

***CRITICAL ANALYSIS OF THE IMPLICATION OF GST (GOODS AND SERVICES
TAX) MODEL IN INDIA***

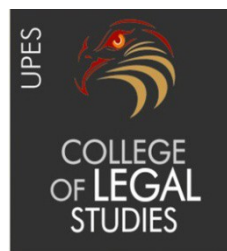
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This dissertation is submitted in partial fulfillment of the degree of B.A., LL.B. (Hons.)



College of Legal Studies

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Certificate

This is to certify that the research work entitled “*Critical analysis of the implication of GST(goods and services tax) model in India*” is the work done by Priyanka Gupta under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Preetika Sharma

Signature:

Designation:

Date:

DECLARATION

I declare that the dissertation entitled “*Critical analysis of the implication of GST(goods and services tax) model in India*” is the outcome of my own work conducted under the supervision of Preetika Sharma, Assistant Professor at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Priyanka gupta

Signature:

Date:

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Abbreviation

GST: Goods and Services Tax

VAT: Value Added Tax

CENVAT: Central Value added Tax

GDP: Gross Domestic Product

CST: Central Sale Tax

FTP: Foreign Trade Policy

CVD: Countervailing Duty

SAD: Special Additional Duty

IGST: Integrated Goods and Service Tax

SGST: State Goods and Service Tax

CGST: Central Goods and Service Tax

CG: Central Government

SG: State Government

RTGS: Real time gross settlement

NFFT: National Electronic Fund Transfer

FMCG: Fast-moving Consumer Goods

TDS: Tax Deduction at Source

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1. What is GST?

Introduction

The Goods and Services Tax (GST), the biggest reform in India's indirect tax structure since the Indian economy began to be opened up 25 years ago, at last looks set to become reality.

Though GST is a tax reform, it is going to impact every part of business activity, be it procurement, supply chain, IT, logistics, pricing, margins, working capital, etc. as a number of business decisions taken based on the current tax structure may no longer be important in the new GST regime.

The draft law 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.

What we have in the public domain now is the revised draft GST law and the four business processes on Registration, Returns, Payments and Refunds which gives a fair idea on the basic construct of the GST structure. What is awaited is the GST Rules, Negative List and clarity on the rates¹.

It essentially looks to revise the Constitution to engage both the Center and the states to levy GST. This they can't do now, in light of the fact that the Center can't force any duty beyond manufacturing (Excise) or primary import (Customs) stage, while states do not have the power to tax services. The proposed GST would subsume various central (Excise Duty, Additional Excise Duty, service tax, Countervailing or Additional Customs Duty, Special Additional Duty of Customs, etc.), as well as state-level indirect taxes (VAT/sales tax, purchase tax, entertainment tax, luxury tax, octroi, entry tax, etc).

Current Taxation System :

¹Sidhartha Jain, What is GST? Here's a 10 point simple guide on Goods and Services Tax, available at August 3, 2016, available at <http://www.financialexpress.com/economy/gst-what-is-goods-and-services-tax-guide-highlights-benefits-indirect-tax/336821/>

Two types of taxes are levied by Indian government which is direct tax and indirect tax. Direct tax includes income tax which is imposed by central government on individuals, companies, body of individuals and association of persons etc. and other one is indirect tax which is imposed on manufacture of goods, provision of services and consumption. Central government levied taxes on manufacture of goods and services while state government levied taxes on consumption. So politically, India is one country but economically, it is fragmented.

Problems in Current Taxation System:

Many type of indirect taxes like entertainment tax, value added tax, excise duties, import duties, luxury tax, central sales tax, service tax are levied in India. For ex. manufacturing of a shirt: firstly, central government levied indirect tax at factory gate known as central excise then state government will charge value added tax at the time of consumption on price which include tax already paid. Similarly, on transfer of goods from one state to another state, central sales as well as excise tax will be charged.

GST:

First time GST was implemented in France in 1954 and about 140 countries have adopted GST. First time, the idea of GST India was started in 2007 by BJP government however not able to actualize because of dismissal by numerous states. GST is an indirect tax which will be subsumed majority of the indirect taxes levied by center & state like center taxes include center excise duty, additional excise duty, service tax, center sales tax, countervailing duty and special additional duty of customs as well as state taxes including value added tax/sales tax, entertainment tax, octroi and entry tax, purchase tax, luxury tax, taxes on lottery, betting and gambling but custom duty will not be subsumed in GST. GST is an indirect tax levied on goods and services from manufacturer to consumers. Under GST, uniform tax will be imposed on manufacture, sale and consumption of goods and services. GST will be paid only on value addition at each stage by deducting taxes already paid at each stage so cost for consumers will be diminished by input tax credit and reduction in cascading effect of taxes on taxes. Canadian model of dual GST system will be realised by Indian government.

Advantages of GST :

- Uniform tax rate for goods and services will diminish complexity in division of transaction values in goods and services and also furthermore prompts to lessening in compliance because of single reporting of records and returns.

- Reduction in prices due to input tax credit and decrease in cascading effect.
- Increase in revenue due to more business entities coverage under tax system and reduction in tax evasion.
- Competitiveness will be increased in Indian as well in International market due to reduction in cost of doing business.

Upcoming Challenges :

- Better IT infrastructure needed for administering GST.
- State government has to compensate for loss if any happens due to GST.
 - As GST is a consumption based tax so higher consumption will earn higher revenue. therefore for successful implementation of GST, cooperation of state government will be needed.

The revised Model GST Law ²contains several other provisions which are meant for facilitating trade. The provisions worth mentioning here are:

- (i) Valuation of goods will 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 will 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 in earlier dates.
- (iv) Taxpayers are allowed to file the details of sales and purchases, and the various returns through Tax Return Preparers.
- (v) The opportunity of provisional assessment to tax payers in cases where he is unable to determine the value or rate of tax has been allowed.

² Model GST law (nov'16) available at <http://www.cbec.gov.in/resources//htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

(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 authorised 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 with regard 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 should be dealt as zero rated supply. No tax is payable on exports but credit of the input tax related to that supply is permissible.

(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 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.

1.1 How will GST work in India?

GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be accessible in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

GST would be levied on 'supply' of goods and services and hence the present prevalent idea of levy of excise on manufacture, VAT/CST on sales, entry tax on entry of goods in local area would no longer be relevant. The ambit of 'supply' is quite wide and covers supply of goods and services without consideration from one taxable person to another. There would be dual GST i.e. both the Center and the States would simultaneously levy GST over the whole goods and services supply chain on a common base.

Present Central Taxes like Central Excise, Service Tax, CVD, SAD, CST and State Taxes like VAT, CST, Entry Tax, Luxury Tax would get subsumed under GST. Customs is outside GST and hence Basic Customs Duty would continue on imports.

GST is a destination based consumption tax, which basically suggests that the income will collect to the State where the consumer lives. This is not at all like the present inception based exact where the income gathers to the source state from where the movement originates.

Consistent flow of credit would be there under GST whereby CGST would be allowed to be set-off against CGST and IGST, SGST against SGST and IGST and IGST against IGST, CGST and SGST in that order. However, CGST credit will not be allowed to set-off against SGST and vice versa.

Obligation for payment of GST would emerge at the time of supply of goods and service. As far as model law, receipt of advance payments for supply of goods and/or services would be considered as 'time of supply' and tax liability would arise on such advance receipt. In any case, receipt of goods and services is one of the pre-conditions for permitting input tax credit under GST and hence, even if GST is paid on advance payments, credit for the same would be accessible only on receipt of goods and services.

Registration threshold has been presently kept at Rs. 10 Lakhs (Rs. 5 lakhs in case of North East States and Sikkim) in the draft model law. Existing registered assesses would be migrated into GST, first provisionally and then finally subject to furnishing of required information. Assessess have the opportunity to take business segment-wise registration.

Option of composition levy is also prescribed, if aggregate turnover of a tax payer is < Rs. 50 lakhs. Persons adopting composition levy would be neither entitled to charge GST from its customers nor to avail credit of input tax. whereas, composition levy is not permissible to assesses who affects inter-State supplies.

Under GST, each assessee would need to transfer receipt level outward supply points of interest for B2B exchanges. Subtle elements of internal supplies and tax credit would be auto-populated in view of offers points of interest transferred by the merchant. Hence, a robust IT infrastructure at the end of both supplier and recipient is critical for hassle free tax credits and avoid denial of credits due to mismatch issues³.

Provisions identifying with payment of tax under reverse charge, tax deduction at source are relied upon to proceed under GST administration for indicated people/exchanges. Along these lines, extra compliances would proceed with respect to beneficiaries, so far as tax payments under invert charge and finding at source are concerned.

The differences in the levy from the current scenario will be as follows.

Current scenario:

(i) At present the Centre alone can tax 'services'. At the point when service tax was presented in 1994, this was a thing not specified anywhere in Lists 1, 2 or 3 of the Seventh Schedule and was covered under the residual entry number 97 in List I (union list). An item 92C has subsequently been inserted in List I, but not been operationalized.

(ii) at present, different stages in the progression of goods in the supply chain are imposed to different taxes, and there is no input tax relief for most of these, so that the price of goods gets correspondingly inflated. The taxes on goods include excise duty, VAT / CST, purchase tax (if applicable), entry tax (in various forms and names), and state Cess and surcharges. While a manufacturer's invoice does reflect both excise duty and VAT / CST even now, this is only because both are indirect taxes and are collected from the customer. However they are

³ Supra note 1

sequentially collected, excise duty on manufacture and then VAT / CST on sale, and are charged on different values (as elaborated elsewhere in this paper). It can also be seen that VAT / CST is not charged on transfer of goods that is not a sale, like stock transfer; and excise duty is not charged on sale transactions but is charged only on manufacture.

(iii) Because manufacture, sale and service are at present taxed differently, there is much ambiguity and litigation over legal concepts of what constitutes

- Manufacture
- Sale
- Service [as distinct from deemed sale under Article 366(29A) of the Constitution⁴]

In future (during GST regime):

(i) In GST it is proposed to delete entry 92C (“tax on services”) from List I so that the states as well as the centre can tax services. Additionally, both centre and states are to be expressly engaged to require goods and services tax, which is characterized as a tax on the supply of goods or services or both. Thus the Constitution, upon amendment, will support levy of tax on services as well as goods by the states as well as the centre.

(ii) GST will replace a variety of taxes on goods, like excise duty on indigenous manufacture and on imports, VAT, CST, purchase tax, entry tax, and various cesses and surcharges. It will also replace entertainment tax (other than by local bodies), luxury tax, taxes on advertisements and taxes on lottery, racing and gambling. Furthermore, GST will be available as input tax credit.

(iii) The single tax on ‘supply’ will render repetitive the decades-old level headed discussions on what constitutes manufacture, what constitutes sale, and how to tax composite transactions of service and sale. A more prominent level of clearness with respect to taxability, and a corresponding reduction in uncertainty will result.

GST: chargeable by states and centre on the same taxable value

The levy of GST will be simultaneously made on the same transaction by the states and centre. Consequently, the taxable value will be the same for the purpose of both state & central GST. This is different from the present scenario in the following ways:

At present:

Even today, a manufacturer's commercial invoice reflects both central excise duty and state VAT on the same goods. This is on the grounds that both are indirect taxes and are gathered from the client. Thoughtfully, in any case, at present the center taxes 'manufacture', and from there on the state taxes "sale" of the goods. The result is that the central excise duty is imposed first on the goods, and the state tax comes after that, on a value that is price plus central excise duty. If the goods are priced at Rs 100, and excise duty is 10% and VAT is 14%, the present scenario is that the invoice will read as follows:

Goods	Rs. 100.00
C. Excise duty @ 10%	Rs. 10.00
Sub-total	Rs. 110.00
VAT @ 14%	Rs. 15.40

In future (during GST regime):

When the same transaction of 'supply' is being taxed by both centre and states, the taxes are levied simultaneously on the same value. The rate of GST in the above transaction will be 24%, split as 10% central GST and 14% state GST. The transaction will then be taxed as follows:

Goods	Rs. 100.00
C.GST @ 10%	Rs. 10.00
S.GST @ 14%	Rs. 14.00

Thus there will be a reduction in the amount of VAT (to be known as SGST) payable if the rate remains the same. (The same result could have been achieved by changing the method of valuation in VAT / CST law, but there was no incentive for the states to do this or agree to it, as it involves reduction in their revenue.)

GST will provide input tax relief in inter-state transactions

- The major gain from GST will be extension of input tax relief to inter-state sale of goods.

