

# GST MODEL WITH REFERENCE TO CENTRAL & STATE RELATIONS IN FINANCIAL TERMS

Priya Singh Chauhan, LL.M. AUMP, Gwalior (MP).

Akriti Bhatnagar, LL.M. AUMP, Gwalior (MP).

Sanjiv Singh, Assistant Professor, Amity University Madhya Pradesh.

## ABSTRACT

*Goods and Service Tax or GST is all set to be a game changer for the Indian economy. The waiting period is over on 8th September 2016 with the consent of the President to the Constitution (101st Amendment) Act 2016. The successful passing of the amendment has cemented the ways for introduction of the GST in the country. It would instantly enable the Union to exact expense on the offer of merchandise which has been in the space of the states, and the states correspondingly would have the capacity to demand assess on administrations which as of recently was generally in the area of the Union government. In this paper an attempt is made to study GST model with reference to central and state relations in financial terms.*

## INTRODUCTION

### Goods and Services Tax (GST):

Goods and service tax (GST) is a proposed system of indirect taxation in India merging most of the existing taxes into single system of taxation. It was introduced as **The Constitution (One Hundred and First Amendment) Act 2016**. The chairman of GST Council is union finance minister which is currently Arun Jaitley.

GST would be a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India, to replace taxes levied by the central and state governments. The GST is consumption based tax levied on the supply of Goods and Services which means it would be levied and collected at each stage of sale or purchase of goods or services based on the input tax credit method. This method allows GST-registered businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity. Taxable goods and services are not distinguished from one another and are taxed at a single rate in a supply chain till the goods or services reach the consumer. Administrative responsibility would generally rest with a single authority to levy tax on goods and services. Exports would be considered as zero-

rated supply and imports would be levied the same taxes as domestic goods and services adhering to the destination principle in addition to the Customs Duty which will not be subsumed in the GST.

The introduction of Goods and Services Tax (GST) would be a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax would mitigate cascading or double taxation, facilitating a common national market. The simplicity of the tax should lead to easier administration and enforcement. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%, free movement of goods from one state to another without stopping at state borders for hours for payment of state tax or entry tax and reduction in paperwork to a large extent.

What changes there would be if India launches GST- “The tax rate under GST may be nominal or zero rated for the time being. It has been proposed to insulate the revenues of the States from the impact of GST, with the expectation that in due course, GST will be levied on petroleum and petroleum products.” The central government has assured states of compensation for any revenue losses incurred by them from the date of introduction of GST for a period of five years.

As India is a GST would be implemented concurrently by the central government and by state governments.

The President of India approved the Constitution Amendment Bill for Goods and Services Tax (GST) on 8 September 2016, following the bill's passage in the Indian parliament and its ratification by more than 50% of state legislatures. This law will replace all indirect taxes levied on goods and services by the central government and state government and implement GST by April 2017. The implementation of GST will have a far-reaching impact on almost all the aspects of the business operations in India. With more than 140 countries now adopting some form of GST, India has long been a stand-out exception.

GST is a value-added tax levied at all points in the supply chain, with credit allowed for any tax paid on input acquired for use in making the supply. It would apply to both goods and services in a comprehensive manner, with exemptions restricted to a minimum.

In keeping with the federal structure of India, it is proposed that the GST will be levied concurrently by the central government (CGST) and the state government (SGST). It is expected that the base and other essential design features would be common between CGST and SGSTs for individual states. The inter-state supplies within India would attract an integrated GST (IGST), which is the aggregate of CGST and the SGST of the destination state.

**The following are the salient features of the proposed GST system:**

- The power to make laws in respect of supplies in the course of inter-state trade or commerce will remain with the central government. The states will have the right to levy GST on intrastate transactions, including on services.
- The administration of GST will be the responsibility of the GST Council, which will be the apex policy-making body for GST. Members of GST Council will comprise central and state ministers in charge of the finance portfolio.
- The threshold for levy of GST is a turnover of Rs. 1 million. For a taxpayer who conducts business in a northeastern state of India the threshold is Rs. 500,000.
- The central government will levy IGST on inter-state supply of goods and services. Import of goods will be subject to basic customs duty and IGST.
- GST is defined as any tax on supply of goods and services (other than on alcohol for human consumption).
- Central taxes such as central excise duty, additional excise duty, service tax, additional custom duty and special additional duty, as well as state-level taxes such as VAT or sales tax, central sales tax, entertainment tax, entry tax, purchase tax, luxury tax and octopi will be subsumed in GST.
- A provision will be made for removing imposition of entry tax/ octopi across India.
- Entertainment tax, imposed by states on movies, theatre, etc., will be subsumed in GST, but taxes on entertainment at panchayat, municipality or district level will continue.
- Stamp duties, typically imposed on legal agreements by states, will continue to be levied.

