

## **BIRD'S EYE VIEW OF GST LAW**

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This part covers major aspects of CGST, IGST Act for understanding what GST is all about. The UTGST and State GST laws are expected to follow the same principles. Comparison of the various SGST laws & UTGST laws would bring out the differences.

### **I. INTRODUCTION**

The present system of indirect taxation has multiplicity of taxes levied by the Centre and State. This has led to a complex and conflicting principles in indirect tax structure, adding to the multiple compliance and administrative costs. There is no uniformity in 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., credit of excise duty and service tax paid at the stage of manufacture is not 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, is meant to mitigate the cascading effect of taxes, provide near seamless credit and make way for a common market. However, realization of all the foregoing objectives appears to be a Herculean task and requires the co-operation of all States.

### **Why GST is necessary for India?**

- GDP Growth will go Up by about 1 -2 % after the new law stabilizes (2018-19)
- International Competitiveness will increase by about 5%
- Increased Foreign Direct Investments due to improve ease of doing business and serious reform measures.
- Common Market- Tax distortions due to differential tax structures and entry tax impositions. Further check post delays would not be there.
- Lower transaction cost (multiples returns on different events at different rates in different States).
- Reduced corruption due to use of information technology, less interaction and less discretion.
- Increased IDT revenue as grey market operators would slowly start joining the mainstream.
- This would also lead to increased Direct Tax Revenue due to higher sales/ services disclosure.

## II. GST CONCEPTS

### 1. Power to tax GST

Under new Article 246A (inserted by the Constitution Amendment Act, 2016), 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 emphasizes 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 (52) 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(102) of the CGST Act *“Services” means anything other than goods, money and securities but includes 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 the 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:

- Inter State or distinct person stock transfer;
- captive consumption in another State location;

- supply 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 Act, 2016 contains suitable provisions 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. In respect of tax paid goods in stock as on the date of transition credit not availed in the past or not eligible at that point of time, available under GST could also be availed and used towards discharging CGST (Central GST) liability. There could be a time bound transition for carry forward of credit availed prior to introduction of GST. 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 Act, 2016 contains suitable provisions. SGST is to be administered by the State Governments. 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 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 Act, 2016.

The balance of credit under VAT as well as Cenvat Credit can be carried forward from the earlier regime. Further the duty and tax paid on closing stock would be available as credit where duty paying documents available, for hitherto exempted products / services which may not have been claimed as set-off. Lower deemed credit is available for those who do not have duty paying documents.

#### 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	
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 inspite of drop in CST rate to 2%.	

Surcharge and Cesses	
Central Sales Tax	

### **III. BROAD PRINCIPLES OF GST**

#### **A. Levy and Collection of CGST Bill (Section 9)**

In terms of Section 9(1) of CGST Act, 2017 Central Goods and Services Tax (CGST) shall be levied on all intra-State supplies of goods and/or services on the value determined under section 15 and at the rate notified by the Central/State Government in this behalf, on the recommendation of the Council. However, the aforesaid rate of CGST shall not exceed 20%. Further, the CGST shall be collected in the prescribed manner.

In terms of Section 9(3) the Central 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. This has been restricted to the very unorganized sectors like transport. (See Notification for list) 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. However, this cannot be adjusted with the credit but only in cash.

In terms of Section 9(4), CGST in respect of supply of goods or services or both by an unregistered supplier to a registered recipient will be paid by such registered recipient under reverse charge. This is a significant change which would force even small tax payers to go for the regular scheme of full tax with credit if they want to deal with any registered businesses. No business in competitive environment can afford to break the credit chain and may avoid buying from unregistered or composition dealers.

In terms of Section 9(5), the Central 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. In other cases where the e-com operator only provides a platform the need to pay TCS (Tax Collection at Source) of 1% and reporting the same has been fastened. The supplier would be liable for discharge of the GST applicable as such persons not eligible for threshold exemption of Rs. 20 / 10 Lakhs.

#### **B. Composition Levy (Section 10)**

In terms of Section 10(1) a registered person whose aggregate turnover in the preceding financial year did not exceed Rs.75 lakhs, may opt to pay amount (not tax), in lieu of tax payable in normal levy but not exceeding following % of turnover in State or in Union Territory:

- (i) 1% of turnover, in case of a manufacturer
- (ii) 2.5% of the turnover in case of restaurant services (excluding alcohol)
- (iii) 0.5% in case of others

Note: a) Barring Uttarakhand, which has opted for a Rs. 75 lakh threshold for the composition scheme, the Rs. 50 lakh threshold will continue for all other special category states except for Jammu & Kashmir.

b) The State GST maybe an equal amount of Rs. 75 Lakh.