At present:

Currently, there is a pan-India input tax relief mechanism for only the central taxes on goods and services, in the form of CENVAT credit. As for the state taxes, each state charges VAT on sale of goods within the state and provides input VAT credits for taxes paid within the state. Inter-state sales are subject to CST, levied by the centre but collected by the states. No credits are available for such inter-state transactions. The obvious reason for the absence of tax credits in inter-state sales is loss of revenue that would ensue by allowing tax paid to another state to be reduced from tax payable.

In future (during GST regime):

The leap forward accomplished by the GST model is the central clearing house to intervene between state credits, with central compensation incorporated with the framework. CST will be supplanted by incorporated GST (IGST), which the starting state will charge on the sale. IGST can be assumed as a credit in the destination state. Its use will be to pay IGST, CGST or SGST, in that order of preference. The transaction will be electronically routed through the central clearing house, which will also track the use of IGST to pay SGST and will compensate the state to that extent. In other words, the loss caused to the destination state by tax paid in another state being adjusted against tax payable to the destination state will be made up by the centre. The reason for this is to encourage growth of the market, which in turn is expected to spur production and increase revenue. This system of input tax credit in inter-state sales is a major salutary feature of the proposed GST model⁴.

Differential treatment for alcohol, tobacco and petroleum products

(i) Alcoholic liquor for human consumption has been excluded from the purview of GST. The definition of goods and services tax in the proposed clause (12A) to be inserted in Article 366 of the Constitution is “tax on the supply of goods or services or both (except tax on the supply of alcoholic liquor for human consumption).” The manufacture and sale of the product will continue to be taxed by states.

(ii) Tobacco and tobacco products will be subject to central excise duty in addition to GST. While not excluded from GST, it is retained in entry 84 of List I (union list) also.

⁴ Radha Arun, salient features of upcoming Goods and Services tax (GST) in India, available at- <http://www.udयोगsoftware.com/taxes-covered/gst/salient-features-of-upcoming-goods-and-service-tax-gst-in-india/>

(iii) Petroleum products are excluded from GST for the present, and will continue to be taxed in the present mode – central excise duty on manufacture and VAT / CST on sale. However, the proposed Constitutional amendment requires the GST Council to fix the date by which these products will be brought into the purview of GST. This is in clause (5) of the proposed Article 279A.

Additional 1% for originating state on interstate supply of goods – non-VATable

In addition to GST, an amount of 1% on inter-state supply of goods will be charged by the centre and assigned to the originating state, as per section 18 of the Constitution amendment bill. What is the originating state will be determined in terms of the rules for place of supply, which will be framed by Parliament in terms of the same section. This tax of 1% on inter-state supply of goods will not be available as input tax credit. The tax will be levied for an initial period of two years and may be extended on the recommendation of the GST Council⁵.

1.2 Concept of supply(point of taxation)

⁵ Supra note4

The point of taxation is the point in time when liability of supplier will accrue to pay GST on taxable supply of Goods and Services. This is also important for calculation of registration and turnover of entities. There may be different rules and regulations for Goods and Services. Since goods are tangible and physically removed from one place to another, but in case of services same rule cannot work.

TREATMENT FOR GOODS:

General principles related to supply of Goods are;

- i. If there are removal of goods then time of supply is “date of removal”;
- ii. If there is no removal of goods, then time of supply is the “date when they are available to the person to whom they are supplied, or to any person on his behalf.”

As the supply of goods are accompanied by an Invoice issue by the supplier of Goods and time of supply or time of removal of goods are same as date of invoice. In some cases it may be happen that the supplier may get payment before supply of goods , they at this it is necessary to decide “time of supply” of goods. Now in these cases the time of supply will be determined by following principal, which proposes that the time of supply will be actual tax point or basic tax point, whoever is earlier. The time of supply cannot after basic tax point. There may be cases in relation to which the basic tax point will be different. These difficulties should be discussed under GST.

There are some exceptions from general principal related to time of supply of goods:

1. If there should arise an occurrence of interstate or intra state supply of goods between units of same substance having diverse registration number, the time of supply will be the date of removal of goods.
2. Since water and gas will be dealt with as goods under GST, then for persistent supply of these goods the providers are issuing progressive statements for raising bill and getting payments. The supplies will be deemed to complete on the period for which successive statement of account is expired. If they not issue successive statement, then the time of supply will be date of invoice or date of payment received, whichever earlier.

Point of Taxation OR Chargeability

Service Tax is charged at the time of rendering services, in ordinary conditions. Notwithstanding, there might be a circumstance where service tax is charged before rendering services or after consummation of service. The critical thing to note here is the planning of chargeability and the rate of chargeability. Chargeability emerges when services are rendered, while the rate is resolved at the time of payment by service recipient. Suppose when services are rendered, the rate is 10% on such services. However, when the receiver makes payment, the rate is 12.36%. So, the applicable rate is 12.36%.

On an alternate note, assume when services are rendered, the service was under exempt classification. However, when the receiver makes payment, the rate is 12.36%. In that case, the applicable rate is Nil, since chargeability did not arise at the time of rendering services, the services being exempt at that time.

VAT (Value Added Tax) follows a different practice of chargeability, where fulfilment the following conditions generate chargeability:

- Existence of 'goods'
- Sale of 'goods'
- Within the state i.e. both the buyer and seller should be situated in the same state.

CST (Central Sales Tax) runs parallel with VAT conditions, when it comes to chargeability, except the third condition. The difference is as follows:

- From one state to another i.e. the buyer and seller should be situated in two different states.

Time of Payment/Deposit of Tax:

Service Tax

Assessee	Duration of Payment	Time of Payment
Individual, Sole Proprietorship or Partnership or LLPs	Quarterly	If tax paid electronically: 6 th of the month following the quarter, for manual payment, 5 th of the month following the quarter.
Any other assessee	Monthly	If tax paid electronically: 6 th of the month following the relevant month, for manual payment, 5 th of the month following the relevant month.

Service Tax for quarter/month ended 31st March: Payable by 31st March itself

VAT is payable by 15th of the succeeding month following the relevant month i.e. For June,2012, the due date of VAT payment is 15th July,2012.

CST is payable by 20th of the month following the relevant month. i.e. For Oct,2012, the due date of VAT payment is 20th Nov,2012.

Following are the relevant section from the revised GST draft model:

Section 12- Time of supply of goods⁶

“ (1) The liability to pay CGST / SGST on the goods shall arise at the time of supply as determined in terms of the provisions of this section.

(2) The time of supply of goods shall be the 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, under section 28, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply: PROVIDED that where the supplier of taxable goods receives an amount up to one thousand

⁶ Section 12- MODEL GST LAW (NOV'16)

Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purpose of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(3) 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 dates, namely— (a) the date of the receipt of goods, or

(b) the date on which the payment is made, or

(c) the date immediately following thirty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a), (b) or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Explanation.- For the purpose of clause (b), “the date on which the payment is made” shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of vouchers, by whatever name called, by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases;

(5) In case it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (4) the time of supply

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed, or

(b) in any other case, be the date on which the CGST/SGST is paid.”

Section 13-Time of supply of services⁷

“ (1) The liability to pay CGST/SGST on services shall arise at the time of supply, as determined in terms of the provisions of this section.

(2) The time of supply of services shall be the 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, under section 28, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply: PROVIDED that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purpose of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(3) 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 earlier of the following dates, namely- (a) the date on which the payment is made, or

(b) the date immediately following sixty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a) or (b), the time of supply shall be the date of entry in the books of account of the recipient of supply: PROVIDED FURTHER that in case of ‘associated enterprises’, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier. Explanation.- For the purpose of clause (a), “the date on which the payment is made” shall be the date on

⁷ Section 13- MODELGST LAW (NOV'16)

Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of vouchers, by whatever name called, by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point;

(b) the date of redemption of voucher, in all other cases;

(5) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3) or (4), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the CGST/SGST is paid.”

Section 14-Change in rate of tax in respect of supply of goods or services ⁸

“Notwithstanding anything contained in section 12 or section 13, the time of supply, in cases where there is a change in the rate of tax in respect of goods or services, shall be determined in the following manner, namely:-

(a) in case the goods or services have been supplied before the change in rate of tax –

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to change in rate of tax but the payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment is received before the change in rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

⁸ Section 14- model GST LAW(NOV'16)

Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>;

(b) in case the goods or services have been supplied after the change in rate of tax –

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and the payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

PROVIDED that the date of receipt of payment shall be the date of credit in the bank account when such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.- For the purpose of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.”

Section 15- Value of taxable supply⁹

“ (1) The value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include:

(a) any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;

⁹Section-15 model GST law(NOV'16)

Available at : <http://www.cbec.gov.in/resources//htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;

(c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central and State governments;

Explanation.- The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount that is given:

(a) before or at the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, provided that:

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.

(4) Where the value of the supply of goods or services cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council shall be determined in such manner as may be prescribed.”

1.3 Dual GST model

There would be dual GST i.e. both the Centre and the States would concurrently levy GST across the entire goods and services supply chain on a common base.

Center would require Central GST (CGST) and States would collect State GST (SGST) on each supply of goods and services inside a State. Coordinated GST (IGST) would be collected on all between state supplies by the Center and afterward exchanged to the

Destination State. Not at all like in the present situation, IGST would need to be paid on all between state supplies, be it in the way of a sale or stock transfer.

The GST is relied upon to cultivate expanded efficiencies in the financial framework along these lines bringing down the cost of supply of goods and services. Further, in the Indian context, there is an expectation that the aggregate incidence of the dual GST will be lower than the current incidence of the multiple indirect taxes in force. Consequently, the implementation of the GST is expected to bring about, if not in the nearly but in the medium to long term, a reduction in the prices of goods and services. The expectation is that the dealers would start passing on the benefit of the decreased tax incidence to the customers by way of reduced prices. As regards services, it could be that their short term prices would go up given the expectation of an increase in the tax rate¹⁰.

Dual GST model for india will have positive impact due to following reasons:

- “1. Simple and transparent tax :** Dual GST is the best solution for countries like India because it will reduce the number of taxes at central and state level. This will also be easy to implement and create accountability for¹¹.
- 2. Decreasing tax rate :** Dual GST will also result in decreased in the effective tax rates for many goods.
- 3. Removal of cascading effect of taxes :** The implementation of GST will reduce the cascading effects of the current taxation system.
- 4. Simplified tax compliance:** By reducing the transaction costs of taxpayers, dual GST will bring about simplified tax compliance.
- 5. Increase in the amount of tax collection¹²:** Better consistence and a more extensive tax base will prompt to expanded tax accumulations

10 Sandeep kanoi,(2012), GST, Dual GST – Meaning, Provisions & Applicabilty, available at - <http://taxguru.in/custom-duty/goods-and-service-tax-gst-dual-gst-meaning-provisions-and-applicabilty-in-brief.html> as on 1march2017

11 Single v/s Dual GST- Which is better?, availabl at - <http://www.careerride.com/view/single-vs-dual-gst-which-is-better-26190.aspx> as on 12 nov'16

12 Ibid note8

6. India is a federal country with disparate states: Dual GST is in a perfect suited for a nation like India to guarantee solidarity through differing qualities. Single point GST is neither attractive monetarily nor functional authoritatively, in light of the fact that it implies central excise duty, sales tax and service tax will be merged to be gathered as a single tax.

7. Questions about the Constitution: The Constitution of India does not allow the Centre to be in charge of sales tax and states similarly are not permitted to impose central excise duty and service tax. If the Constitution is amended to combine all taxes in 1 list(whether Union/State/Concurrent), present federal structure will change fundamentally This is on the grounds that the Center will collect everything if it goes to the Union List and the States would not consent to this. If this goes to the State List, Centre will protest against loss of fiscal power. Concurrent list would be even bigger problem with no one being able to control the power of states to increase taxation rates.

8. Upset fiscal federalism: dual GST is not embraced and a brought together GST framework is favored, this will annoy the thought of financial federalism which is the central foundation of India nation. Besides, the key structure of the Constitution can't be changed through an amendment. Unified GST would in this way conflict with the soul of the Constitution.

9. Unified GST does not exist in most federal States : With the exception of Australia, unified GST system does not exist in any nation with a federal structure. Countries that have combined GST are unitary states mostly. Though Canada has a single federal GST, it also has states sales taxes and Brazil does not follow a pure single GST system either.

10. Who will collect the GST? : This becomes an issue if single point GST is implemented. States will not allow Centre to be sole tax authority. System will malfunction further if tax collection services at Union and State level are merged.

