

Goods and Services Tax (GST): An Overview

I. Introduction

Introduction of GST would be a significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market. For the consumers, the biggest gain would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make our products competitive in the domestic and international markets. Studies show that this would instantly spur economic growth. There may also be revenue gain for the Centre and the States due to widening of tax base, increase in trade volumes and improved tax compliance. Last but not the least, this tax, because of its transparent character, would be easier to administer.

II. Genesis

2. The idea of moving towards the GST was first mooted in the Budget for 2006-07. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representation of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the Empowered Committee released its First Discussion Paper on the GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

III. Salient Features of GST

3. The salient features of GST are as under:
- (i) The GST would be applicable on the supply of goods or services as against the present concept of tax on the manufacture and sale of goods or provision of services. It would be a destination based consumption tax.

- (ii) It would be a dual GST with the Centre and States simultaneously levying it on a common tax base. The GST to be levied by the Centre on intra-State supply of goods and / or services would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST).
- (iii) The GST would apply to all goods other than alcoholic liquor for human consumption and five petroleum products, viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel. It would apply to all services barring a few to be specified.
- (iv) Tobacco and tobacco products would be subject to GST. In addition, the Centre could levy Central Excise duty on these products.
- (v) The GST would replace the following taxes currently levied and collected by the Centre:
 - a. Central Excise duty
 - b. Duties of Excise (Medicinal and Toilet Preparations)
 - c. Additional Duties of Excise (Goods of Special Importance)
 - d. Additional Duties of Excise (Textiles and Textile Products)
 - e. Additional Duties of Customs (commonly known as CVD)
 - f. Special Additional Duty of Customs (SAD)
 - g. Service Tax
- (vi) State taxes that would be subsumed under the GST are:
 - a. State VAT
 - b. Central Sales Tax
 - c. Luxury Tax
 - d. Entry Tax in lieu of octroi
 - e. Entertainment Tax (not levied by the local bodies)
 - f. Taxes on advertisements
 - g. Purchase Tax
 - h. Taxes on lotteries, betting and gambling
 - i. State cesses and surcharges insofar as they relate to supply of goods and services
- (vii) An Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Accounts would be settled periodically between the Centre and the States to ensure that the SGST portion of IGST is transferred to the destination State where the goods or services are eventually consumed.

- (viii) Tax payers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax. However, no input tax credit on account of CGST shall be utilized towards payment of SGST and vice versa. The credit of IGST would be permitted to be utilized for payment of IGST, CGST and SGST in that order.
- (ix) HSN (Harmonised System of Nomenclature) code shall be used for classifying the goods under the GST regime. Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores shall use 2 digit code and the taxpayers whose turnover is Rs. 5 crores and above shall use 4 digit code.
- (x) Exports shall be treated as zero-rated supply. No tax is payable on export goods but credit of the input tax related to the supply shall be admissible to exporters.
- (xi) Import of goods and services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties.
- (xii) The laws, regulations and procedures for levy and collection of CGST and SGST would be harmonized to the extent possible.

IV. GST and Centre-State Financial Relations

4. Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that is empowered to levy service tax.

4.1 Introduction of the GST would require amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The assignment of simultaneous jurisdiction to the Centre and the States for the levy of GST would require a unique institutional mechanism that would ensure that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needs to have Constitutional force.

V. Amendment of the Constitution and Other Legislative Requirements

(a) Constitution (One Hundred and Twenty Second) Amendment Bill, 2014

5. To address all these and other issues, a Constitution Amendment Bill was introduced in the Lok Sabha and the Bill (122nd Amendment Bill) has since been passed by the Lok Sabha (May, 2015). The Bill is currently under consideration of the Rajya Sabha. The salient features of the Bill are as under:

(i) The GST shall be levied on all goods and services except alcoholic liquor for human consumption.

(ii) The tax shall be levied as dual GST separately by the Union and the States.

(iii) Parliament will have power to make laws with respect to GST imposed by the Union (CGST) and the State Legislatures will have power to make laws with respect to GST imposed by the States (SGST).

(iv) Parliament will have exclusive power to make laws with respect to GST where the supply of goods and/or services takes place in the course of inter-State trade or commerce (IGST).

(v) The Government of India (GoI) will have exclusive power to levy and collect GST on inter-State trade or commerce. This tax shall be apportioned between the Union and States on the recommendations of the GST Council by Parliament by law.