**The key benefits associated with GST are:**

- Offers a wider tax base, necessary for lowering tax rates and eliminating classification disputes
- Eliminates the multiplicity of taxes and their cascading effects
- Rationalizes the tax structure and simplifies compliance procedures
- Automates compliance procedures to reduce errors and increase efficiency

GST would be levied on the basis of the destination principle. Exports would be zero-rated, and imports would attract tax in the same manner as domestic goods and services. In addition to the IGST in respect of supply of goods, an additional tax of up to 1% has been proposed to be levied by the central government. The revenue

from this tax is to be assigned to the origin states. This tax is proposed to be levied for the first two years or a longer period, as recommended by the GST Council.

With GST, it is anticipated that the tax base will be comprehensive, as virtually all goods and services will be taxable, with minimum exemptions. GST would bring in a modern tax system to ensure efficient and effective tax administration. It will bring in greater transparency and strengthen monitoring, thus making tax evasion difficult. While the process of implementation of GST unfolds in the next few months, it is important for industry to understand the impact and opportunities offered by this reform. GST will affect all industries, irrespective of the sector. It will impact the entire value chain of operations, namely procurement, manufacturing, distribution, warehousing, sales and pricing.

### **GST with Reference to Central & State Relations**

The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 (“**Bill**”) seeks to introduce the goods and services tax (“**GST**”) by conferring concurrent taxing powers on the Union and state governments on every transaction involving the supply of goods or the supply of services or both. It would immediately allow the Union to levy tax on the sale of goods which has been in the domain of the states, and the states similarly would be able to levy tax on services which until now was mostly in the domain of the Union government.

The introduction of the GST in this manner would, without doubt, be the most widespread restructuring of India’s indirect taxation system, which currently involves a multiplicity of taxes as well as cascading effects.

### **Removal of Cascading Effects**

For instance, the central excise duty component suffered by goods during the manufacturing process and the additional excise duty component on imported goods are included in the value of the goods when the states levy value added tax (“**VAT**”). The Bill seeks to subsume various central indirect taxes and levies such as central excise duty, additional excise duties, additional customs duty, special additional duty of customs, service tax, and surcharges and cesses in relation to the supply of goods and services. The Bill also simultaneously provides for the subsuming of value added tax or sales tax, entertainment tax, central sales tax, octroi or entry tax, purchase tax, luxury tax, taxes on lottery, betting and gambling, and state cesses and surcharges imposed by the states in relation to the supply of goods and services. The removal of these various taxes and the introduction of a single point GST will thus remove the cascading effect of taxes and also simplify the number of taxes that are levied on a transaction involving goods or services. While the current scheme of the *Central Excise Act, 1944* and the *Finance Act, 1994* provided for the removal of the cascading effect of taxes in respect of certain central indirect taxes, and the VAT system introduced in states provided for the removal of the cascading effect in respect of tax on the sale of goods, the GST will be the first time that the cascading effect will stand removed in respect of both central and state indirect taxes. The GST, therefore, can be seen as a logical step for having an indirect tax system that seeks to capture only the value addition in the goods and services at each level, and not capture the taxes being levied at each level for the purposes of further taxation.

## **Types of GST taxes**

To implement GST, the Bill proposes the introduction of Article 246A into the Constitution – a *non obstante* clause that provides that the Parliament, and with the exception of tax on the supply of goods and services in the course of inter-state trade or commerce, the states shall have the power to make laws with respect to goods and services tax to be imposed by the Union or by the states. Keeping in mind the federal structure, the Union and the states will levy the GST at each point of time in the taxation of goods and services, with the Union levying a central goods and services tax (“CGST”) and the states levying a state goods and services tax (“SGST”).

The Bill also proposes an amendment to Article 286 of the Constitution to ensure that the supply of goods and services continues to remain outside the purview of the states’ power to tax if such supply takes place outside the state or in the course of import of goods into India or the export of goods outside India. However, this amendment is merely clarificatory. The substance and the intention of the provision continue to remain the same. Equally important is the amendment proposed to Article 248. The exclusive power of the Parliament to make any law with respect to any matter not enumerated in the Concurrent List or the State List in Schedule VII, including the imposition of tax on such matters, will now be subject to Article 246A. This essentially means that any new matters involving goods or services, including their taxes, will necessarily have to be routed by the Union through the mechanism of the GST; and thereby necessarily enabling the states to tax such matters as well.

Additionally, Article 246A(2) empowers the Parliament with the exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-state trade or commerce. This tax is called the integrated goods and services tax (“IGST”). Hence, every point in taxation will necessarily be subject to CGST, and either SGST or IGST, depending on whether the movement of goods or supply of services involves intra-state or inter-state trade or commerce. Under the proposed Article 269A, the IGST should be levied and collected by the Union but be apportioned between the Union and the States.