11. Dual GST most practical for federal India: As Centre already levies CENVAT and tax services, CGST will work well with some harmonization as will SGST with symmetry in a dual GST system.

12. Easily attainable : The dual GST system is easy to attain in the current structure, given that India is following an indirect taxation system. Certain amendments may be required, but on the whole, the transition will be easier.

13. Good balance : The dual GST will attain a good balance between need for harmonisation and fiscal autonomy of Centre and States. Both levels of Government will be able to apply taxes to goods and services at various points in the supply chain.

14. Most benefits, Least changes: Dual GST will enhance a competitive atmosphere for companies to work on an international scale. Moreover, single taxation system will also

reduce costs to customers

15. Single point GST will impair Centre's revenues : Double GST will keep an imprint in the Center's income. Decrease in fiscal transfers will offset losses and Centre will also have access to revenue resources for future need.

16. Better for business: Single GST will mean that businesses will have to comply with different task laws for different states and this will affect business stability.

17. Undermines States powers, is not workable¹³: Undesirable rivalry can come about among states utilizing tax structures to draw in enterprises if single GST is actualized. Dual GST is more workable and a total withdrawal of Center from State's taxation could weaken the capacity of the last to gather income in a symmetrical way.

2. Brief history and politics over GST in India

An empowered committee was set up by the AtalBihari Vajpayee administration in 2000 to streamline the GST model to be adopted and to develop the required back-end infrastructure that would be needed for its implementation.¹⁴

13 Ibid note 8

14 "GST Bill: How the tax reform advanced through the years", The Indian Express, *11 August 2015*

In his budget speech on 28 February 2006, P. Chidambaram, the then Finance Minister, announced the target date for implementation of GST to be 1 April 2010 and formed another empowered committee of State Finance Ministers to design the road map. The committee presented its report to the legislature in April 2008 and discharged its First Discussion Paper on GST in India in 2009. Since the proposition included change/rebuilding of indirect taxes required by the Central as well as the States, the duty of setting up a Design and Road Map for the execution of GST was allocated to the Empowered Committee of State Finance Ministers (EC). In April, 2008, the EC submitted a report, titled "A Model and Road map for Goods and Services Tax (GST) in India" containing broad recommendations about the structure and design of GST. In light of the report, the Department of Revenue made a few recommendations to be fused in the plan and structure of proposed GST charge. In light of inputs from GoI and States, The EC discharged its First Discussion Paper on Goods and Services Tax in India on the tenth of November, 2009 with the target of producing an open deliberation and getting inputs from all partners.

A dual GST module for the country has been proposed by the EC. This dual GST has been acknowledged by center. Under this model GST have two parts viz. the Central GST to be required and gathered by the Center and the State GST to be exacted and gathered by the individual States. Central Excise duty, additional excise duty, Service Tax, and additional duty of customs (equivalent to excise), State VAT, entertainment tax, taxes on lotteries, betting and gambling and entry tax (not levied by local bodies) would be subsumed within GST. Other taxes which will be subsumed with GST are Octroi, entry tax and luxury tax thus making it a single indirect tax in India.¹⁵

In order to take the GST related work further, a Joint Working Group consisting of officers from Central as well as State Government was constituted. This was further trifurcated into three Sub-Working Groups to work separately on draft legislation required for GST, process/forms to be followed in GST regime and IT infrastructure development needed for smooth functioning of proposed GST. Moreover, an Empowered Group for improvement of IT Systems required for Goods and Services Tax administration has been set up under the chairmanship of Dr. Nandan Nilekani. Amendment. The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha by Finance

¹⁵"Goods & Service Tax - Important things to know". Available at <http://www.authorstream.com/Presentation/mysharebazaar-2883516-gst-goods-service-tax-important-points-know/as> on 5 march 2017

Minister Arun Jaitley on 19 December 2014, and passed by the House on 6 May 2015. In the Rajya Sabha, the bill was referred to a Select Committee on 14 May 2015. The Select Committee of the Rajya Sabha submitted its report on the bill on 22 July 2015. The bill was passed by the Rajya Sabha on 3 August 2016, and the amended bill was passed by the Lok Sabha on 8 August 2016¹⁶

The bill, after ratification by the States, received assent from President Pranab Mukherjee on 8 September 2016¹⁷ and was notified in The Gazette of India on the same date.¹⁸

The Rajya Sabha has cleared a constitutional amendment to realize an arrangement of Goods and Services Tax (GST) in India. It is maybe the most essential financial change thing on the Narendra Modi government's agenda. This is one change which influences all of us.

Currently, we have Value-Added Tax (VAT) systems both at the central and state levels. But the central VAT or CENVAT mechanism extends tax set-offs only against central excise duty and service tax paid up to the level of production. CENVAT does not extend to value addition by the distributive trade below the stage of manufacturing; even manufacturers cannot claim set-off against other central taxes such as additional excise duty and surcharge.

Moreover, state VATs cover just sales. sellers can claim credit just against VAT paid on past purchases. The VAT likewise does not subsume a large group of different taxes forced inside the states such as luxury and entertainment tax, octroi, etc.

Once GST comes into effect, all central- and state-level taxes and levies on all goods and services will be subsumed within an integrated tax having two components: a central GST and a state GST.

This will ensure a complete, comprehensive and continuous mechanism of tax credits. Under it, there will be tax only on value addition at each stage, with the producer/seller at every stage able to set off his taxes against the central/state GST paid on his purchases.¹⁹The end-

16 "PRS / Bill Track / The Constitution (122nd Amendment) (GST) Bill, 2014". *www.prsindia.org*. as on 13 August 2016.

17 "President gives assent to GST Bill". *The Hindu*. 8 September 2016. Retrieved 10 September 2016.

18 "The Constitution (One Hundred and First Amendment) Act, 2016" (PDF). *Ministry of Law*. 8 September 2016. As on 29 September 2016.

19 <http://indianexpress.com/article/explained/gst-bill-parliament-what-is-goods-services-tax-economy-explained-2950335/>

consumer will bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

2.1 Constitutional Amendment Bill & way forward

To address all these and other issues, a Constitution Amendment Bill was introduced in the Lok Sabha and the Bill (122nd Amendment Bill). Following features are enshrined in the bill:

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

(ii) The tax will 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 concerning GST where the supply of goods and/or services takes place in the course of inter-State trade or commerce (IGST).

(v) GOI will have exclusive power to impose 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 shall 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 imposed 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 due to 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 regard to the North-East States, J&K, Himachal Pradesh and Uttarkhand.

The component of GST Council would guarantee some level of harmonization on various parts of GST between the Center and the States and also among States. It is as a rule particularly gave that the GST Council, in its release of different capacities, might be guided by the requirement for a fit structure of GST and for the improvement of an orchestrated national market for goods and services .The GST Council may decide about the modalities to resolve disputes arising out of its recommendation.

2.2 Salient features of Constitutional Bill

In a positive development towards India's progress into a nationwide unified market and removing trade barriers in the form of cascading effects of taxation, the Central Government tabled the 122nd Constitution Amendment Bill, 2014 ('Bill') on the introduction of Goods and Services Tax :

1.The GST would apply on the supply of goods or services as against the present idea of tax on the manufacture and sale of goods or arrangement of services. It would be a destination based consumption tax.

2.It would be a dual GST with the Center and States at the same time requiring it on a common tax base. The GST to be imposed by the Center on intra-State supply of goods and/or services would be called Central GST (CGST) and that to be imposed by the States would be called State GST (SGST).

3.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.

4.The GST would replace the following taxes currently levied and collected by the Centre:

- Central Excise duty
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional Duties of Excise (Goods of Special Importance)
- Additional Duties of Excise (Textiles and Textile Products)
 - a. Additional Duties of Customs (commonly known as CVD)
 - b. Special Additional Duty of Customs (SAD)
 - c. Service Tax

State taxes that would be subsumed under the GST are:

- d. State VAT
- e. Central Sales Tax

- f. Luxury Tax
- g. Entry Tax in lieu of octroi
- h. Entertainment Tax (not levied by the local bodies)
- i. Taxes on advertisements
- j. Purchase Tax
- k. Taxes on lotteries, betting and gambling
- l. State cesses and surcharges insofar as they relate to supply of goods and services

5. An Integrated GST (IGST) would be imposed and gathered by the Center on between State supply of goods and services. Records would be settled intermittently between the Center and the States to guarantee that the SGST bit of IGST is exchanged to the destination State where the goods or services are eventually consumed.

6. 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.

7. SN (Harmonized System of Nomenclature) code should be utilized for grouping the goods under the GST administration. Taxpayers whose turnover is above Rs. 1.5 crores but beneath Rs. 5 crores might utilize 2 digit code and the taxpayers whose turnover is Rs. 5 crores and above should utilize 4 digit code.

8. 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.

9. 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. The laws, regulations and procedures for levy and collection of CGST and SGST would be harmonized to the extent possible.

3. Levy and exemption of tax

The legality of any tax is established largely by some key aspects like the power to levy tax, the incidence of tax, the liability of being taxed exemptions from being taxed and if there are any special provisions made in consonance with the socioeconomic milieu of the country in which the tax is being introduced. These are largely covered under Chapter III of the Model GST Act. This write up would explicate these aspects thus attempting to give the reader an understanding of the legal foundations of the new taxation system. The 122nd Constitutional Amendment Bill is introducing Article 246A which would confer simultaneous powers on both the Parliament and State Legislatures to make laws with respect to goods and services tax imposed by the Union or by such State

Article 246A of the Constitution, which was introduced by the Constitution (101st Amendment) Act, 2016 confers concurrent powers to both parliament and state legislatures to make laws with respect to GST. However, clause 2 of Article 246A read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-state trade or commerce.

The Article is as follows:

Article 246A :

“(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of eve”, State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has 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.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”

Chapter III ²⁰dealt with levy of, and exemption from, tax.

The incidence of tax is perhaps the foundation stone of any taxation system. It determines the point at which tax would be levied , i.e. the taxable event. Presently different taxes in India have differing taxable events e.g. : V.A.T. is levied on sale and purchase of goods and follows the destination – based principle of taxation ; Excise tax is levied on the manufacture of goods and follows the origin-based principle of taxation. Similarly the taxable event for GST would be supply of goods and services and would follow the destination – based principle of taxation. The incidence of tax for CGST , SGST and IGST according to the Model Acts is explained as follows:

Accordingly section 8²¹ of the said revised act provides:

“(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services on the value determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding fourteen percent, on the recommendation of the Council and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

(3) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services and all the provisions of this 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.

20 Model GST law (nov'16)

Available at : <http://www.cbec.gov.in/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

21 Section 8 –Model GST LAW (NOV'16) Available at : <http://www.cbec.gov.in/resources//htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

(4) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services:

PROVIDED that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

PROVIDED FURTHER that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.”

3.1 Composition levy

It is a special provision for taxable persons with aggregate turnover below fifty lakh rupees. They would not be part of the credit chain and would not be able to pass on the tax to consumers. The tax levied on them would be a certain percentage (not less than one percent) of the turnover during the year. The proper officer of the Central or a State Government may permit a registered taxable person to avail this special facility. The provisions in detail in this respect have been laid out in Section 9 of the Model CGST/SGST Act. There is a caveat in this that this would not be available for those effecting inter-state supply. Section 9 has been cited as below.

As per section 9²² “(1) Notwithstanding anything to the contrary contained in the Act but subject to subsection(3) of section 8, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions

²² Section 9 –model GST LAW (NOV’16) Available at : <http://www.cbec.gov.in/resources//htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

as may be prescribed, permit a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than two and a half percent in case of a manufacturer and one percent in any other case, of the turnover in a State during the year:

PROVIDED that no such permission shall be granted to a taxable person-

- (a) who is engaged in the supply of services; or
- (b) who makes any supply of goods which are not leviable to tax under this Act; or
- (c) who makes any inter-State outward supplies of goods; or
- (d) who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56; or
- (e) who is a manufacturer of such goods as may be notified on the recommendation of the Council:

PROVIDED FURTHER that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

- (2) The permission granted to a registered taxable person under sub-section (1) shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds fifty lakh rupees.
- (3) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- (4) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.”

3.2 Taxable person

Section 2(98)²³- “**taxable person**” shall have the meaning as assigned to it in section 10;

As per section 10 “(1) Taxable Person means a person who is registered or liable to be registered under Schedule V²⁴ of this Act.

