

TAX UPDATES

GST UPDATE

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AWARDS AND RECOGNITIONS

Chambers Asia Pacific 2016

- Leading law firm - 'Projects, Infrastructure & Energy: India', 'Banking and Finance', 'Corporate/M&A' and 'TMT'
- Noted for – 'Dispute Resolution'

Chambers Global 2016

- Leading law firm - 'Projects, Infrastructure & Energy: India', 'Corporate/M&A', Noted for 'Dispute Resolution'

ACQ Global Awards 2016

- India - Full Service Law Firm of the Year
- Projects Infrastructure and Energy Law Firm of the Year

Legal 500 – Asia Pacific 2016

- Consistently ranked as a Tier 1 law firm - 'Projects & Energy' and as a leading law firm - 'Banking, Finance and Capital Markets, Corporate M&A, Dispute Resolution, Tax and TMT'.

IBLJ 2015 India Law Firm Awards

- Best Energy, Infrastructure and Projects Law Firm of the Year

Lawyer Monthly 2015

- PPP Law Firm of the Year – India

Intercontinental Finance Magazine 2015

- One of ICFM 500 Leading Lawyers

Magic Lawyers 2015

- Magic 10 – Banking & Finance
- Magic 10 – Infrastructure & Energy

Acquisition International 2015

- Tax Awards 2015 - 'Best Tax Law Firm - India'

Asialaw Profiles 2016

- Highly Recommended Law Firm - 'Banking & Finance, Energy & Natural Resources, IT, Telco & Media and Tax'

International Tax Review 2015

- Highly recommended as a leading law firm - 'Tax'

Who's Who Legal 2015

- Partners ranked for 'Project Finance'

IFLR 1000 2015

- Ranked for 'Banking and Finance' and 'Energy and Infrastructure'

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The Constitution (122nd Amendment) Bill, 2014, popularly known as “**GST Bill**”, has been finally passed in the Rajya Sabha on 3rd August, 2016, after extensive debate and deliberation. The GST Bill is an enabling amendment to the Constitution paving way for ‘one nation one tax’ regime to become a reality. Finance Minister, Mr. Arun Jaitley has promised to keep goods and service tax (GST) rate ‘as low as possible’ but refused to commit to a specific rate. The tax rate would be decided by the GST Council comprising of the Union Finance Minister and representatives of all 29 states in India. Though, there are still many steps remaining, like ratification of the GST Bill by 50% of state legislatures, one crucial hurdle is now over.

Historical background

Goods and service tax era started in France in 1954. This was later followed by various European countries. It was welcomed in Asia with same euphoria, Malaysia being the latest one to adopt GST. In India, the genesis of GST was laid down by the NDA Government under Atal Bihari Vajpayee by appointing Dr. Asim Dasgupta Committee to design the model for GST. UPA Government took the matter further. However, the first concrete step was taken when the GST Bill was passed by Lok Sabha on 6th May, 2015. The GST Bill as passed by the Lok

Sabha was referred to the Select Committee of Rajya Sabha, which gave its report on 22nd July, 2015. The GST Bill was passed by Rajya Sabha on 3rd August, 2016 with certain amendments as proposed by the Select Committee. The Lok Sabha has on 8th August 2016, taken up the amendments to the GST Bill and passed the bill, approving the changes made by Rajya Sabha. It may be noted that the Constitution (122nd Amendment) Bill, 2014 will enter into the statute book as “*The Constitution (101st Amendment) Bill, 2016*”.

Salient features of GST Bill

Following are the salient features of the GST Bill as passed by Rajya Sabha:

1. Simultaneous power to the Union and the State legislatures to legislate on GST.
2. Creation of a GST Council.
3. Exhaustive definition of “Services” as “anything other than goods”.
4. Integration of central taxes like Central Excise Duty, Additional Excise Duties, Service Tax, Countervailing Duty and Special Additional Duty of Customs (SAD), in to single tax known as CGST.