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

- who is engaged in the supply of services other than supply of food and beverages ( outdoor caterer/ hotel etc.); 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 has any instate or imported stocks in hand
- 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.

the registered person shall not be eligible to opt for the composition scheme unless all registered person opts the scheme. Resultantly, registered taxable person, having the same PAN has obtained more than one Registration, whether in the same State or in two different States as Head Office and Branch, then the Head Office and Branch cannot opt for Composition Levy Scheme in isolation. Both will have to opt for Composition Levy.

In terms of Section 10(3), the Composition Levy Scheme shall stand withdrawn from the day when the aggregate turnover of the registered taxable person during a financial year exceeds Rs. 75,00,000/- or specified limit.

In terms of Section 10(4) 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 noting here that in terms of Section 10(5) 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; provision of section 73 and 74 for shall apply for determination of tax and penalty

It is also to be noted that since Composition Levy Scheme cannot be availed by a taxable person who is engaged in the supply of Ice-cream, Pan Masala & Tobacco, supply of services, works contractors 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 the composition levy economically viable.

In terms of Section 2(107) Taxable Person means a person who is registered or required to be registered under Section 22 or 24 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 are not liable to registration as per sections 22-24:

- (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 to the extent of supply of produce out of cultivation of land
- (c) the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) of the CGST Act, 2017
- (d) Any supplier if his aggregate turnover in a financial year does not exceed Rs. 20 lakh.
- (e) 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 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		

In terms of Section 24 read with Section 22, following persons are 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 Government on the recommendation of the Council.

### **C. Meaning and scope of supply (Section 7)**

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, for a consideration whether or not in the course or furtherance of business, and

In terms of Section 7(3) the 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
- (c) In terms of Schedule I to the CGST Act, following are 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 25, 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 25(4)**

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 professional services as Chartered Accountant. 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 person.

**(ii) Deemed Establishments of Distinct Persons in case of Multiple Registration in Different States –Section 25(5)**

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, the establishment in Haryana and establishment in 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 or furtherance of business.
1. Schedule II-following matters 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*

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 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 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*

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

In terms of Section 8 of the Act, 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.

**D. Meaning of inter-state and intra-state supply [Section 7 and 8 of the IGST Act]**

In terms of Section 7(1) & (3) of the IGST Act supply of goods or services 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

I. Two different state

II. Two different union territories

III. A State and a Union territory

On the other hand, in terms of Section 8(1) and (2), intra-State supply of goods or services means any supply of goods where the location of the supplier and place of supply are in the same State or same Union territory. 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.

(iii) Supplies made to a tourist leaving India on any supply of goods taken out of India by him

**E. 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 of any doubt 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. The notification issued on the interpretation rules and the rates may be referred for clarity.

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.

## **F. Exemptions under GST (Section 11)**

### **1. Exemption in Public Interest by Notification – Section 11(1)**

The 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, 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 allowed to pay the tax on such goods and/or services. However, if the goods or services are exported then there is facility for claiming the rebate or refund of tax paid on inputs etc.

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

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

The classification at higher rates than the correct rate may lead to assessee being uncompetitive.

The classification at lower rate can severely damage the business when the demand for several years with interest and penalty is raised.

Therefore, it is important that classification is not done in a hurry and done accurately and in case of doubt reference to the entry, HSN, case laws be examined in an independent manner. It may be noted that the Apex court has held that exemptions are to be construed strictly.

**G. Decision on Registration (Section 22)**

The decision regarding registration as a supplier of goods or service would be made when GST is payable. The intermediate goods supplier should not claim 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. Prescribed accounts and records will have to be maintained by them and they must issue proper invoice for the supply of goods and services.

**H. Place of Supply (Sections 10- 14 read with Sections 7 & 8 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 taxed at the rate prevailing at the destination. There would be some exceptions in regard to services and a few in regard to goods.

Section 7 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 7(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 8(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 Section 12 & 13 of the IGST Act the place of supply for services is quite elaborate and based partially on the present Place of Provision of Services Rules under the 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.