(2) A person who has obtained or is required to obtain more than one registration,

whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

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

²³ Model GST law (nov'16)

²⁴ SCHEDULE V PERSONS LIABLE TO BE REGISTERED

3.3 Exemption/remission of tax

The Powers to make such exemptions have been conferred in Section 11²⁵ of the revised model Act. The relevant Section is cited as follows:

“(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable

1. Every supplier shall be liable to be registered under this 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 twenty lakh rupees: PROVIDED that where such person makes taxable supplies of goods and/or services from any of the States specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees. (Other than Special Category States) 2. Every supplier shall be liable to be registered under this 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 ten lakh rupees: (Special Category States) Explanation 1.- The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Explanation 2.- The supply of goods, after completion of job-work, by a registered jobworker shall be treated as the supply of goods by the “principal” referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker. 2. The following persons shall not be liable to registration – (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 this Act; (b) an agriculturist, for the purpose of agriculture. 3. Subject to the provisions of paragraph 1, every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day. 4. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession. 5. Notwithstanding anything contained in paragraph 1 and 3 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. 6. Notwithstanding anything contained in paragraph 1 and 3 above, the following categories of persons shall be required to be registered under this Act: (i) persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1; Page 162 of 163 (ii) casual taxable persons, irrespective of the threshold specified under paragraph 1; (iii) persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1; (iv) persons who are required to pay tax under sub-section (4) of section 8, irrespective of the threshold specified under paragraph 1; (v) non-resident taxable persons, irrespective of the threshold specified under paragraph 1; (vi) persons who are required to deduct tax under section 46, whether or not separately registered under this Act; (vii) persons who are required to collect tax under 56, whether or not separately registered under the Act; (viii) persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1; (ix) input service distributor, whether or not separately registered under the Act; (x) persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8, through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in paragraph 1; (xi) every electronic commerce operator, irrespective of the threshold specified in paragraph 1; (xii) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and (xiii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

25 Section 11 –model GST law (nov’16) Available at : <http://www.cbec.gov.in/resources//htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

thereon with effect from the date of issue of notification or any date subsequent thereto as may be specified in the said notification.

Explanation.- 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 shall not pay the tax on such goods and/or services.

(2) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(3) The Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall-

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein; and

(b) be made available on the official website of the department of the Central or a State Government”.

The lawful and reasonable establishments of the Goods and Services Tax have in this manner been laid out. The ability to collect GST is drawn from Article 246A proposed in the Constitutional Amendment Act. In compatibility of a similar Section 8 of the CGST/SGST Act and Section 4 of the IGST Act collect the separate taxes additionally deciding the frequency of the individual taxes in that. Therefore Section 8 alongside Section 10 and Schedule V additionally set out the risk to be taxed. Area 9 explains the unique instance of

Composition Levy and Section 11 has soaked up inside it the extraordinary way of the Indian State giving uncommon powers on the administration for making exclusions from tax. Along these lines the legitimacy of the tax has been built up and the way has been cleared for comprehension the procedural complexities of the proposed taxation regime.

Schedule V of the Act LIABILITY TO BE REGISTERED Requirements:

1. Aggregate turnover is > 20 lacs and 10 lacs in NE states this lacuna has been fixed at 20 lacs and 10 lacs in North Eastern States. If a trader's turnover is less than the threshold limit per annum, he won't be covered under the indirect tax.
2. The total turnover of the provider comprises of just goods and services which are not at risk to tax. Take note of that as far as possible should incorporate every one of the provisions made on his on record and his principals. Supplies sent for occupation work to enrolled Job Worker under area 43A might not shape some portion of total turnover.
3. Every person who holds licence under the previous Law shall be liable to be registered with effect from the appointed day.
4. In case where the business is transferred by succession or going concern, the Transferee or the successor shall be liable to be registered.
5. In the case of any scheme of arrangement of amalgamation, merger, demerger by the order of the High court, the transferee company shall be liable to be registered with ROC on the date of issue of certificate of Incorporation.

4. Payment of tax

As indicated by GST Law, all liabilities of a taxable individual under this Act might be recorded and kept up in an electronic enlist as might be recommended. Each taxable individual might discharge his tax and different dues under this Act and the rules made thereunder in the following order:

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to return of current tax period;
- (c) any other amount payable under the Act or the rules made thereunder including the demand determined under section 44. Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods and/or services.

Explanation. — For the purposes of this section, the expression “tax dues” means the tax payable under this Act and does not include interest, fee and penalty.

In GST regime the following are the types of payments to be made-

- Tax to the credit of Central Government if it is intra-state supply (CGST);
- Certain categories of registered persons are required to pay TDS and TCS;
- Interest, penalty, fees and any other payment as required.
- Tax to the credit of State Government if it is intra State supply (SGST);
- For inter-state supply tax to be is Integrated GST;

The following are liable to pay tax-

- The supplier of goods or service;
- The recipient under reverse charge mechanism in specified cases like imports and other notified supplies;
- Third person (in the case of e-commerce operator responsible for TCS or Government Department responsible for TDS).

4.1 Payment process under GST regime

We have recently witnessed various initiatives by the government toward digitization of our economy. One noteworthy stride toward digitization of economy is the presentation of compliance systems under Goods and Services Tax, totally on an advanced and online stage.

Goods and Services Tax Network (GSTN) has been set up with the objective of providing IT infrastructure for GST implementation in India.

CHAPTER-IX of model GST law (nov'16) dealt with payment of tax .

Section 44 ²⁶provides with Payment of tax, interest, penalty and other amounts.

Accordingly, provisions have been made under GST law which requires filing of all returns under GST through GST Portal only. Similarly, it will become mandatory to make payments in excess of Rs. 10,000 through online mode. The government is also planning to enable payment of GST liability by way of Debit and Credit Card.

²⁶ Supra16

It will not be surprising to see Aadhar cards or mobile wallets such as BHIM being utilised for digital payment of tax liability under GST regime.

Various forms and processes have been defined under the Model GST Law incorporating online compliances. A large number of businesses are going to be impacted by this change. Presently most of the tax payments are made manually by way of deposition of tax challan along with the tax amounts in specified banks.

The electronic tax obligation enlist should be kept up in Form GST PMT-1 on the regular entrance and all sums by a taxable individual might be charged to the said register. The electronic tax liability register shall be debited by-

- The amount payable towards tax, interest, late fee or any other amount payable as per the return filed by the said person;
- The amount of tax and interest payable as a result of mismatch; or
- The amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceeding under the Act or as ascertained by the said person;
- Any amount of interest that may accrue from time to time.

Payment can be done in two ways as discussed above, namely payment through electronic cash ledger maintained in Form [GST PMT-3](#) and through electronic credit ledger to be maintained in Form [GST PMT-2](#) of the taxpayer maintained in the common portal.

The taxable person has to deposit money in the cash ledger by any of the following mode-

- E-payment through internet banking, credit card, debit card;
- Real time gross settlement (RTGS);
- National Electronic Fund Transfer (NEFT);
- Over the Counter payment in branches of banks authorized to accept deposits.

When the payment is made by NEFT or RTGS from any bank the mandate form shall be generated along with the challan. The said form shall be submitted to the bank from where the payment is to be made. Such mandate form shall be valid for 15 days from the date of

generation of challan. On successful credit of the amount to the concerned government account a Challan Identification Number will be generated by the collecting bank and the same shall be indicated in the challan. Where the bank account of the concerned taxable person is debited but no Challan Identification Number is generated he may represent in Form [GST PMT -6](#) through the common portal to the bank or electronic gateway through which the deposit was initiated. On receipt of Challan Identification Number from the bank the said amount shall be credited to the electronic cash ledger of the registered taxable person who, or on whose behalf, the deposit has been made and the Common Portal shall make available a receipt to this effect.

The restriction for deposit up to ₹ 10,000/- per challan in case of an Over the Counter payment shall not apply to deposit to be made by-

- Government Departments or any other deposit to be made by persons as may be notified by the Board/Commissioner (SGST) in this behalf;
- Proper officer or any other officer authorized to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
- Proper officer or any other officer authorized for the amounts collected by way of cash or cheque, demand draft during any investigation or enforcement activity or any ad hoc deposit.

The tax payers are allowed to take credit of tax paid on inputs and utilize the same for payment of output tax. 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. Only tax can be paid through credit ledger of the tax payment. Interest, penalty and fees cannot be paid by debit in the credit ledger.

Electronic Tax Liability Register

Under GST law, every registered taxable person is subjected to maintain an electronic tax liability register in the prescribed Form GST PMT-1 on GST portal in electronic format. All amount payable under GST shall be debited from this register.

Following are some of the payments that can be debited from the Electronic Tax Liability Register of a registered taxable person under GST regime:

- The amount payable towards tax, interest, late fee or any other amount payable as per the return filed by any taxable person;
- The amount of tax, interest, penalty or any other amount payable as determined by an officer of the GST law on registered taxable person;
- Any amount of tax and interest payable as a result of mismatch under GST law;
- Any amount of interest that may be required to be paid under the GST law.

Every registered member with GST is allotted a unique identity number. A separate electronic ledger is maintained to account GST tax, Interest on GST, Penalty for any cases in terms of GST payment.

As per GST Law, every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by any other mode, subject to such conditions and restrictions as may be prescribed in this behalf, shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

Explanation - The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit.

The payment processes under the proposed GST regime will have the following features-

- Electronically generated challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;
- Paperless transactions;
- Speedy accounting and reporting;
- Electronic reconciliation of all receipts;
- Simplified procedure for banks;
- Warehousing of digital challan
- Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;

- Convenience of making payment online;
- Logical tax collection data in electronic format;
- Faster remittance of tax revenue to the Government Account;

4.2 Interest and penalties

Following relevant sections below discussed about the interest , penalties :

Section 44²⁷-Payment of tax, interest, penalty and other amounts

“(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by any other mode, subject to such conditions and restrictions as may be prescribed in this behalf, shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed. Explanation.- The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger, in accordance with section 36, to be maintained in the manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the

²⁷ Section 44 –Model GST law (nov’ 16) Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(5) (a) The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

(b) The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The input tax credit on account of CGST shall not be utilized towards payment of SGST. {CGST Act} (b) The amount of input tax credit on account of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The input tax credit on account of SGST shall not be utilized towards payment of CGST. {SGST Act}

(6) The balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the rules made thereunder may be refunded in accordance with the provisions of section 48 and the amount collected as CGST/SGST shall stand reduced to that extent.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order:

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to return of current tax period;

(c) any other amount payable under the Act or the rules made thereunder including the demand determined under section 66 or 67.

(9) Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods and/or services.

Explanation. 1— For the purposes of this section, the expression “tax dues” means the tax payable under this Act and does not include interest, fee and penalty.

Explanation. 2- For the purposes of this section, the expression “other dues” means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.”

Section 45-“Interest on delayed payment of tax²⁸

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified, on the recommendation of the Council, by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated from the first day on which such tax was due to be paid.

(3) In case a taxable person makes an undue or excess claim of input tax credit under sub-section (10) of section 37 or undue or excess reduction in output tax liability under sub-section (10) of section 38, he shall be liable to pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at the prescribed rate for the period computed in the manner prescribed.”

28 Section45-Model gst law (nov'16) Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

4.3 Concept of tax reduction at source(TDS)

As per Sec 46 of revised GST law, the Central Government/State Government may order certain class of people to deduct tax from the payments made to the providers of taxable goods/service where the aggregate value of supply, under an agreement, surpasses rupees ten lakh. The various departments which may come under TDS are:

- a. a department or establishment of the Central or State Government, or
- b. Local authority
- c. Governmental agencies or such persons or category of persons as may be notified

hereinafter referred to in this section as “the deductor”, to deduct tax at the rate of one percent from the payment made or credited to the supplier [hereinafter referred to in this section as “the deductee”] of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds five lakh rupees.

This provision is meant for Government and Government endeavors and other informed entities making authoritative payments in abundance of Rs.5 Lakhs to providers. While making such payment, the concerned Government/expert should deduct 1% of the aggregate payable sum and dispatch it into the proper GST account (both of central government or state government as might be relevant to deductor).

Value of supply on which TDS shall be deducted:

The value of supply shall be taken as the amount excluding the tax indicated in the invoice. This means TDS shall not be deducted on the CGST, SGST or IGST component of invoice.