5. Integration of VAT/Sales Tax, Central Sales Tax, Entertainment Tax, Octroi and Entry Tax, Purchase Tax and Luxury Tax, and taxes on lottery and gambling in to single tax known as SGST.
 6. Wide coverage of goods and services under GST, except alcoholic liquor for human consumption. Petroleum and petroleum products shall be subject to the levy of GST from future date to be notified after considering the recommendations of the GST Council. Electricity has been specifically kept out of the purview of GST.
 7. Simultaneous levy and collection of CGST and SGST across the value chain by Central Government and State Governments respectively on all intra-State transactions.
 8. GST, being a destination based tax, all SGST on the supplies will accrue to the consuming States.
 9. Term “IGST”, as existed in the GST Bill passed by Lok Sabha in May 2015, is been replaced with “goods and services tax levied on supplies in the course of inter-State trade or commerce” (for the sake of coherency, hereinafter referred as “IGST”).
 10. States’ share of the IGST shall not form a part of the Consolidated Fund of India.
 11. IGST shall be levied by the Central Government, on supplies in the course of inter-State trade or commerce.
 12. CGST and the Centre’s share of IGST will be distributed between the Centre and States.
 13. Mandatory obligation on the Parliament to form laws to provide compensation to the States by Centre for loss of revenue arising on account of implementation of the GST. However, compensation shall not be provided for more than 5 years from the date of implementation of GST, or for any shorter period as may be decided by the Parliament.
 14. GST Council to establish a mechanism to adjudicate disputes between: (i) Centre and States vs. one or more States; (ii) Centre vs. one or more States; and (iii) State vs. State.
 15. Taking a major shift from earlier approach, proposal for additional 1% tax on inter-state supply has been rejected by Rajya Sabha. Provisions to this effect has been struck down from the GST Bill as passed by Rajya Sabha.
- Though the GST Bill has been passed by Rajya Sabha, the following key steps are still required to be undertaken before GST becomes a reality:
1. Ratification of the GST Bill by minimum 50% of total states i.e. 15 States.
 2. Formation of the GST Council.

3. Consensus on final tax rate and threshold limits.
4. Drafting of GST legislations (i.e. CGST, SGST, IGST and other relevant rules, etc.) and get them pass in Parliament and State legislatures.
5. Putting in place a dispute resolution mechanism.
6. Launching of GST NET and its link with each States' IT infrastructure.

Considering the fact that provisions providing for 1% additional tax by producer states has been deleted, this may cause a setback and slow down the GST wagon in the states not ruled by the BJP.

Model GST Law

Recently, in June, 2016, the “Empowered Committee of State Finance Ministers” released the ‘Model GST Law’. The model law was released with an objective to give a first-hand experience to the general public and to solicit comments from the experts. Nevertheless, it has been received by the trade and industry groups as a foundation on which GST structure is proposed to be based. No doubt, it is the first serious attempt and most authentic document to rely upon if one wants to have a feel of future GST regime.

The salient features of ‘Model GST Law’ are as follows:

1. Taxable event for CGST/SGST shall be the intra-state supply of goods and/or services. For IGST, taxable event shall be the supply of goods and/or services made in course of interstate trade and commerce.
2. Central Government to notify certain categories of supply on which tax shall be payable in reverse charge by the receiver of supplies.
3. Taxable Person is the person carrying on any business at any place in India/State of India who is registered or required to be registered under Schedule III of the Model GST Law. Person required to get so registered shall not be treated as taxable person if aggregate turnover is less than amount prescribed therein.
4. Migration of existing taxpayers to GST shall be through a gradual process first by issuing provisional registration certificate for an extendable period of 6 month and then final certificate of registration on verification of documents.
5. State Government, Central Government or any local authority shall be treated as taxable person in respect of activities in which they are engaged as public authorities other than

activities mentioned in Schedule IV of Model GST Law.

6. Non-taxable persons shall include:

- agriculturist,
- employees in relation to their employment,
- persons exclusively supplying exempted or non-taxable goods and/or services,
- persons liable to pay tax under reverse charge for services received of value not exceeding an annual threshold for personal use.

7. Electronic commerce operator means person who facilitates supply of goods or services. E-commerce operator is required to:

- withhold tax on collections and deposit the same with the Government within 10 days of the succeeding month.
- file a monthly statement of all amounts collected towards supply of goods or services effected through it.

8. GST on composition rate of 1 per cent of the turnover in respect of taxable persons having turnover less than Rs. 50,00,000/- (Rupees Fifty Lakh). Exceptions being:

- persons paying tax under reverse charge mechanism; or
- persons carrying out interstate supply of goods and service.