(vi) Petroleum & petroleum products would be subject to GST. [However, it has been decided that these products would be kept out of the purview of GST in the initial years of implementation]. In the case of tobacco and tobacco products, the Centre alone would have the power to levy excise duty in addition to the GST.

(vii) Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council shall not be subsumed under GST.

(viii) Parliament may, by law, provide for compensation to States for revenue loss arising out of the implementation of the GST, based on the recommendations of the GST Council. Such compensation would be for a period of 5 years.

(ix) A GST Council would be constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to recommend on

(a) the taxes, cesses and surcharges to be subsumed under GST;

(b) the goods and services that may be subjected to or exempted from the GST;

(c) the date from which the specified petroleum products would be subject to GST;

(d) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;

(e) the threshold limit of turnover below which the goods and services may be exempted from GST;

(f) the rates including floor rates with bands of GST;

(g) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster; and

(h) special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarakhand.

5.1 The mechanism of GST Council would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as among States. It is being specifically provided that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

5.3 The GST Council may decide about the modalities to resolve disputes arising out of its recommendation.

6. The Constitution Amendment Bill is expected to be passed by the Rajya Sabha in the ensuing monsoon session of Parliament. After ratification of the amendment bill by 50% of State legislatures and receipt of assent by the President, the process of enactment would be complete.

(b) Other Legislative Requirements

7. Suitable legislation for the levy of GST (Central GST Bill, Integrated GST Bill and State GST Bills) drawing powers from the Constitution can be introduced in Parliament or the State Legislatures only after the enactment of the Constitution Amendment Bill. Unlike the Constitutional Amendment which requires 2/3rd majority, the GST Bills would need to be passed by a simple majority. Obviously, the levy of the tax can commence only after the GST law has been enacted by the respective legislatures. Also, unlike the State VAT, the date of commencement of this levy would need to be synchronized across the Centre and the States. This is because the IGST model cannot function effectively unless the Centre and all the States participate simultaneously.

VI. Work on the Various Aspects of GST: Recent Developments and Work Ahead

(a) Model GST Law

8. The Model GST Law, jointly drafted by the tax officials of the Centre and States, has been placed on the website of the Ministry of Finance for suggestions/comments. The model CGST/SGST legislation contains 162 sections spread over 25 Chapters and 4 Schedules. The draft sets out the provisions of taxable event, taxable person, time of supply, valuation of supply and input tax credit. The draft also deals with the various administrative and procedural aspects of levy, such as, registration, filing of returns, assessment, payment of tax, maintenance of accounts, refunds, audit, demands and recovery, inspection, search, seizure and arrest, offences and penalties, prosecution, appeals and revision, advance ruling and transitional provisions.

9. Under the GST regime, tax is payable by the taxable person on the supply of goods and/or services. Liability to pay tax arises when the taxable person crosses the threshold exemption, i.e. Rs.10 lakhs. The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter-State supply of goods and/or services. Intra-State supply of goods and/or services refers to those transactions where the location of the supplier and the place of supply are in the same State. Inter-State supply of goods and/or services refers to those transactions where the location of the supplier and the place of supply are in different States. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.

10. The draft IGST law contains 33 sections divided into 11 Chapters. The draft, inter alia, sets out the rules for determination of the place of supply of

goods. Where the supply involves movement of goods, the place of supply shall be the location of goods at the time at which the movement of goods terminates for delivery to the recipient. Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of delivery to the recipient. Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Where the goods are supplied on board a conveyance the place of supply shall be the location at which such goods are taken on board.

10.1 The draft also sets out in detail the rules for determination of the place of supply of services. As per the draft, the place of supply of services (other than some specified exceptions) made to a registered person shall be the location of such person and that made to a person other than a registered person shall be the location of the recipient where the address on record exists. In other cases, i.e. where the address on record is not available, the place of supply shall be the location of the supplier of service. The draft law has also set out rules for determining the place of supply of certain services like immovable property, restaurant and catering, training and performance appraisal, admission to a cultural, scientific or educational event, organization of a fair, exhibition etc., transportation of goods, passengers, telecommunications, banking, insurance and financial services.

10.2 The draft IGST law deals with cross utilization of IGST credit. It has been provided that on utilization of IGST credit for payment of CGST, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to CGST account. Likewise, on utilization of IGST credit for payment of SGST, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to SGST account. The draft provides for apportionment of tax collected under this Act and settlement of funds. It has also been provided that certain provisions of the CGST Act such as registration, valuation, time of supply, exemption, ITC, audit, assessment, demands, adjudication, refund, search, seizure and arrest, prosecution, appeals, shall apply *mutatis mutandis* to this Act.