To whom TDS shall be paid:

TDS shall be paid within 10 days towards the end of the month in which tax is deducted. The payment shall be made to appropriate government. As per sec 2(11) of revised GST model law appropriate Government means the Central Government in case of the IGST and the CGST, and the State government in case of the SGST. Further following procedural compliances shall be done by deductor:

1. Such deductors needs to get compulsorily registered under section 23 read with Schedule IV of revised Model GST Law.
2. Such deductor shall have TAN issued under income tax act to get registered under the act.
3. They need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected and reported in GSTR 7.
4. The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.
5. They need to issue certificate of such TDS to the deductee within 5 days of deducting TDS mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed.
6. Non deduction / short deduction / non payment or short payment of TDS is on offence under the act for which a minimum penalty of Rs 10000/- is prescribed under the act.

How deductee can claim benefit of TDS:

The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 34, in the manner prescribed. Any amount deducted as TDS and reported in GSTR – 7 will automatically reflected in electronic cash ledger.

Refund of excess amount deducted:

1. In case amount is claim by deductee in electronic cash ledger:

Refund to deductor is not possible such case. However, deductee can claim refund of tax subject to refund provisions of the act. Practically it is not possible to claim any erroneous deduction of TDS by deductor.

2. In case amount is not so claimed by deductee.

Refund of erroneous excess TDS deducted is possible to deductor subject to refund provision and procedure of the act.

5. GST and international trade

Tax policies play significant role on the economy through their impact on both efficiency and equity. A decent tax framework ought to keep in view issues of income appropriation and, in the meantime, likewise attempt to create tax incomes to support government use on public services and infrastructure development. Cascading tax revenues have differential impacts on firms in the economy with relatively high burden on those not getting full offsets. This contention can be extended to international competitiveness of the adversely affected sectors of production in the economy. Such domestic and international factors lead to inefficient allocation of productive resources in the economy. This results in loss and welfare of the affected economy.

One factor where the industry has clearly been in majority is that GST being a destination based tax (where the tax is not applied at the point of production but at the point of supply or consumption), will make it easier for businesses in India. Companies will not have to file tax returns with multiple departments, but there will be just one web-based form to file tax returns. The country will finally become one common market, with uniform pricing across states, and proper allocation of resources, making our goods more competitive. Undoubtedly the most significant reform since the liberalisation in 1991, GST will transform India's economic landscape. Unifying the \$2 trillion economy and its 1.3 billion people under a uniform tax code, makes our country one of the most attractive destinations for business.

Apart from this, there will be a very strong positive impact on the logistics sector. There is nobody in India who has not seen the serpentine lines of goods conveying vehicles remaining at between state check posts for examination and payment of taxes. “GST will revolutionise logistics with unified and simplified structure versus multiple taxes at various levels. It will lower the inventories and working capital, reduce documentation, improve asset utilisation, ensure higher turnaround time and efficiencies. We expect the industry to move away from pure vanilla warehousing needs to contract logistics,”²⁹

With uniform taxation and cost efficiencies owing to reduced time and costs in transportation, one obvious result would be that ‘Made in India’ products would now be more cost competitive in the global markets.

Nihal Kothari, Chairman, National Council on Indirect Taxes, ASSOCHAM and Executive Director at Khaitan & Co. Says-

“In the previous tax regime, our exports were sagging, since we also exported a major portion of taxes. Indigenous manufacturers failed to capitalise owing to double taxation. All this will change post GST. And eventually exports from the country will increase”

There is an inclination of manufacturers to locate manufacturing facilities as well as warehouses in states or locations that offer better tax concessions regardless of their suitability in terms of other resources. With respect to India's exports, this prompts to absence of worldwide competitiveness of the segments which would have been generally effective under distortion free indirect tax regime. Adding to this, there is a lack of full offsets of taxes loaded on to the FOB (Free On Board) export prices. This results in negative impact on export competitiveness. Efficient allocation of productive resources and providing full tax offsets, as provided under the GST, is therefore expected to result in gains for exporters.

Sectors which are required to see a generous increment in exports include textiles and readymade garments, beverages, industrial machinery for food and textiles, transport equipment other than railway equipment, electrical and electronic machinery, and chemical products. Further, while agricultural machinery, metals and railway transport equipment are expected to gain moderately, exports is expected to decline when it comes to agricultural commodities, iron and steel, cement, wood and wood products except furniture.

²⁹PrakashTulsiani, Executive Director & COO, Allcargo Logistics, tells The Dollar Business.

As different initiatives like Make in India and Digital India project have been taken to make India a manufacturing hub and to generate employment opportunities in various sectors and to attract foreign investment as well by improvising business environment through easing process to do business in country. However, the significant obstacles in the smooth improvement of various parts are the variety of taxes at various rates at various focuses. It additionally demoralizes to foreign nations to invest resources into India. Indian companies also loose competitiveness in foreign countries because of increase in prices due to higher taxation. So, GST is an economic reform which will eliminate multiplicity of taxes for goods and services by deciding a uniform rate for both. As GST bill has been passed in Lok Sabha & Rajya Sabha and also got approval from president so it will come in effect in India from 1st April, 2017.

5.1 Impact of GST in import and export

An introduction of GST would change the method for doing business in India and would have huge effect on universal exchange of goods through the adjustment in customs duty calculation, possible withdrawal of different duty exemptions and change in terms of 'FTP'. The Constitutional Amendment Bill prescribes that import of goods into the territory of India would be deemed to be an inter-state supply, thereby triggering levy of IGST. This deeming fiction has also been incorporated in the Model GST (IGST) Law. As a result, the computation of customs duty under the GST regime would have two components, ie, basic customs duty and IGST. The proposed levy of IGST would subsume the current levy of CVD and 'SAD'. The levy of IGST is likely to be collected by the Customs at the time of import into India and should be payable for each transaction, as against the monthly payment in case of IGST payable on domestic transactions.

The importer is likely to report the import transactions and IGST paid on such imports in its monthly returns. As of now, the import related data is caught in various returns, where VAT return catches the import purchases while the excise/ service return captures the credit taken on countervailing duties paid on imported goods. Going forward, all this information should form part of the IGST return.

The customs function of companies/ importers should be coordinated with the tax work, while up to this point, the incorporation of the customs and tax function was limited to

availment of credit of the custom duties. However, under the GST regime, the integration should be more than mere credit linkage; for instance, classification for customs purposes may also apply for GST law as well.

As per the revised Model GST Law, the GST should be payable on the transaction value of imported goods plus any duties/ taxes, etc, levied under any statute other than the GST laws. This should mean that while paying IGST on the imported goods, 'BCD' should be added to the transaction value of the imported goods. Additionally, other duties such anti dumping duties, safe guard duties, etc is envisaged to continue as well. This practice is in line with the current regime as well as the global practices where import VAT or GST is payable.

Further, the Customs valuation principles has been adopted for GST purposes as well. This will be a new phenomenon that the domestic industry will have to follow especially for services. For instance, determination of valuation through computed value mechanism is prevalent in the Customs valuation norms. However, this principle does not find place in either current excise or service tax laws. VAT laws in fact do not have valuation norms. Therefore, the domestic industry is likely to face problems in arriving at a transaction value, for instance, valuing a service by computed mechanism may reveal the margins of the service provider.

Moreover, the related party valuation idea predominant in the customs and excise law will likewise apply to the services; the related party transactions have been topic of question and an uplifted investigation by the tax authorities. These disputes and the examination is probably going to get extended for services also.

Presently , the related party import transactions are examined by the Special Valuation Branch ('SVB'); there are guidelines issued for SVB process. Currently, CVD is payable but generally not creditable for import and sale model. Under GST, the payment of IGST would be creditable and hence, need for SVB review of valuation may need to be revisited. It is vague at this stage of continuation of the SVB process for goods with zero rate of BCD like the ITA products. The key features of GST structure like reduced number of exemptions to ensure integrity of credit chain and increased credit flow through the supply chain, could have a bearing on pricing, cost and working capital requirement for managing the crossborder supply chain. These features will also mean reduced duty benefit claimed on imports and reduced quantum of export incentives / drawback on export of goods from India.

The current customs import tariff is loaded with multiple exemptions notification which are likely to be reviewed and possibly withdrawn or converted into a refund mechanism. This can change structure of export linked duty exemption schemes under the FTP where the duty exemptions may get limited to exemption from payment of BCD, while IGST may not be exempted. Withdrawal of exemptions or changing them to refund mechanism could fundamentally change the attractiveness and viability of some of the key schemes under the FTP like EOU, STP, EPCG, Advance authorization, SEIS, MEIS etc.

Migration to IGST on imports together with possible withdrawal of exemptions of IGST, could also impact the computation of all industry rate of drawback rate (for recouping taxes on exported goods). Hence, the rate of drawback could be limited to amount of BCD embedded in the export product.

In effect, reduced exemptions for ensuring continuity of credit chain and efficiency of the credit chain under under GST is probably going to decrease the level of impact of export incentives under FTP and drawback scheme. While it is logical to hold the above point of view flowing from our understanding of the structure of GST, it would be significant to wait and watch for the details of change in customs and FTP as a consequence to introduction of GST.

Exports

GST will introduce a new regulatory regime for India's exports. For the manufactured product exporters, the most significant impact would be the increased requirement and blockage of working capital. For manufacturing a product, a firm purchase locally or imports raw material and machinery. The current export schemes allow firms to purchase these without payment of applicable duties through *ab-initio* exemption or subsequent refund of duties. The proposed GST system mandates that all duties should be paid at the time of a transaction while refund for these can be obtained after exports. This means the exporter will have to arrange money for the inputs, manufacturing and payment of duties and taxes.

As of now the SEZ developer and units can import their requirements duty-free. Also, the supplies made by the domestic units to SEZs are considered exports and so are free from payment of taxes and duties. Not anymore. The model GST law defines exports as taking goods and services out of India to a place outside India.

And India is defined to include the Exclusive Economic Zones lying at 200 nautical miles beyond territorial waters. Since SEZs are within Indian territory, these would be reduced to the status of a normal domestic firm. This means, no duty or tax exemptions on imports or exports would be admissible. Imports into SEZ will attract IGST while supplies to SEZs will attract CSGT and SGST or IGST. With average value addition at SEZ already less than 10 per cent, the new law may make many SEZs unfeasible.

The GST will likewise influence the supplies defined as deemed exports. As of now, the supplies to projects under International Competitive biddings (ICB), mega power plants and World Bank funded projects are exempted from central taxes. This has been done to enhance competitiveness of Indian firms participating in global tenders or large scale bids. Post GST, these supplies, currently termed as deemed exports will become taxable where no refund would be available.

In order to understand this : taking a exporter view assuming X as exporter

Most of India's 130,000 exporters who currently use these schemes must comprehend the post-GST impact of the changes. X a medium-sized garment exporter from Coimbatore. X just got an export order from a buyer in Germany for supply of 10,000 linen shirts at \$100 each. We will have a look at the current export options available to X and how these will change post GST. X will need to buy linen fabric and manufacture shirts from it. She can either import or buy it locally. Her manager tells that the total customs duty would be 24 per cent of the import value of the linen.

X can use the Advance Authorisation Scheme for import of the required quantity of linen from Italy. Currently, she need not pay any duty on imports. However, post-GST, while she will get an exemption from payment of only basic customs duty (7 per cent), she has to pay Integrated GST which (let's assume) will be around 18 per cent of the import value.

She can get the refund of this duty only after exports and realisation of money. Considering a value addition of 15 per cent and cost of capital at 12 per cent, Jaya's working capital equal to 15.65 per cent of export value will be blocked for six to 12 months.

Post GST, X cannot use the two regularly used variants of Advance Authorisation. One, currently she can buy linen from a domestic manufacturer who will supply without payment of duty. Post GST, the domestic manufacturer cannot supply without charging duties.

Two, currently, X can buy linen from domestic market paying full duty, manufacture the shirts and export. She can subsequently use the authorisation to import linen without payment of duty. Post GST, this option will not be available.

X needs to buy textile machinery for making quality garments. She currently imports duty-free using the EPCG scheme. In return, she has to undertake to export garments six times the value of the duty saved amount in six years. Alternatively, if she buys machine from an indigenous manufacturer, she will have to export 25 per cent less compared to what she would have had to had she imported the machine. This way EPCG scheme nudges exporters to use indigenous machines. Post GST, imports under EPCG will become expensive.

She will have to pay IGST which may be around 18 per cent of the import value. This money may be blocked up to six years, the time allowed under EPCG scheme to complete exports. For an import value of ₹100, if Jaya takes a loan at 12 per cent for paying IGST of ₹18, she may have to return about ₹35.5 after six years.