#### **I. Time of Supply (Sections 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 of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

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

- (a) the date of issue of invoice by the supplier if the invoice is issued within the prescribe period (i.e. 30 days)
- (b) The date of provision of service, if invoice is not issued within the prescribed period
- (c) The date on which the recipient shows the receipt of services in his books of account, in the case (a) and (b) do not apply.

#### **J. Rate of GST**

The rates could be as under:

- |     |   |   |     |
|-----|---|---|-----|
| (a) | Revenue Neutral Rate (RNR)                    | – | 18% |
| (b) | Products/ service which are basic necessities | – | 12% |

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(c)	Essential Goods	-	5%
(d)	Demerit/ luxury goods	-	28% + some Cesses (Upto 160 %)

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The Codes and Rates of various goods and services under GST have already been notified by CBEC and are available on [www.cbec.gov.in](http://www.cbec.gov.in)

### **K. Valuation (Section 15)**

GST would 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* the supply is effected. However, discounts/ incentives given *before or at the time* of supply would be permissible as deduction from the 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 is not there.

Valuation Rules provides that, where the supply of goods or services is for a consideration not wholly in money, the value of supply shall be:

- (a) open market value
- (b) if (a) is not, then sum total of consideration in money and equivalent thereof
- (c) value of like kind and quantity
- (d) cost+10%
- (e) by reasonable means.

However, where there is no consideration and the receiver is eligible for credit then the value declared would be accepted as the proper value. Though not specified, it may be ideal to

ensure that reasonable value is ascribed to such transaction to avoid any questions at the time of audit or otherwise.

The valuation provisions envisaged may result in disputes is the understanding as on date. The settled case laws in Customs for market value and in Central Excise for other than sole consideration may assist in guidance in case of tainted transactions.

#### **L. 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 restriction except say goods / services which are availed for personal use and not for official use (something similar to United Kingdom VAT law).

However, surprisingly, inter-alia, many of the aforesaid credit restrictions continue to remain (in respect of both goods and services). Further, credit is 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 will result 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 inter-State between the same entities 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.

Doubts/ issues in transition as well as post transition continue to be confusing arbitrary and illogical leading to disputes as in the past. It is expected that in the next 6 months these would be made reasonable and cascading impact be reduced further.

#### **M. Set off of input Credit (Sections 16 – 22)**



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

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

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

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)	✓ (3)
CGST	✓ (2)	✓ (1)	
SGST	✓ (2)		✓ (1)

**N. Number of Legislations:**

There would be 38 GST laws in India in GST regime; there would be 1 CGST law and 31 SGST laws for each of the States including two Union Territories and 5 UTGST Law and 1 IGST law governing inter-State supplies of goods and/ or services.

**O. Whether branch transfer taxable?**

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 and full credit reversal in some States etc.

Under GST, the movement of goods or services from one State to another on transfer basis would be subject to IGST [total of CGST+SGST/ UTGST]. Therefore, tax would not cascade to the extent of restriction. However, it will have issues of increased working capital, storage and logistics.

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

**P. Supply in the course of Import (Section 11 of IGST)**

At present import of goods is liable 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.

**Q. Supply in course of export (Section 11 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.

**R. Transitional Provisions**

The key to the success of GST would be when all present tax payers comfortably migrate 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**. In the present act and rules there are a couple of aberrations which treat hitherto exempted manufacturers or taxable and exempted product manufacturers unfairly and unequally. Some important transition provisions are briefly explained hereunder:

- (a) Every person registered under VAT, Central Excise or Service tax etc. having a *valid PAN* would be provisionally registered. Further particulars to be provided (online) to enable final registration. (Section 139)
  
- (b) 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. Only eligible credits credit to be carried forward. Capturing the complete credits of VAT, Central Excise and Inputs credit could be a value-added activity. The time limit specified is 90 days from 1<sup>st</sup> July or another 90 days if Commissioner extends. (Section 140(1))