9. Term supply has been defined in its widest sense and includes supply made against consideration or for free and includes:

- all forms of supply of goods or services including sale, transfer, barter, exchange, rental lease or disposal made or agreed to be made, for a consideration, in the course or furtherance of business;
- importation of service with or without consideration;
- specified supplies made without consideration;
- deemed supplies which includes works contract, construction services, restaurant, transfer of right to use intellectual property;
- supply between agent and principal;
- supply of branded services owned by an aggregator;

10. Strict and complex provisions for availment of credit of GST on inputs have been prescribed viz.:

- Details of all inward supplies and outward supplies to be provided monthly before 15th and 10th of every month respectively.
- Monthly return of all transaction details including supplies, input credit, etc., to be provided by 20th of every month.
- Quarterly returns to be filed by taxpayers opting to pay tax under composition scheme.

- Annual return to be filed by 31st December following the end of financial year.
 - Monthly matching of input tax claims with the output liability of the supplier and claims of reductions with the details of credit notes issued by supplier.
11. Credit to be availed within 1 year of the date of the invoice but before filing return for the month of September following the financial year in which the invoice was raised or filing of annual return (31st December) whichever is earlier.
12. Credit can be availed by receiver only if the tax in relation to such goods and services has been paid to the respective Government by the supplier and upon furnishing of monthly return by recipient.
13. No limitation prescribed for issuance of show cause notice for initiating proceedings, however, limitation for concluding the entire adjudication process have been prescribed as under:
- three years in case where non-payment of GST is not attributable to fraud, collusion, mis-statement; and
 - five years in case of evasion of GST due to fraud, collusion etc.
14. Under the Model GST Law, mere wrong availment of credit, without actual utilization, has also been treated as an offence.
15. Commissioner of CGST and SGST be having powers to arrest in certain cases.
16. A comprehensive list of offences and penalties have been provided. Further, provisions have also been made for detention/confiscation of goods and conveyance and levy of penalty.
17. Rebuttable presumption of culpable mental state has been introduced. To prove any fact, one has to prove it beyond reasonable doubts and not on the standards of preponderance of probability, as existing in current tax laws.
18. Manner of service of any document under GST, has been made commensurate to the current technology. E-mail and SMS on registered mobile number has been included as valid mode of service of communications. Presumption of valid service as provided under Section 27 of the General Clauses Act, 1897, in respect of service by registered post, has also been introduced in GST.

HSA Comments

The above model law, in our view, is still in a very nascent state and is expected to undergo changes (by

the GST Council) before the same is presented to the Parliament and the State legislatures for enactment. Also, objections, comments and recommendations from the industry on the draft legislations would be sought by the Government. Further, the other challenges before the Government are:

- Fixing the median GST rate i.e. CGST, SGST and IGST.
- List of commodities which would be exempted from payment of GST.
- Common list of classification of commodities, based on Harmonized System of Nomenclature (HSN).

Despite the challenges, in our view, GST is the much needed tax reform that India desperately requires, especially to achieve its “Make in India” dream¹. Manufacturers, traders, service providers including multinational corporations are deterred by the multiple taxation under the current taxation regime and often find it unviable to invest in India.

No doubt, transition phase will pose heavy challenges to trade and industry, however, same should be taken as a bitter pill to cure the already paralysed and ineffective tax system.

¹ http://www.business-standard.com/article/b2b-connect/why-gst-is-must-for-make-in-india-115091100852_1.html - Article by HSA

GLOSSARY OF TERMS

<i>BJP</i>	<i>Bhartiya Janta Party</i>
<i>CGST</i>	<i>Central Goods and Service Tax</i>
<i>GST</i>	<i>Goods and Service Tax</i>
<i>GST NET</i>	<i>Goods and Service Tax Network</i>
<i>IGST</i>	<i>Integrated Goods and Service Tax</i>
<i>NDA</i>	<i>National Democratic Alliance</i>
<i>SAD</i>	<i>Special Additional Duty of Customs</i>
<i>SGST</i>	<i>State Goods and Service Tax</i>
<i>UPA</i>	<i>United Progressive Alliance</i>
<i>VAT</i>	<i>Value Added Tax</i>

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