This high additional cost will affect the viability of many enterprises. Worse, since capital goods do not get consumed in the process, it may be difficult to link specific capital goods imports with the specific exports and in that case no GST refund may be a likely scenario.

Another option currently available to X is buying duty paid linen from the domestic market and using the drawback scheme for obtaining refunds of duties paid. Currently, the drawback scheme largely refunds the basic custom duty and other central duties paid on buying inputs. However, post GST, the schemes will refund basic custom duty only. The other central duties will be refunded through the GST mechanism on a case-to-case basis.

The current indirect tax structure is real obstruction in India's monetary development and competitiveness. Tax barriers in the form of CST, entry tax and restricted input tax credit have fragmented the Indian market. Cascading effects of taxes on cost make indigenous manufacture less attractive. Complex different taxes increment cost of compliance. In this situation, the introduction of GST is considered important for economic growth. GST will have quite a favourable impact on Indian economy. Some sectors will have more favourable impact compared to others under the proposed GST.

GST will encourage simplicity of working together in India. Combination of existing numerous taxes into single GST will altogether diminish cost of tax compliance and transaction cost.

Stable, transparent and predictable tax regime will encourage local and foreign investment in India creating significant job opportunities.

Electronic processing of tax returns, refunds and tax payments through 'GSTNET' without human intervention, will reduce corruption and tax evasion. Built-in check on business transactions through seamless credit and return processing will reduce scope for black money generation leading to productive use of capital.

5.2 GST and Indian trade

For a developing economy like India it is desirable to become more competitive and efficient in its asset utilization. Aside from different other policy instruments, India must pursue taxation policies that would expand its monetary effectiveness and minimise distortions and impediments to efficient allocation of resources, specialisation, capital formation and international trade. With regard to the issue of equity it is desirable to rely on horizontal equity rather than vertical equity. While vertical equity is based on high marginal rates of taxation, both in direct and indirect taxes, horizontal equity relies on simple and transparent broad-based taxes with low variance across the tax rates.

Traditionally India's tax regime relied heavily on indirect taxes including customs and excise. Revenue from indirect taxes was the major source of tax revenue till tax reforms were undertaken during nineties. The real contention set forth for substantial dependence on indirect taxes was that the India's majority share of population was poor and in this way extending base of direct taxes had inborn restrictions. Another argument for reliance on indirect taxes was that agricultural income was not subjected to central income tax and there were administrative difficulties involved in collecting taxes.

The differential multiple tax regime across various sectors of production leads to distortions in allocation of resources thus causing inefficiencies in the sectors of domestic production. With respect to India's exports, this leads to lack of international competitiveness of the sectors which would have been relatively efficient under distortion-free indirect tax regime. Adding to this, the lack of full offsets of taxes loaded on to the FOB export prices. The export

competitiveness gets negatively impacted even further. Efficient allocation of productive resources and providing full tax offsets is expected to result in gains for GDP, returns to the factors of production and exports of the economy. While indirect taxes paid by the producing firms get offsets under state VAT and CENVAT, the producers do not receive full offsets particularly at the state level. The diversity of taxes further adds the difficulty in getting full offsets.

The broad objectives of this study refer to analysing the impact of introducing comprehensive goods and services tax (GST) on economic growth and international trade; changes in rewards to the factors of production; and output, prices, capital, employment, efficiency and international trade at the sectoral level. Analysis indicates that implementation of a comprehensive GST in India is expected to lead to efficient allocation of factors of production thus leading to gains in GDP and exports. This would translate into enhanced economic welfare and returns to the factors of production, viz. land, labour and capital.

Even though the country has moved on the path of tax reforms since the mid-1980s yet there are various issues which need to be restructured so as to boost productivity and international competitiveness of the Indian exporters. Sales of services to the consumers are not appropriately taxed with many types of services escaping the tax net. Intermediate purchases of inputs by the business firms do not get full offset and part of non-offset taxes may get added up in prices quoted for exports thus making exporters less competitive in world markets.

Tax policies play an important role on the economy through their impact on both efficiency and equity. A decent tax framework should keep in view issues of income distribution and, at the same time, also endeavour to generate tax revenues to support government expenditure on public services and infrastructure development. Cascading tax revenues have different impacts on firms in the economy with relatively high burden on those not getting full offsets. This analysis can be extended to international competitiveness of the adversely affected sectors of production in the economy. Such domestic and international factors lead to inefficient allocation of productive resources in the economy. This results in loss of income and welfare of the affected economy. For a developing economy like India it is desirable to become more competitive and efficient in its resource usage.

Apart from various other policy instruments, India must pursue taxation policies that would maximise its economic efficiency and minimise distortions and impediments to efficient

allocation of resources, specialisation, capital formation and international trade. With regard to the issue of equity it is desirable to rely on horizontal equity rather than vertical equity. While vertical equity is based on high marginal rates of taxation, both in direct and indirect taxes, horizontal equity relies on simple and transparent broad-based taxes with low variance across the tax rates..

GST is a development that comes at a challenging time in the external environment for India. Global growth has slowed. Many major economies in the world face economic and political challenges with uncertain resolution. With the British vote to exit the European Union, the EU now confronts the possibility of a disintegration, with a larger collapse of the Eurozone in the coming years remaining a real, even if unlikely, possibility. Japan, once a driver of global growth, now lies dormant and is struggling to revive itself. China, after two decades of extraordinary growth, appears to be slowing down. The US is going through a divisive presidential election that has seen its candidates adopt threatening postures towards international trade, especially with lower-income countries, and towards the world trade system more generally. To achieve improvements in trade performance in this environment will clearly be difficult.

While India herself embraced generous market-situated changes beginning in the mid 1990s, noteworthy obstacles, both interior and outer, that have kept the economy beneath its productive potential clearly remain.

Indian producers complains about the problems created by an inverted duty structure where domestic producers pay high costs on taxed intermediate inputs made elsewhere in the country, making them under-competitive relative to imports which land at lower cost. GST, which is expected to erase these distortions, is being rightly seen as a “once in a lifetime” opportunity to improve industry competitiveness and enable much larger participation in global markets.

Such advantages won't collect to the electronics sector alone. Recent studies analyzing the gains from reduction of internal and external barriers to trade in India, suggest that the combined benefits will be of a very significant scale—roughly a 20% increase in economic welfare, with reduction in internal barriers to trade accounting for over half that number.

India's move far from agribusiness will require productive opportunities for laborers and firms in manufacturing and services. This development will be incredibly helped if India

could exploit the worldwide market. For its “Make in India” campaign and in helping India to become an efficient export platform, the Modi government has just scored its game-changing goal with GST. If the economy evolves as is hoped, the GST council can rest easy over its revenue concerns—a policy reform of this magnitude and reach will surely deliver the

Food items like cereals and vegetables are expected to become more expensive. Essential items like health services and medicines will also become expensive as they presently are subjected to lower tax rates, even if GST rate is capped at 18%.As of now, products like alcohol and petroleum have been kept out the GST ambit; clarity is yet to emerge on whether there will be more exemptions. With various industry bodies lobbying for exemptions or lower rates, it is plausible that we will see more products and services being exempted. That being said, in the past, countries (like Malaysia and New Zealand) which have opted for GST have been known to face high inflation and slowdown in consumption initially. Whether history will be repeated in India depends on a host of factors, the most important being the standard rate of GST finally agreed upon.

India is at the cusp of dawn of GST’s introduction. In spite of the proceeding with resistance of States, based on their fears of revenue loss, the Centre is making all-out efforts to make it a reality. It will be the most significant event in the fiscal history of the country, since it will have an impact on all the segments and sectors of economy and will entail a fundamental shift in the way tax policies are made in the country. GST would free India from the shackles of archaic indirect tax laws and introduce a new era of growth and prosperity. The current tax system contains many distortions that result in substantial tax cascading and inefficient production and consumption structures, which hinder economic growth. GST would remove these distortions, paving the way for a higher GDP. GST would also bring in a modern tax system to ensure efficient and effective tax administration. The new system would facilitate compliance for parties that are willing to pay taxes and ensure strict enforcement for others that do not. It will bring in greater transparency and strengthen monitoring, thus making tax evasion difficult. Most importantly, GST implies the beginning of agreeable federalism, where the Center and States will plan the new tax in anharmonised and helpful way, instead of dealing with it in a confined way .The benefits of GST would accrue only if tax is designed according to best practices. When the Government initially proposed a “game changer” GST in 2007, which was to be a “grand bargain”, it was received by the public with enthusiasm and applause. Most tax reforms fail because of significant opposition by vested

interests or a minority of tax payers who tend to lose interest in the reform. In India, the proposal to introduce GST received unanimous endorsement by all stakeholders including industry, business community, professionals and even consumers. However, their endorsement is not for a half-baked GST but for a truly flawless model that applies to the widest possible base at low rate.

Impact of GST on Various Sectors:-

Impact of GST on Startup Business

1. Every new business has to be registered in sales tax department for VAT by following different procedure with fee in different state for registration. Under GST, a simplified uniform process and centralized registration will be required for starting business in different states³⁰.
2. Under GST, new organizations must be enlisted if turnover is more than 10 lakhs (5 lakhs if there should arise an occurrence of existing VAT framework) and business will be taxed at lower rate for turnover in the vicinity of 10 and 50 lakhs³¹.
3. Today startup business has to spend lot of their energy in managing various taxes according to different regulation in different states. GST will be substitute for all indirect taxes levied by state and central government.
4. Now businesses that pay both sales and service tax like restaurants will get benefit from GST due to taxation on all once.
5. For manufacturers, logistic cost and time across states will be decreased due to tax neutrality in interstate supply which will increase competitiveness in industry.
6. Now registration, returns and payments will be online so that IT system so startup can easily follow rules.
7. Due to GST, hidden cost of doing business will be reduced by minimizing cascading of taxes due to availability of input tax credit throughout value chain and across boundaries of state.

30 Neha Rani,Sunil ,An Overview about the Impact of GST on Various Sectors of Indian Economy(2016) ,Available at <http://www.theijbm.com/wp-content/uploads/2016/10/18.-BM1610-087.pdf>

31 Supra note25

8. Cost of manufacturing goods & services will be reduced due to phasing out of CST, subsuming of center & state tax in GST and reduction in compliance cost which will make our goods and services competitive in international market.

Impact of GST on Automobiles Sector

1. Presently, tax revenue of Indian government from automobile sector is 30-47% but after GST, it will be in the range of 20-22 percent. Cost of vehicles will also drop by 8-19 percent for end users. The reason is that imported distributor as well as domestic resellers can save input tax credit on inputs paid under GST.

2. Organized battery and other spares will become more cost effective and gain market share³².

3. Because of easily surpassing of various octroi and check points, now goods can be transferred from one state to another and therefore transportation cost will be reduced.

Doubts:

1. Ambiguity regarding GST rates for different segments like small, mid and luxury car segment and criteria for defining these segments.

2. Clarity regarding incentives provided to different automakers by state government in the form of VAT/CST linked subsidies and/or deferment of taxes.

3. Clarity regarding treatment of used car sales under GST.

Impact of GST on Hospitality and Tourism Industry³³

“GST can be proved as a game changer for the tourism industry. Now multiple taxes have been levied by center and state. So under GST:

1. Supplies of hotels and restaurants will be taxed by single rate.

2. Input tax credit will be available on services related to renovation or construction of hotels and resorts.

32 Ibid 25

33 Supra note 25,26

3. Different taxes like R&D less payable on franchise fees and technical know-how will be subsumed under GST.

Doubt:

- Existing benefits under foreign trade policy will be availed or not?

Impact of GST on Hospitality

1. Due to inverted duty structure, cost of domestic manufacturers is high which can be reduced by removing inverted duty structure and refund of accumulated credit under GST.
2. Indirect tax paid by Pharma companies could be increased for service oriented industries like health, insurance and diagnostic centers.
3. Various Exemptions and benefits/ incentives are availed according to location wise which will be provided up to the expiry of period.

Impact of GST on FMCG Sector

1. GST will be beneficial for some companies like Havells, Blue Star, HUL, Emami, Godrej consumer. Around 3000 crore FMCG industries in India is the major contributor to the state revenue approx. 40,000 crore Food & Beverage and household & personal care are major FMCG industries currently. Tax at 27% (12.5% excise and VAT at 12 to 14.5% on top of excise) was paid by FMCG industries. After subsuming all GST rates, GST rate will be in range 17-20% which will be gainful for this sector.
2. As most of the companies establish warehouse in each state to avoid CST on interstate sales. Warehouses opened from tax point rather than market proximity and transport considerations. Under GST model law, India is emerged as a single largest common market so local and interstate supply would be neutral so companies will be in beneficial position due to savings in warehousing and distribution cost.
3. FMCG distributors and retailers can set off input tax credit from services such as transport, rent against GST tax liability which is not available currently.

