

**RECOMMENDATIONS ON
GOODS AND SERVICES TAX (GST)
IN INDIA**



**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
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Summary of Recommendations on Goods and Services Tax (GST) in India

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12. Taxable Entities should not include housing societies and charitable institutions.
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34. An awareness campaign through print and electronic media will be necessary.
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36. A permanent bonding of Centre and States on basic and substantive aspects will be the key to success.

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Recommendations on Goods and Services Tax (GST) in India

1. STRUCTURAL ASPECTS OF GST

1.1. Warm Welcome to the proposal to introduce GST

The Institute of Chartered Accountants of India extends its warm welcome to the proposal to introduce a comprehensive destination based consumption tax called “Goods and Services Tax” (GST) to be implemented simultaneously in all the States all over India.

1.2. Dual GST is the most acceptable method at present

It is a well known fact that a single GST, all over the country, is the ideal structure for taxation of goods and services. But looking into the Constitutional framework of our country we understand that, at present, dual GST is the most acceptable structure to begin with. It may lead to introductions of a single GST at a later stage. We believe that with harmonious principles of taxation, it is possible to attain the benefits of Single GST even though it may be called Dual GST. As suggested by the Empowered Committee (EC) that both SGST and CGST would be levied on the same base, this therefore presents a strong case to subsume both the components of GST into one single GST, albeit in the long run. It is recommended, therefore, that the entire GST law and the constitutional amendments be drafted accordingly.

1.3. Both the laws should be common and be administered by a common authority

The Indian GST Law may be drafted in such a manner that there is only one Law, which shall prevail all over India, providing for CGST as well as SGST to be levied by the Central and State Governments respectively. In case, the Centre and States feel that they should have their own law on GST then one model law may be drafted with certain basic features, which shall be adopted as it is by the Centre as well as all the States. Since both the components of GST (CGST and SGST) would be levied on the common base, it is strongly recommended that both the laws be administered by a common authority. This therefore implies common registration, common payment of taxes (albeit under different codes for different components), common filing of returns, common assessment of both the components, common audit provisions and the like. We expect that the law so designed shall be in conformity with the following broad parameters: -

- Yield adequate revenue to the Government (both Centre and the States)
- Be fair and equitable to different classes of traders, manufacturers and service providers
- Easy to comprehend and simple to administer
- Avoid economic distortions
- Facilitate free movement of goods as well as services
- Contain a strong and un-biased mechanism of Input Tax Credit, and
- Acceptable to the ultimate tax payer (i.e. the consumer)

1.4. All amendments in the GST should be approved by a governing body like the Empowered Committee

For continuous harmony between the Centre and States, it may be necessary to form a 'Governing Body' (may be on the lines of Empowered Committee or any such other committee having representatives from the Centre, States and the Industry). The 'Governing Body' so constituted shall have statutory recognition through the Constitution of India. The Constitution may also provide that any amendment in the State/Central GST Law (or variation from the model State GST law) shall be permitted only if the 'Governing Body' approves the same. Similarly, any change in the rate/s of State GST and/or exemption shall be permitted only if the 'Governing Body' approves the same. This would bring about uniformity in the GST Legislation and would help in creating a unified Indian marketplace.

Keeping in mind the diverse requirements of the country and the natural and other calamities, in special situations, the State/Centre may be permitted to temporarily reduce the tax rate/s within a permissible limit. However, such reduction in tax rates should be temporary in nature to counter such special situations and should be ratified by the Governing Body within a reasonable time.

1.5. All indirect taxes and levies should be subsumed within the GST Framework

It is recommended that most of the products/services and the corresponding indirect tax levies should be subsumed within GST. In

particular, it is recommended that the following taxes should also be subsumed within GST¹:

1.5.1. Electricity Duty

1.5.2. State Royalty on Minerals

1.5.3. Research and Development Cess

1.5.4. Duties/taxes on tobacco/petroleum/liquor products²

1.5.5. Purchase Tax

1.5.6. Octroi Duty and Entry Tax/ cess in lieu of Octroi (even in cases where the same is levied by local bodies)³

1.6. The GST to be implemented simultaneously in all the States

Since GST represents a paradigm shift from origin based taxation to destination based taxation, it is imperative that all the States and the Centre implement GST from one common date only. In case some States decide to implement GST from a later date, there could be inherent conflicts in the principles of taxation because GST represents a fundamental shift from origin based principle to destination based principle of taxation.