11. The Model Law has been drafted keeping in view certain policy objectives, such as, clarity in tax laws, tax laws which are easy to administer, tax laws which are non-adversarial and tax payer-friendly, and which improves “ease of doing business”. An attempt has been made to provide a fair dispute

resolution mechanism for tax payers under GST. The highlights of the Model Law are as under:

Minimal interface

11.1 The physical interface between the tax payer and the tax authorities would be minimal under GST. Certain important provisions in this regard are:

(i) Registration will be granted on line and shall be deemed to have been granted if no deficiency is communicated to the applicant within 3 common working days.

(ii) Taxable person shall himself assess the taxes payable (self-assessment) and credit it to the account of the Government.

(iii) Payment of tax shall be made electronically through internet banking. Smaller taxpayers shall be allowed to use the systems generated challan and pay tax at the bank counter.

(iv) The tax payer shall furnish the details of sales and purchases electronically without any physical interface with the tax authorities.

(v) Tax payers shall file, electronically, monthly returns of sales and purchases, ITC availed, tax payable, tax paid and other prescribed particulars. Composition tax payers shall file, electronically, quarterly returns. Omission/incorrect particulars can be self-rectified before the filing of annual return.

(vi) Matching, reversal and reclaim of input tax credit shall be done electronically on the GSTN portal without any tax payer contact. [This would prevent, *inter alia*, input tax credit being taken on the basis of fake invoices or twice on the same invoice.]

(vii) Tax payers shall be allowed to keep and maintain accounts and other records in electronic form.

Input tax credit

11.2 The provisions of input tax credit have been prone to litigation. The Model GST law provides an elaborate mechanism for availment and utilization of ITC and seeks to impart clarity so as to minimize disputes. The important provisions of the law are:

- (i) Tax payer is allowed to take credit of taxes paid on inputs (input tax credit), as self-assessed, in his return.
- (ii) Taxpayer can take credit of taxes paid on all goods and services, other than a few in the negative list, and utilize the same for payment of output tax.
- (iii) Credit of taxes paid on inputs shall be allowed where the inputs are used for business purposes or making taxable supplies.
- (iv) Full input tax credit shall be allowed on capital goods on its receipt as against the current Central Government practice of staggering the credit in two equal instalments.
- (v) Unutilized input tax credit can be carried forward.
- (vi) The facility of distribution of input tax credit amongst group companies has been provided for.

Refund

11.3 Refund provisions have been simplified and made more taxpayer friendly. Some of the important provisions of the Model GST law are:

- (i) Time limit for claiming refund has been increased from one year to two years.
- (ii) Refund claim along with documentary evidence is to be filed online without any physical interface and the tax refund will be directly credited to the nominated bank account of the applicant.
- (iii) Refund shall be granted within 90 days from the date of receipt of application. Interest is payable if refund is not sanctioned within the stipulated period of 90 days.
- (iv) If the refund claim is less than Rs. 5 lakhs, there is no need for the claimant to furnish any documentary evidence that he has not passed on the incidence of tax to any other person. Only a self-certification to this effect would suffice.
- (v) Refund of input tax credit shall be allowed in case of exports or where the credit accumulation is on account of inverted duty structure (i.e. where the tax rate on output is higher than that on inputs).

(vi) In case of refund claim on account of exports, 80% of the claim shall be paid immediately on a provisional basis without verification of documentary evidence.

Demands

11.4 Keeping in mind complaints of long delays in issuance of adjudication orders, a new concept of sunset clause for tax disputes has been introduced. The important provisions in this regard are:

(i) Adjudication order shall be issued within 3 years of filing of annual return in normal cases.

(ii) The time limit is 5 years (of filing of annual return) in fraud/suppression cases.

(iii) There are no separate time lines for issue of SCN and adjudication order, as at present under Central Laws.

(iv) Provisions for settlement of cases have been made available to taxpayers at every stage, right from audit/investigation to the stage of passing of adjudication order and even thereafter.

(v) Penalty is minimal if the tax short paid / non-paid is deposited along with interest at the stage of audit/investigation.

(vi) The officer shall in his order set out the relevant facts and the basis of his decision.