Doubts:

1. Some companies are currently enjoying tax incentives or exemptions according to current taxation system so GST effect can be negative on them.

2. Job work performance and stock transfers currently not taxed are likely to be taxed and will affect product outlay.
3. Some FMCG companies import raw materials but it will attract IGST so it will be costly against local products.
4. Beverages and tobacco products will be negatively affected due to taxation at higher rate approximately 40% under GST.

Impact on E-Commerce

1. Up to now, many indirect taxes like VAT, excise duty, CST and service tax by categorizing offering into goods and services while some offerings like digital downloads including software, music, e-books cannot be categorized into goods & services so to decide VAT/CST or service tax will be charged is a challenge. By GST, single tax will be charged across the country. All goods & services will be taxed at single rate so no problem of categorizing.
2. Issues related to interstate movement of goods and services like entry taxes with the requirement of statutory form, way bills, road permits, and local registration will be resolved under GST.
3. Reduction in cost due to elimination of cascading effect of taxes on prices.

Negative Impact:

1. Now the tax will be collected at source and it is the duty of e-commerce firms to file monthly and annual returns and collect tax on supplies of goods & services made by supplier so TCS guideline in the GST will increase workload and cost for e-commerce firms.
2. As small scale business are exempted up to 10 lacs but under GST, E-Commerce firms have to collect tax on every transaction whether relates to small scale. So firstly small firms have to pay tax then they apply for refund impacting negatively the working capital of small firms.
3. Tax Collected at Source (TCS) will affect negatively for goods sold for cash on delivery and later being rejected because firms have to bear tax from their own capital then apply for refund after cancellation.

4. Under TCS, firm will pay tax on price when it purchases the goods from supplier and will have to bear extra burden.

Impact on IT Sector

1. It is good for IT industry that GST will eliminate multiple levies and no difference between goods and services for taxation purpose. Under GST, input GST will be available on purchase of goods required for setting IT infrastructure which will reduce cost in long run³⁴.

2. No need to invest in logistics of creating warehouses in every state of country.

Negative:

1. Cost of electronics like mobile phones, laptops will rise because GST rate will be more than current duty on manufactured goods.

2. Currently, IT companies are registered under single CST authorities so all accounting and billing is done from a centralized location. Due to destination based consumption tax and place of supply provisions, multiple invoicing will be required if services delivered under a single contract are delivered from various offices/ centers of the same entity so it will make billing and invoicing complex for IT industry.

Impact on Media & Entertainment

1. Currently many taxes like entertainment tax, service taxes etc. are charged. Under GST, a uniform tax will be charged (less than multiple taxes) so it will decrease prices of tickets.

2. Cost will also reduce due to availability of input tax credit which cannot be claimed currently i.e. payments to artists etc. Major beneficiary will be Dish TV, PVR so overall positive benefit is expected.

Insurance

Negative

Insurance policies: life, health and motor will begin to cost more from April 2017 as taxes will go up by up to 300 basis points.

Airlines

³⁴ Supra25

Negative

Flying to become expensive, as service tax will be replaced by GST. Service tax on fares currently range between 6% and 9% (depending on the class of travel). With GST, the rate will surpass 15%, if not 18%, effectively doubling the tax rate.

5.3 Difference between Indian GST and GST in other countries (Canada, Singapore, and Malaysia)

Indian GST

Goods and Services 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.

GST would be an exhaustive indirect tax on manufacture, sale and consumption of goods and services all through India, to supplant taxes demanded by the focal and state governments. The GST is consumption construct tax demanded with respect to the supply of Goods and Services which implies it would be required and gathered at each phase of sale or buy of goods or services in light of the input tax credit technique. 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 business activity. Taxable goods and services are not differentiated 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.³⁵ 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 GST would be a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax³⁶ 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,

35 <http://www.idtc.icai.org/download/BGM-on-GST-march-15.pdf>

36 "Which of the existing taxes are proposed to be subsumed under GST? - GST India Forum". *gstindia.net*. Retrieved 2017-01-02.

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.³⁷

Similar to Indian context, it is only Canada that has the concept of dual GST. While there was strong rebel at the time of introduction of GST by the then political division in Canada, however, GST sustained despite the opposition. Even for the subsistence, the Government of Canada has been pragmatic and worked towards reducing the GST rate a couple of times post implementation. While some others have had to increase the rates very soon after introduction.

Country	Rate of GST / HST / VAT
Canada	Ranges from 13% to 15%
France	Standard rate: 20%, Reduced rate: 5.5% & 10%
UK	Standard rate: 20%, Reduced rate: 5%
New Zealand	Peak rate: 15%
Malaysia	6%
Singapore	7%
India	Indicative rate ~ may range from 12% to 20%

The aforesaid is highly relevant in the India context where once revenue neutral rate was discussed at 27% and now realistically being talked about at 16-18%. It is imperative that a reasonable rate structure is adopted to ensure the success of GST.

Another aspect encountered and accepted by most of the GST countries lies in the statistic that GST will be inflationary, especially if the effective tax rate is higher than what prevailed

³⁷ States on Board, GST Launch from April '16', available at- <http://www.pressreader.com/india/the-new-indian-express/20141210/282205124221120>

before. For instance, Singapore saw a spike in inflation in 1994 when it introduced the GST. That makes it all the more important for administrators to keep tabs on how prices move after imposition of the tax. Malaysia, to an extent, was able to mitigate this risk as price control on account of the GST was administered by the Ministry of Domestic Trade and Consumer Affairs.

INTERNATIONAL PERSPECTIVES:

Canada³⁸

GST in Canada is a multi-level value added tax introduced in Canada on January 1, 1991, by then-Prime Minister Brian Mulroney and his finance minister Michael Wilson. The goods and services tax is defined in law at Part IX of the Excise Tax Act. GST is levied on supplies of goods or services purchased in Canada and includes most products, except certain politically sensitive essentials such as groceries, residential rent, and medical services, and services such as financial services. Businesses that purchase goods and services that are consumed, used or supplied in the course of their "commercial activities" can claim "input tax credits" subject to prescribed documentation requirements (i.e., when they remit to the Canada Revenue Agency the GST they have collected in any given period of time, they are allowed to deduct the amount of GST they paid during that period). This avoids "cascading" (i.e., the application of the GST on the same good or service several times as it passes from business to business on its way to the final consumer). In this way, the tax is essentially borne by the final consumer. This system is not completely effective, as shown by criminals who defrauded the system by claiming GST input credits for non-existent sales by a fictional company.³⁹ Exported goods are exempt ("zero-rated"), while individuals with low incomes can receive a GST rebate calculated in conjunction with their income tax.

Much of the reason for the notoriety of the GST in Canada is for reasons of an obscure Constitutional provision. Other countries with a Value Added Tax legislate that posted prices include the tax; thus, consumers are vaguely aware of it but "what they see is what they pay". Canada cannot do this because jurisdiction over most advertising and price-posting is in the

³⁸ GST Introduced on January 1, 1991 by Prime Minister Brian Mulroney and Finance Minister Michael Wilson.

³⁹<https://web.archive.org/web/20060218051228/http://www.oagbvg.gc.ca/domino/other.nsf/html/03pac08e.htm>
1

domain of the provinces under the Constitution Act, 1867.⁴⁰The provinces have chosen not to require prices to include the GST, similar to their provincial sales taxes. As a result, virtually all prices (except for fuel pump prices, taxi meters and a few other things) are shown "pre-GST", with the tax (or taxes) listed separately.

GST is imposed at 5% in Part IX of the Excise Tax Act. GST is levied on goods and services made in Canada except items that are either "exempt" or "zero-rated". When, a supplier makes a zero-rated supply, he is eligible to recover any GST paid on purchases but the supplier who makes supply of Exempt goods he is not eligible to take input tax credit.

SINGAPORE GOODS AND SERVICE TAX:

GST in Singapore is a broad-based value added tax levied on import of goods, as well as nearly all supplies of goods and services. The only exemptions are for the sales and leases of residential properties and most financial services. Export of goods and international services are zero-rated. GST was implemented at a single rate of 3% on 1 April 1994, with an assurance that it would not be raised for at least five years. To cushion the impact of GST on Singaporean households, an offset package was also introduced.

Before 1986, Singapore's corporate income tax rate and top marginal personal income tax rate both stood at 40%. Such high rates were deemed to be uncompetitive. On the recommendation of the 1986 Economic Committee, Singapore's government decided that it needed to shift from direct to indirect taxes, to maintain its international competitiveness in attracting investments, and to sustain its economic growth to create well-paying jobs for Singaporeans⁴¹

GST was implemented at a single rate of 3% on 1 April 1994, with an assurance that it would not be raised for at least five years. To cushion the impact of GST on Singaporean households, an offset package was also introduced. Simultaneously, corporate tax rate was cut by 3% to 27%, and the top marginal personal income tax rate was cut by 3% to 30%. The

⁴⁰Sherman, David M. "Policy Forum: Tax-Included Pricing for HST—Are We There Yet?" (PDF). *Canadian Tax Journal*. Toronto: Canadian Tax Foundation. **57** (4): 846–848. ISSN 0008-5111.

⁴¹Report of the Economic Committee, *The Singapore Economy: New Direction*, Singapore Ministry of Trade and Industry, Republic of Singapore, 1986, p. 89

initial GST rate of 3% was among the lowest in the world, as the focus was not to generate substantial revenue, but to allow people to get adjusted to the tax⁴².

In response to the rising cost of living, members of the opposition have called for the GST rate to be reduced. The Singapore government has argued that reducing the rate of GST would benefit the wealthy more than the poor, as the bulk of GST is collected from foreigners and higher-income earners. In 2010, 84.2% of all GST paid was collected from foreigners and the top 40% of Singaporean households, while the bottom 20% of households contributed only 4% of all GST paid. The government argued that as the GST was a core part of a fiscal system that provides transfers to the lower income, reducing the GST rate would be costly and inequitable, and leave the government with less resources to help the lower income.⁴³

Time of supply of goods is⁴⁴: 1. If the goods are to be removed, at the time of removal;

2. If the goods are not to be removed, at the time when they are made available to the person to whom they are supplied;

3. If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place at the time when it becomes certain that the supply has taken place or 12 months after the removal, whichever is the earlier.

Section 12⁴⁵ of GST : Relates to time of supply of services:

“(1) Notwithstanding Sections 11, 11A and 11B, the Comptroller may, at the request of a taxable person, by direction in writing alter the time at which supplies made by the taxable

42Jenkins, Glenn P.; Khadka, Rup (March–April 1998), "Value Added Tax Policy and Implementation in Singapore" (PDF), VAT Monitor, Amsterdam: International Bureau of Fiscal Documentation, 9(2): 35–47, ISSN 0925-0832

43Shanmugaratnam, Tharman (2011). "Budget Debate Round-up Speech 2011" (PDF). Singapore Ministry of Finance. as on 12nov 2016

44Section 11 –model GST law(nov'16)

Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

45 Section 12- Model GST law (nov'16) Available at : <http://www.cbec.gov.in/resources/htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>

person(or such supplies made by him as may be specified in the direction) are to be treated as taking place, either-

(a) By directing that those supplies be treated as taking place-

(i) At times on dates determined by or by reference to the occurrence of some event described in the direction ; or

(ii) At times or on dates determined by or by reference to the time when some event so described would in the ordinary course of events occur, the resulting times or dates being in every case earlier than would otherwise apply; or

(b) By directing that those supplies shall (to the extent that they are not treated at taking place at the time any invoice is issued or any consideration is received in respect thereof) be treated as taking place-

(i) At the beginning of the relevant working period as defined in his case in and for the purpose of direction) ; or

(ii) At the end of the relevant working period (as so defined).”

MALAYSIAN GOODS AND SERVICE TAX:

The Goods and Services Tax (GST) is a value added tax in Malaysia. GST is levied on most transactions in the production process, but is refunded with exception of Blocked Input Tax, to all parties in the chain of production other than the final consumer.

The existing standard rate for GST effective from 1 April 2015 to is 6%.