- (c) 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. However, this credit has not been extended to traders who have capital goods in use as well as area based exempted units. (Section 140(2))
- (d) All manufacturers/ traders and to a lesser extent service providers would have stock of goods which may be 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 under the earlier law, claiming exemption, providing works contract service or claiming abatement or 1<sup>st</sup> and 2<sup>nd</sup> stage dealer would be eligible to avail the credit on closing stock. This again may not be fair. The proof of existence of stock may also be retained such as stock taking, entries in the running stock registers.
- The claim for credit of taxes paid on stock can be made for all the above situations along with duty paying documents to maximize the credit. Where no documents are there, Transitional Rules prescribe deemed credit of 60% can be availed in case of supply of goods taxed at 18% or higher and 40% credit can be availed in case of supply of goods taxed at less than 18% within 6 months, subject to certain conditions. If supply is IGST then it would be 30 % and 20% respectively. (Sections 140(3))
- (e) The credit for duty/ tax paid for goods in transit can be claimed within a period of 30 days with the condition that the same has been recorded in the books. A statement as prescribed should be submitted. (Section 140(5))
- (f) Many dealers and works contractors who are under the composition scheme in the local VAT laws as well as the service tax law are ineligible or may not find it economically viable especially if, they are into Business to Business (B2B). However, if such dealers opt for regular scheme under GST, the credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day is allowed subject to certain conditions. (Section 140(6))
- (g) 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 140(7)].

- (h) 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 140(8))
- (i) Under 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 140(9))
- (j) 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 when such goods are identifiable to the satisfaction of the proper officer. However, if the said goods are returned by a RTP, the return of goods shall be deemed to be a supply. (Section 142(1))
- (k) When inputs/ Semi Finished/ finished Goods sent for job work on payment of duty are returned after GST date within 6 + 2 months of GST date no GST will be 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 have been made for receipt of goods directly by job worker or supply from job workers premises. (Sections 141)
- (l) 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 142)
- (m) 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 a 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 142)

- (n) The claim for 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. (Sections 142)
  
- (o) The returns under central excise can be revised before the end of the month, and service tax returns within 90 days; under VAT in most States a 6 months' time is provided for such revision. If aforesaid revision of returns results 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 142(9))
  
- (p) Contracts entered prior to GST spilling over to GST would be liable to tax under GST. No tax shall be payable on the supply of goods and/or services made on or after the appointed day where the duty or tax payable thereon has already been paid under the earlier law. (Section 187)
  
- (q) The tax in respect of the taxable services /taxable goods paid under earlier law, tax shall be levied under this act, and the taxable person shall be entitled to take credit of taxes paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed. (Section 142(11))
  
- (r) In many States the stock transfers are after reversal of input tax credit. No such credit reversal is permissible under GST though it was desirable.
  
- (s) Where goods are sent on approval and are returned within 6 + 2 months, then no liability to pay exist under GST. 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 142(12))

- (t) 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 142(13))

#### **IV. Impact of GST on Trade, manufacture, service**

##### **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/ UTGST levy:* CGST and SGST/ UTGST would be levied on the local supply of goods within State. IGST (comprising of CGST and SGST) would be levied on inter-State 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.
- (g) *Stock transfers to branches/consignment agents within the State:* Under GST, these transfers would not be taxed as the registration number of transferor and transferee is same. Where the division/ branch or agent has a different registration CGST & SGST would be charged.
- (h) *Small Traders:* They would be eligible for the composition scheme upto Rs 75 lakhs provided their aggregate turnover in the preceding financial year did not exceed Rs. 75 lakh. After that, normal rate will apply. The essential conditions to be complied for availing the benefit of the 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 manufacture reducing the cost of goods/ services supplied. This would make them more competitive both in domestic and 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:* Exports would be cheaper as taxes paid at earlier stages could be refunded to a larger extent. [credit restrictions can lead to tax sticking]
- (d) *Ease of doing Business:* Adoption of Information technology in GST regime will enable the organization to do business with ease.
- (e) *Transaction costs:* The transaction costs of compliance would reduce due to widespread computerization and online filling of forms and returns and payment of taxes. However, the need to upload all transactions may lead to increased compliance cost for medium sector while for the 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 exempt 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 proposed consumption based levy:* Presently, service tax is levied mainly at the 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) *Increased 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 not been subjected to 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 lists 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 under Central excise and service tax laws take long time. 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) *Reduced corruption:* When the laws are simplified, then the chances of multiple interpretations would get reduced, leading to reduction 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. In reality there may be minimal outgo except for the weaker States. All expected to gain due to increased compliance.