(vii) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice.

(viii) No demand shall be confirmed on grounds other than the grounds specified in the notice.

Audit

11.5 The manner of conducting audit has been a sore point with the taxpayers. In the Model GST law, certain disciplines have been brought in, as enumerated below, to streamline the process of audit.

(i) It is not necessary that in all cases the tax authorities would have to visit the place of business of the taxpayer for conducting audit. The audit can even be conducted at the office of the tax authorities.

(ii) Tax payer shall be informed sufficiently in advance, not less than 15 working days, prior to the conduct of audit.

(iii) The audit shall be carried out in a transparent manner and completed generally within a period of 3 months from the date of commencement of audit.

(iv) On conclusion of audit, the proper officer shall without delay notify the taxable person of the findings, the taxable person's rights and obligations and reasons for the findings.

Penalty disciplines

11.6 Another area of dissatisfaction of the taxpayers has been the propensity of the tax authorities to impose disproportionately high penalties for breaches of law which may not be that serious. In order to address this concern, certain general disciplines, as mentioned below, have been incorporated in the Model GST Law.

(i) No substantial penalties shall be imposed for minor breaches of tax regulations or procedural requirements.

(ii) No penalty shall be imposed in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence.

(iii) Penalty shall be commensurate with the degree and severity of the breach.

(iv) No penalty shall be imposed without issue of Show Cause Notice and without giving personal hearing.

(v) Reasoning is to be given in the order, specifying the nature of the breach and the applicable laws or procedure.

(vi) In case of voluntary disclosure of breach, the tax authorities may consider this fact as a potential mitigating factor when establishing a penalty for that person.

Alternate dispute resolution mechanism

11.7 The various modes of dispute resolution like advance ruling and Settlement Commission have been continued under GST law.

(i) Advance ruling can be sought in respect of more subjects than allowed at present. The subjects are: classification of goods/or services, method of valuation, rate of tax, admissibility of input tax credit, liability to pay tax, liability to take registration and whether a particular transaction amounts to a supply under GST law.

(ii) The facility of appeal, which is not there under the Central law, has been provided in the Model GST Law. The applicants, if aggrieved by the advance ruling, would henceforth get the opportunity to file an appeal before the Appellate Authority for revision of the ruling.

(iii) The provision of Settlement Commission has been included in IGST Law only.

Transitional provisions

11.8 In the Model GST law, elaborate transitional provisions have been made to enable smooth migration of tax payers from the present regime to GST. The important provisions in this regard are:

(i) The existing taxpayers shall be issued a certificate of registration valid for 6 months. Upon furnishing of prescribed information, registration shall be granted on a final basis.

(ii) The amount of Cenvat credit / VAT carried forward in a return shall be allowed to be taken as input tax credit subject to certain conditions. Un-availed Cenvat credit on capital goods, not carried forward in a return, shall also be allowed to be taken as ITC subject to certain conditions.

(iii) Credit of eligible duties and taxes in respect of inputs held in stock shall be allowed to a registered taxable person subject to fulfilment of certain conditions.

(iv) Credit of eligible duties and taxes in respect of inputs held in stock shall be allowed to a taxable person switching over from the composition scheme to the normal scheme.

(v) No tax is payable on the goods removed/despached earlier but returned to the place of business after the introduction of GST. This is subject to the

condition that the goods are returned within a period of 6 months after the introduction of GST.

(vi) Likewise, no tax shall be payable on the inputs, semi-finished goods and finished goods removed/despached earlier for job work or for carrying out certain processes and returned to the place of business after the introduction of GST. This is subject to the condition that the inputs / goods are returned within a period of 6 months after the introduction of GST.

(vii) Pending refund claims shall be disposed of in accordance with the provisions of earlier law and the amount of refund shall be paid to the claimant in cash, subject to certain conditions.

(viii) Pending claim of Cenvat credit /input tax credit shall be disposed of in accordance with the provisions of earlier law and the amount of refund shall be paid to the claimant in cash, subject to certain conditions.

(ix) No tax shall be payable on the supply of goods and /or services made before the introduction of GST where a part of consideration for the said supply is received on or after the introduction of GST, but the full duty or tax payable on such supply has already been paid under the earlier law.

(x) No tax shall be payable on the goods sent on approval basis before the introduction of GST but are rejected and returned to the seller on or after the introduction of GST if such goods are returned within 6 months from the introduction of GST.