GST was scheduled to be implemented by the government during the third quarter of 2011, but the implementation was delayed until 1 April 2015. Its purpose is to replace the sales and service tax which has been used in the country for several decades. The government is seeking additional revenue to offset its budget deficit and reduce its dependence on revenue from Petronas, Malaysia's state-owned oil company. The 6% tax will replace a sales-and-service tax of between 5–15%.⁴⁶

⁴⁶ "GST Implementation Is To Place Malaysia At Par With Developed Countries, Says Ahmad Husni". *Bernama*. 19 Feb '2016, available at <http://www.bernama.com.my/bernama/v5/newsbusiness.php?id=463351>

The Goods and Services Tax Bill 2009 was tabled for its first reading at the Dewan Rakyat (the lower house of the Malaysian parliament) on 16 December 2009.⁴⁷ It was delayed amid mounting criticism.⁴⁸ The government responded by asserting that the tax on oil income will not be sustainable in the future. National Consumer Complaints Centre head Muhammad Sha'ani Abdullah has said, "The government should create more awareness on what the GST is. The public cannot be blamed for their lack of understanding, and thus, their fears". Sha'ani says that the GST will improve accounting, reduce tax fraud, and facilitate enforcement of the upcoming Anti-Profiteering Act. Muslim Consumer Association of Malaysia leader Datuk Dr. Ma'amor Osman said the GST could help end dishonest business practices, but expressed concern about how the tax would be applied to medical products and services. A group leading the campaign against the GST, Protes (which objects to the GST because of concerns about its effects on low-income Malaysians), cancelled a planned protest but has stated that they will continue to agitate against the legislation.⁴⁹

During the government reading of the 2014 budget, Malaysian Prime Minister Najib Razak announced a GST tax of 6% starting on 1 April 2015. This will replace the Sales and Services Tax.⁵⁰ Implementing GST tax will be a part of the Government's tax reform program to enhance the capability, effectiveness and transparency of tax administration and management. The GST was implemented on 1 April 2015.

During the unveiling of the national budget, it was announced that the following goods and services would be exempted from GST⁵¹.

47 "Parliament: GST Bill tabled for first reading (Update)". *TheStar Online*. 16 Dec '2010, available at <http://www.thestar.com.my/news/story.asp?file=/2009/12/16/nation/20091216102228&sec=nation> as on 26 February 2016.

48 "Government defends GST delay, scoffs at PR's victory claims". *Malaysian Insider*. 15 March 2010 available at <http://www.themalaysianinsider.com/index.php/malaysia/56278-government-defends-gst-delay-scoffs-at-pr-victory-claims>. As on 15 february 2016

49 Creating awareness on GST is needed, says NGOs, by Azreen Hani. *The Malay Mail*, 15 March 2010 available at <http://www.mmail.com.my/content/30256-creating-awareness-gst-needed-says-ngos>

50 "Malaysia to introduce GST at 6% from April 2015 - SE Asia - The Straits Times". *straitstimes.com* Available at <http://www.straitstimes.com/breaking-news/se-asia/story/malaysia-introduce-gst-6-april-2015-20131025>. as on 11 January 2016.

51 "RON95, diesel and sundry goods exempted from GST | Malaysia | Malay Mail Online". *themalaymailonline.com*. available at <http://www.themalaymailonline.com/malaysia/article/ron-95-diesel-and-sundry-goods-exempted-from-gst>

1. Agricultural products – paddy, fresh or chilled vegetables, certain provisionally preserved vegetables
2. Essential foodstuff – oils, salt, flour, etc.
3. Livestocks and livestock supplies or poultry – live animals and unprocessed meat
4. Eggs
5. Fish – live, fresh, frozen and dried
6. First 300 kwh of electricity for domestic use
7. Water for domestic users
8. Goods supplied to designated areas from Malaysia – Labuan, Langkawi&Tioman
9. Exported goods
10. Exported services – such as architecture services in connection with land outside Malaysia
11. Selected services in Malaysia – such as pilotage, salvage or towage services
12. International services – such as transport of passengers or goods from a place in Malaysia to a place outside Malaysia
13. RON95 petrol, diesel and LPG
14. Sale of Residential Property
15. Services provided by Government which are not considered commercial services, such as permits, licences etc. Services considered commercial are TV advertisement, rental of equipments, rental of multifunction halls etc.

Time of Supply:

The time of supply is important because it determines the taxable period in which the output tax should be accounted for.

The rules vary depending whether it is a supply of goods or services.

The basic time of supply for goods is :

- (i) If the goods are to be removed/delivered, at the time of removal of goods.
- (ii) If the goods are not delivered, at the time when the goods are made available to the customers.
- (iii) If the goods are on consignment, at the time when it becomes certain that the taxable supply has taken place or 12 months after the removal, whichever is the earlier.

The basic time of supply of services is the time when the services are performed. The service is considered as performed when the work is done or completed by the supplier.

Where the tax invoice is issued or payment is received prior to the basic tax point, the date of such issue or receipt is taken as the time of supply.

Another key refresh from Malaysia learning is that businesses need to start early with the implementation process to be GST-ready. The Malaysian Government received strong resentment even after providing 1.5 years for GST preparedness. Given the complex GST model proposed in India and the need for a businesses to undergo a transformation to adapt to the GST regime, it would be quite challenging for the Indian government to tackle the ask of requiring businesses to implement GST in less than 9 months, with 1 April 2017 as the potential GoLive date.

One constructive learning that did come handy in the GST preparation in Malaysia was the release of sector specific guidance paper(s) on tax treatment concerning each business sector. It aided in addressing the “to be tax practice” associated with a particular business segment. Indian legislative bodies could look into similar publications to effectuate the implementation of GST in a smooth way.

As GST is a tax on transactions, which for most business organisations is voluminous, the processes and changes required for GST compliance need to be automated and encapsulated in the IT system. It is learnt that many big businesses have either failed or struggled to achieve IT transformation for having not planned or started early. It would be a mistake to assume that IT software with GST capability from other countries may be adopted wholesale in India, due to peculiarities embedded in the proposed Indian dual GST model.

Some post-implementation truths from the GST in Malaysia includes wide-spread unrest and anti-GST street protests by small & medium businesses in Kuala Lumpur for few months after implementation even with a simpler systemic requirements and much higher level of exemption threshold⁵².

6. Conclusion

A wait of more than a decade came to an end on August 3, 2016, when the 122nd Constitution Amendment Bill, 2014 (popularly known as GST Bill) was passed by the Upper House of the Parliament of India. This is clearly the nation's greatest tax change since Independence. Some accomplishment in this manner for the Indian popular government. The new tax administration, which subsumes all indirect taxes, for example, sales tax and excise tax, is relied upon to cut down tax rates in India, while changing over the nation into a major single market. To put it plainly, now, consistent stream of goods and services will happen crosswise over 29 states and 7 union territories. The implementation of the Bill is expected to ease India's complex tax system, help goods move seamlessly across state borders, curb tax evasion, improve compliance, increase revenues, spur growth, boost exports, and attract investments by improving ease of doing business in India.

52 Supra note 1

The introduction of GST would be a significant step in the reform of indirect taxation in India. Amalgamating several central and state taxes into a single tax will mitigate cascading or double taxation, facilitating a common national market. This would be hugely beneficial for consumers as the tax burden on inter-state logistics will be cheaper. A common tax would mean easy compliance and uniformity of tax rates and structures for industry and would thus contribute to ease of doing business by removing cascading costs. For central and state governments, GST is expected to 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.

The recent passage of the Goods and Services Tax (GST) Bill, which will put in place a uniform indirect tax regime in India, is a landmark achievement for the NarendraModi government and presumed to have positive implications over the different segments of economy.

The GST council, which will oversee the GST regime, is currently in deliberations over its own procedures and over the appropriate tax rate to prevent revenue shortfalls. It is already clear, however, that GST, once implemented, will, for the first time in India's history, unify the nation into a common economic market, obviating the need for goods to be taxed each time they cross a state border. GST will affect all aspects of business in India, from decisions on investment location and product pricing to logistics and supply chain optimization; it is being widely applauded as a crucial reform that will facilitate India's development trajectory.

Less all around refreshing, yet maybe no less essential, will be the effect that GST will probably have on India's worldwide trade and on its trade strategy.

In the first place, the macroeconomic impact of a change to the introduction of the GST is significant in terms of growth effects, price effects, current account effects and the effect on the budget balance.

Secondly, in an open economy with a high and growing service sector, a change in the tax mix from income to consumption-based taxes is likely to provide a fruitful source of revenue.

Thirdly, the aggregate consumer price impact of the introduction of the GST in India on the macro-economy was both limited and temporary⁵³.

53 Samyak Sanghvi, GST-Impact on Indian economy, (3 march 2015) Available at- An Overview about the Impact of GST on Various Sectors of Indian Economy

While India is still to see its share of development around implementation of GST, but it should be wary of lessons learnt in countries that have implemented a similar tax regime.

All around the world, GST has the same concept. In some countries, VAT is the substitute for GST, but conceptually it is a destination based tax on consumption of goods and services. But as the most contentious issue that still needs to be resolved among the different governance in the world is the GST rate. Some are still struggling to rationalize an adopted rate structure.

From the lessons learnt from other nations who have already implemented GST, there is no denying that acceptance of GST by general public, businesses and firms would not be an easy task, with advance planning and extending proper time to industry, continued dialogues between businesses and administrators, engaging with industry on the implementation planning, a reasonable tax-rate, timely release of the legislative documents, has proven to aid in smooth GST implementation in many countries. GST is proven to be an efficient tax collection system despite teething problems in the initial implementation period.

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 local and international markets. Studies show that this would instantly impact our 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.

GST is a development that arrives at a challenging time in the external environment for India. Global growth has slowed. Many major economies in the world face economic and political challenges with uncertain resolution.

While GST has become popular as a 'One Nation-One Tax' formulation, the realities of implementation and compliance may be more complicated than political negotiations in the Parliament. Truth is GST, for which the ruling administration has set a go-live date of April 1, 2017, is in no way a one-tax rule. As things stand, the Centre has agreed to subsume excise duty, additional excise duty, service tax, countervailing duty, surcharge and cess, and central sales tax into the waiting arms of GST. The States have agreed to give up VAT (sales tax), entertainment tax, luxury tax, taxes on gambling, octroi and entry taxes, cess and purchase tax. GST will thus replace all of these taxes. The all-important tax rate though remains to be agreed upon.

India is not only the first country to experiment with a unified tax regime. 160 countries already have some form of GST or a value added tax. What makes GST in India special is that as opposed to a federally administered regime, the Union and state governments will jointly administer India's dual GST. This means it will be a set of many different taxes – a GST for each of the 29 states and two union territories (SGST), a Central GST (CGST), and an Integrated GST (IGST; which will be a combine of CGST and SGST on inter-state supplies of goods and services). That surely is not as unified as it seems.

Interestingly, India will be one of the very few countries with a dual GST regime alongside Canada and Brazil. Though the all-important rate is yet to be finalised, with the final standard rate possibly lying between 15% to 27%, though 18% is the rate that seems to be gaining a sort of consensus. GST rate will be decided in the coming months by a GST Council. As such it will be negotiated amongst the Union and state governments that will jointly administer the GST regime. It will still remain complex and difficult to implement, but would surely make life easier for businesses by cutting down, or rather combining, the many indirect taxes that companies file in India.

Foreign media has called GST one of the world's most complicated tax reforms that needs to be supported and serviced by state-of-the-art technology. And Infosys, the Indian software giant, has already started building a massive electronic infrastructure – a GST portal (GSTP) – where taxpayers can register, make payments and file returns. It is expected that some 7.5 million businesses will be covered by the tax.

The dual nature of India's GST regime is expected to make implementation a complex problem, and rob off some of the key features of ease of doing business.

Canada and Brazil, both have a federal administrative structure similar to that of India and have opted for the dual GST route. For instance in Canada, the dual GST route obviously cleared up the conflict between states and the Union government in terms of revenue generation and tax collection, and allowed for a consensus to be formed. But then, Canada owing to the dual nature of its GST has not been able to unify the nation as a common market, with different taxes in different provinces still in effect.

In India, though the scrapping of the proposed additional 1% inter-state tax has cleared the air considerably making businesses happy, the states still need to agree on a common rate. And while

States like West Bengal and Bihar will be happy with a low tax rate, many like Tamil Nadu are expected to ask for a much higher rate. At the high-end, some states have even asked for a GST rate of 27%. But then, experts believe, a tax rate that high can completely negate the positive effects of GST.

Once GST is implemented, the same is expected to reduce to a standard rate to about 18-21%. This will naturally be beneficial for the end users. But if the tax rate goes beyond 18-21%, a lot of the benefits of GST will be lost.

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Other links

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