**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 less.
- (b) *The Destination Principle:* States 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 flow of Foreign Direct Investments may increase once GST is implemented as the present complicated/ multiple tax laws are one of the reasons foreign Companies are wary of coming to India in addition to widespread corruption.
- (b) *Growth in overall revenue:* It is estimated that India could get revenue of \$15 billion per annum by implementing the Goods and Services Tax as it would promote exports, raise employment and boost growth. Over a period, the dilution of the principles may see that only part of this is accruing.
- (c) *Single point taxation:* Uniformity in tax laws will lead 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 result in increased employment, promotion of exports and consequently a significant boost to 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 general rate will be 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 continued tax evasion as well.

- (c) *GST based on HSN:* The central excise tariff based classification which had stabilized over a period of time may no longer be applicable. The present rate structure would substantially increase the interpretational issues in respect of class of commodities. Disputes expected to mushroom in the coming years.
- (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) *Credit availment based on vendor's 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 invoice amount is paid within 6 months of the invoice date. In respect of joint charge and reverse charge, based on receipt of payment on the basis of payment challans of the assessee. Under State VAT law, credit 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 in 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 works contract or licensing of software. This could be resolved under the GST regime 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. 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.
- (j) *Amending existing contracts:* Assesseees have to incorporate an extra clause in the existing contracts to collect CGST and SGST as applicable.

## **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 would be subject to tax in GST at nil rate when unbranded and at a lower rate, 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 liable 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 would be at 18% in general and if value of land were included 12%. Credit in respect of Steel, cement, electrical items would more than offset the present net tax in most States for projects started after GST implementation. However, projects in progress may be severely impacted. Clarity is 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 may be kept out of GST purview.

## **Other Impact**

1. The 5 specified petroleum products namely Petroleum Crude, Motor Spirit(petrol), High Speed Diesel, Natural Gas and Aviation Turbine Fuel as well as electricity are outside the ambit of GST. In addition, tobacco would attract other taxes applicable in addition to GST.
2. At present products known as sin goods and luxury items are taxable not only at higher rate of tax but also subject to multiple taxes. Under GST they may be taxed at 28% + cesses upto 160%.

## **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 to be moderated over period of time.

*Is it certain?* – No. Increased uncertainty as drafted by tax officers. Next 2 years we can expect a slew of changes.

*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. Many products the total tax has increased. The concept of equalizing the earlier tax rate is not in line with inviting those outside to join in. There should have reduction in tax rates of evasion prone products.

*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 is 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) *Enactment of Legislations* - It has been stated by the Finance Minister that there would be no power to tax, if GST is not implemented before September 2017. The date of 1<sup>st</sup> July seems to be possible as of now.
- (b) *GST Rates*: Finalizing the rate structure with clarity and with list of exemptions considering the unintended impact.

**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 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. However, SMEs would need to educate themselves and comply which is not practicable for the uneducated and the unorganized.
- (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 as a concern. On the State GST component, the position would exactly be 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. Practically they can only be in business to consumer traders/ manufacturers/ food service providers.
  - Those between the threshold and composition turnover of Rs. 50 Lakhs have the option to pay 2.5 per cent in the case of manufacturers and 1 per cent in the case of traders. Given the possibilities of input tax credit, not all small enterprise that do B2B business may seek the turnover tax option. Practically they can only

be in business to consumer traders/ manufacturers/ food service providers.

- 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. It would be so, we await the analysis of the SGST law in all States.
- (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. 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 also be 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 period.

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.

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 GST Act 2017 indicates that the Government may be ahead of the industry and professionals in GST.

The essence of a GST regime is that it removes the cascading effect 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 yet to be finalized.

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

They 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, entities 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, they 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.

Business entities in service sector would also have to take into consideration the increase (most likely!) or decrease (least likely!) in tax compliances. For most of the entities, 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, the 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!) few industries/ sectors. Thus, efforts should be made 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 certainly help the organisations gain insight of all aspects 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 30<sup>th</sup> June, 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 – [idtc.icai.org](http://idtc.icai.org), Google GST, [caclubindia](http://caclubindia), yahoo CA groups, [taxindiaonline](http://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 Law as it is on a broad basis without getting into the details. It is not an in-depth analysis of the GST law. It is expected that many rough edges of this law would be addressed based on representations being made from trade industry and professional bodies.

This chapter "Bird's Eye View of GST Law" has been contributed by Indirect Taxes Committee. Readers are requested to provide their feedback and suggestions at [idtc@icai.in](mailto:idtc@icai.in).