed GST regime are contained in the Model law though procedures are pending.

Thus, based on the aforesaid knowledge available in public domain the organisation may consider sensitizing its employees.

The organisation can consider sensitizing its entire business eco-system i.e. not only the employees but also vendors (such as Tier-1, Tier-2 vendors etc.) and key customers of the organisation. An early initiation of training would give the concerned employees, vendors and customers a sense of involvement in discussion much before GST legislation is put in public domain.

- b) **Understand GST Impact on operations** GST may provide opportunities but at the same time it could bring threats. Given this, an organisation may consider carrying out an exercise to identify how its operations would get impacted because of GST. For GST Impact Analysis exercise, the respective department heads such as finance, supply chain, product pricing, human resource etc. should be involved to ensure that they provide their inputs and suggestions.

Going one step forward, organisations can also identify possible cost savings which key suppliers / vendors could be entitled to in the proposed GST regime. Based on the possible cost savings to suppliers / vendors, the organisations can have discussion with its vendors for passing of benefits by way of cost reduction in the coming years (i.e. after GST is introduced). Early discussion and engaging with vendors for GST would ensure maximum possible benefit to be passed on to the organisation.

Organisations would also have to take into consideration the increase (most likely!) or decrease (least likely!) in tax compliances. For most of the organisations, in GST regime, compliances are expected to increase dramatically. Take example of a service tax assessee, who currently files 2 returns on an annual basis. Now, in GST regime, Service tax assessee could be required to file as many as 61 returns (5 returns per month plus 1 annual return)!!! Thus, in human resource department would have to be informed about the GST regime so that they can anticipate the increase (and decrease in certain cases) in the manpower.

- c) **Gear up for transition of Information Technology (IT) systems** Information Technology is a key area for business organisations as irrespective of the fact whether the organisation is ready or not, on the very first day GST is introduced, the information technology system of an organisation has to be ready and running else it would bring the entire business to standstill.
- d) **Design Alternate Business Strategies** To gear up for GST regime, the organisation may identify alternate efficient business strategies to ensure smooth transition to GST. Even, supply chain strategies is expected to undergo a major change as entire India would become one market and there may not be any tax cost involved for intra-State vis-à-vis inter-State procurement of goods. An organisation would have to re-visit

their pricing strategies as business competitors may well reduce prices of their product to pass on the GST benefits.

However, while forming alternate business strategies, it goes without saying that the organisation should take into consideration the commercial feasibility of alternate business strategies before these strategies are recommended.

e) **Make representation before the Government**

Introduction of GST regime could affect negatively (than positively!) to few industries/ sectors. Thus, efforts should be made by the organisation to identify the possible issues for which appropriate representation could be made before the Government through various trade chambers and forums.

Given this, while current economic situation is characterised by volatile economic conditions, introduction of GST remains a ray of hope, thus early initiation of aforesaid steps can surely help the organisations gain most of the proposed GST regime.

- f) Thorough reading of the GST law draft to pre-empt the possible consequences on one's business
- g) Assessing the **manner and quantum of input credit** as available under law.
- h) Evaluation of the competitiveness and the demand for the products in the backdrop of the new GST rate structure to ensure that products are neither overpriced nor under priced
- i) **Preparation of procedures/SOPs** to be followed in the organization
- j) Special attention to :
- Registrations – existing migrants as well as new applicants
 - Records to be updated up to the authorized date and necessary amendments/additions/deletions to be made in records for meeting the requirements of the new law
 - Transition requirements
 - Returns to correctly reflect the details of business e.g. Cenvat credit as reflected in the return for the period ending 31 March, 2017, would only be allowed to be carried forward post the authorized date
 - Inventory check and proper recording

- Development of IT infrastructure to support the GST requirements
- Analysing the MIS reports that would be required post GST implementation
- Analyzing impact of other laws and integration with customs and FTP

k) **Spreading of GST awareness / Trainings:**

To ensure that the transition is smooth and effected in a timely and effective manner, spreading of adequate awareness of GST is a must. Regular workshops and training programs need to be conducted in order to understand the applicability of GST provisions vis-a-vis the existing business of a person/organization. The following steps could be taken in this case:

- Start focused reading/ practice in CST/ VAT, Central Excise or Service Tax now!!
- Use online resources – Google GST, caclubindia, yahoo CA groups, taxindiaonline, linked in.
- Form a small group for GST in your area, meet regularly to understand the latest developments.
- Make yourself ready before GST is implemented to add value to your organization / clients.
- Read books/ attend workshops/ seminars on topic

Conclusion:

This article has looked at the GST Model Law as it is on a broad basis without getting into the details. It is not an in depth analysis of the model law. It is expected that the many rough edges of this law would be addressed based on representations being made from trade industry and professional bodies. It is the view of the paper writer that unless major amendments moving towards Simplicity (clarity), Certainty, Fairness and Transparencies are introduced - this GST law would not be so successful and there could be widespread non-compliance and discontent among smaller players. Poor drafting could also lead to legal challenges which would not be in the interest of the Government or the tax payer. If GST fails it would be disastrous for India as a country and a major setback for tax reforms process.

The Government had received a number of recommendations from the trade industry as well as the Institute of Chartered Accountants of India for the model law exposed in June 2016. Fortunately, out of 140 suggestions by ICAI about 40 have been partly or fully acted on and

incorporated in November version. January 2017 would see one more lot of 100+ suggestions being provided section wise clause wise. We are confident that this time around since time is available all the suggestions including those relating to allowing REAL seamless credit would also be considered. Acknowledgements to CA Ashok Batra for vetting this article. Feedback at hiregange@icai.org, Suggestions made are available on web site: www.idtc.icai.org.