Other provisions of Model GST Law

11.9 The Model Law contains several other provisions which are taxpayer friendly and are meant for facilitating trade. The provisions worth mentioning here are:

(i) Valuation of goods shall be done on the basis of transaction value i.e. the invoice price, which is the current practice under the Central Excise and Customs Laws.

(ii) Tax payments for all months shall be made in the succeeding month. Tax dues of March are thus to be paid in April and not March, as at present in the Central Government. Composition taxpayers filing quarterly returns and thereby

paying tax on a quarterly basis will be required to pay tax in the month succeeding the quarter-end.

(iii) Taxpayers are allowed to issue supplementary or revised invoice in respect of a supply made earlier.

(iv) Taxpayers are allowed to file the details of sales and purchases, and the various returns through Tax Return Preparers.

(v) The facility of provisional assessment to tax payers in cases where he is unable to determine the value or rate of tax has been allowed.

(vi) New modes of payment of tax are being introduced, viz. through credit and debit cards, National Electronic Fund Transfer (NEFT) and Real Time Gross Settlement (RTGS).

(vii) The Commissioner has been empowered to grant extension of time for payment of certain tax dues or allow payment of such amount in monthly instalments to the tax payer.

(viii) The facility of job work has been continued under the GST regime.

(ix) E-Commerce companies shall collect tax at source in relation to any supplies made through their online platforms at the rate notified by the Government. This would eliminate the issues around the levy of entry tax on e-commerce transactions.

(x) Exports shall be treated as zero rated supply. No tax is payable on exports but credit of the input tax related to that supply is admissible.

(xi) Provision has been made for the Government to provide remission of tax on supplies which are found to be deficient in quantity due to any natural causes.

(xii) A separate schedule (schedule II) has been provided to clarify certain types of supply as either supply of goods or of services. For example, supply of intangibles, works contract supplies, lease transactions and restaurant supplies are categorised as supply of services. Hopefully, this would put an end to the prevailing confusion on their tax treatment.

(b) GST Rules and Regulations

12. Preparation of GST Rules and Regulations is another major area of work which needs to be completed well in advance before the implementation of

GST. This is to be jointly drafted by the officials of the Central Government and State Governments. The CBEC has set up a Working Group for this purpose.

(c) IT preparedness

13. Putting in place a robust IT network is an absolute must for implementation of GST. A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST. The functions of the GSTN would, *inter alia*, include: (i) facilitating registration; (ii) forwarding the returns to Central and State authorities; (iii) computation and settlement of IGST; (iv) matching of tax payment details with banking network; (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information; (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

13.1 The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/reports. The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers. Further, the GSTN is developing back-end modules like assessment, audit, refund, appeal etc. for 19 States and UTs (Model II States). The CBEC and Model I States (15 States) are themselves developing their GST back-end systems. Integration of GST front-end system with back-end systems will have to be completed and tested well in advance for making the transition smooth.

(e) Training and Workshops

14. A detailed calendar has since been drawn up for training the Central and State Government officers and staff on GST law, regulations and procedure. Some 10 officers from the Central Government and 15 officers from the State Governments have been identified as Source Trainers who would be training a pool of some 300 Master Trainers of the Central Government/State Governments who, in turn, would be training some 1600 Trainers drawn from the Central Government and State Governments. The Trainers would then train some 70,000 Central/State Government tax officials at the field level. Presentations and training materials are being prepared for this purpose. Training courses would be held at the various locations of the country.

14.1 Training of trade and industry on GST law and procedure is equally important. It has been decided to hold seminars/workshops in 50 cities spread across the country to prepare the trade and industry on GST law, rules, regulations and procedure. Sectoral seminars/workshops for specific sectors such as IT, E-commerce, telecommunications and financial services are proposed to be organised at New Delhi, Bangalore and Mumbai. Further, the GSTN would be imparting training to the officials and trade & industry on GST IT systems. Creating consumer awareness about the benefits of GST is also part of the work plan to be completed before the introduction of GST.

15. The target date for introduction of GST is 1st April 2017. Introduction of this transformational tax reform is expected to broaden the tax base, increase tax compliance and reduce economic distortions caused by inter-State variations in taxes. GST will boost economic activity and will benefit everyone. It will streamline the tax administration, avoid harassment of the business and result in higher revenue collection for the Centre and States. Compliance costs for the industry will go down. Last but not the least, it will create more jobs.