## **The Additional Tax – A Wrong Move**

The manner of taxation on products such as alcohol and petroleum under the GST mechanism has been a point of disagreement between the Union and the states because of the amount of revenue generated by the states in taxing these products. The Bill has sought to address this issue and keep the states happy by keeping the taxation of alcohol and petroleum outside the purview of GST altogether. This essentially means that the states will continue to tax the sale of alcohol and petroleum under its existing state excise and sale tax laws. Additionally, to address the long standing (but slightly unjustified) concerns of revenue loss to the states, the Bill proposes an additional tax not exceeding 1 per cent on the supply of goods in the course of inter-state trade or commerce to be levied and collected by the Union Government for a period of at least two years, but assigned to the states from where the supply of goods originates. However, since this 1 per cent additional tax is intended to be collected in addition to the IGST under Article 269A, it appears that this 1 per cent additional tax falls outside

the purview of the GST framework altogether; else, it could have been specifically incorporated into Article 269A itself.

This is an incorrect move under the Bill and the intention of simplifying the tax net will be partially lost if certain taxes are proposed to be kept outside the GST scheme. Further, if the 1 per cent additional tax is kept outside the GST scheme, then the assesseees will not be able to avail credit of the 1 per cent additional tax being paid on the supply of goods in the course of inter-state trade or commerce; and this will become a cost that will eventually be passed on to the end customers.

### **The Council**

A commendable and necessary but tricky insertion in the Bill is the creation of the GST Council under the proposed Article 279A of the Constitution. The GST Council is intended to be an all-powerful body comprising the Union Finance Minister, the Union Minister of State for Finance, and the State Finance Minister of each state government to formulate principles and make recommendations on the following aspects of the GST:

- (a) The rates, including floor rates with bands of GST;
- (b) The goods and services that may be subjected to, or exempted from GST;
- (c) Model goods and services tax laws for adoption by the Union and the states and principles for the levy and apportionment of IGST;
- (d) The threshold limit of turnover below which goods and services may be exempted from GST;
- (e) Special provisions with respect to the North Eastern States, Jammu and Kashmir, Himachal Pradesh and Uttarakhand; and
- (f) Any other matter relating to GST, as the GST Council may decide.

Having a GST Council of this nature will ensure greater coordination between the Union and states and among states. While the decisions of the GST Council are intended to be binding on the Union and the states, the principal issue here is the extent to which the model GST Law will be binding on and be implemented by the states. If one or more states, for instance, decide to make even procedural changes while adopting and enacting the model GST Law, then one of the purposes of GST – the benefit of uniformity – will be lost on the assesseees; not to mention, give rise to much confusion among the assesseees who are subject to taxation in multiple states. Secondly, instead of providing floor rates and bands of GST, it would have been advisable that the Bill provided for a fixed rate of taxation under the GST (subject to certain exemptions and abatements, of course). Providing for flexibility in terms of the rates that can be charged as SGST could potentially become the subject matter of much confusion in the hands of the assesseees, not to mention a whole lot of business structuring and restructuring around taxation. At the same time, this proposal could lead to a healthy competition between the states and could result in SGST being charged only at the floor rates in the long run. The third and most

important issue could arise not with the model GST law itself, but with its implementation. Would an issue under the SGST raised by a state government in respect of an assessee also become an issue under the CGST to be taken note of by the Union government, and *vice-versa*? What happens if there is a difference of opinion between the CGST authorities and SGST authorities in respect of the same issue involving the same assessee? Can proceedings be commenced only under CGST or only under SGST, or do they necessarily have to be clubbed? Which authorities get jurisdiction over the matter? Does an assessee have to respond to dual proceedings under CGST and SGST in respect of the same cause of action? While one does not expect the Bill to address these issues naturally, one hopes that the model GST law clearly enunciates and addresses such issues; and the GST Council ensures that little or no modifications are made by the states while enacting the model GST law.

Interesting in itself is the mode of decision-making by the GST Council, which has been provided in Article 279A(9). Every decision of the GST Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting: (A) the vote of the Union government shall have a weightage of one-third of the total votes cast, and (B) the votes of all the state governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting. One wonders how the states acceded to a situation wherein the Union government has a weightage of one-third of the votes cast. And given the current political map of India, this could result in a situation where the majority group at the Union government has complete control over the decision making process of the GST Council.

## CONCLUSION

The introduction of GST can soothe the current system of taxation system in India. The complexity of levying taxes on different levels in administration can be made easier by a single arrangement. Moreover it can defeat the ill effects of current system of taxation in India. This system can be more transparent which can unlock the crucial obstacle of tax evasion. If successful, this step by the Government can bring a revolution in the economy of the country. It can be argued that this move from the Government can bring down the economy of the states individually, but the bill has recommended the levying of additional tax of value not exceeding 1% in case of interstate trade which is levied by Union but assigned by the state responsible for supply of goods & services. Excise duty, VAT, custom duty, Sales tax will be covered under this and stamp duties, taxes on alcohol, etc., will be excluded. So overall there is no scope of loss.

The surveillance of the system is proposed to be conducted by the GST Council which will be the apex body for policy making consisting of state and center minister with finance as background. From the view point of consumer as well as Government, this can be a major boon for a developing country like India.

## References

1. An Insight of Goods & Services Tax (GST) in India, (2015) The Institute of Cost Accountants of India.
2. Model GST law, (2016) Empowered Committee of State Finance Ministers.