1.7. The new law (GST) should commence from the start of a financial year

For smoother transition, it is imperative that GST be implemented from the first day of a financial year. Since there is very little time for the slated implementation date of 1 April 2010, it is recommended that GST be implemented from 1 April 2011. This will provide all the stakeholders reasonable time to understand and then implement GST in a fruitful

¹ This list is over and above the list of taxes and duties proposed to be subsumed within the GST by the EC in its' First Discussion Paper

² In case it is so desired, the input tax credits on such inputs may be denied

³ The local bodies may be compensated by the State/Central Government for the loss of revenue in a mutually acceptable fashion

manner. It is expected that the statutory provisions for GST be finalized and made public at least 6-12 months in advance of switching over to GST regime so as to enable industry for formulating system and process changes.

1.8. The law should not permit retrospective amendments

The draft law should prohibit retrospective amendments to overcome judicial pronouncements or for such other reasons. It is felt that retrospective amendments tarnishes the image and reduces credibility of the Government in the eyes of citizens as well as international trade community.

However, the Centre/State Governments should retain powers to provide retrospective exemptions/administrative relief in cases where the general trade practice was in variation with the interpretation of legal provisions.

1.9. Appropriate amendments in the Constitution to be carried out

The Constitutional Amendments for the purposes of levy of GST may broadly cover the following aspects:

- 1.9.1. An entry in the Concurrent List to empower both the Centre as well as the States to levy a tax on the same base
- 1.9.2. Deletion of entries in the State List and the Union List currently empowering the States and the Unions to levy taxes which are proposed to be subsumed including deletion of entries pertaining to deemed sales
- 1.9.3. An Article in the Constitution to define the levy of GST to be a destination based consumption tax with the power to the Centre to

enact rules to define the place of consumption in case of inter-state transactions.

1.9.4. An Article in the Constitution to grant statutory recognition to a governing body like the Empowered Committee.

1.9.5. Amendment, if required, in the entry relating to taxes on import to empower Centre to levy IGST (which shall be shared by the Centre and the importing State/s)

2. SUBSTANTIVE ASPECTS

2.1. The definitions should be clear and in harmony with other existing laws

The definitions provided under the Centre as well as the State enactments should be uniform, unambiguous, simple and in harmony with other existing laws. As far as possible, artificial deeming fiction in the definitions should be avoided. Particular attention be devoted for an appropriate definition of the 'taxable event' (i.e. supply of goods and services)

2.2. Taxable Event should be the supply of goods or services for a consideration and should include inter-state branch transfers of goods for further trade or manufacture

It is recommended that the taxable event should be defined to mean the supply of goods or services by one person to another for a consideration.

Inter-state Branch Transfer of Goods

Currently, branch transfers are not a subject matter of taxation. This results in entities ending up having refund claims in the transferring State and tax liability in the transferee State. This further necessitates the need for declaration forms. Further, there are situations of interpretation of

whether a branch transfer is consequent to a pre-determined sale. These ambiguities/ difficulties need to be resolved in the new GST Legislation

It is recommended that the definition of taxable event may, therefore include, inter-state branch transfers of goods for the purposes of sale or further manufacture. However, other inter-state branch transfers (like branch transfers of fixed assets and transfer of services) should not be defined to be taxable events for the purpose of levy of GST. It is also recommended that the valuation rules and the rate of tax on inter-state branch transfers of goods should be framed in a manner to ensure that the cash outflow to the dealer for such notional transactions is the minimal. This can be achieved by either providing for a cost driven valuation model and/or by prescribing a separate IGST rate for inter-state branch transfers. However, in no case, should there be a requirement of declaration forms for inter-state branch transfers.

It is presumed that intra-state branch transfers would not be defined to be taxable events since they are without consideration and there would be no revenue implications to any of the Governments.

2.3. Taxable Entities should not include housing societies and charitable institutions

It is recommended that the definition of taxable entities should exclude co-operative housing societies, essential services provided by the Government and charitable institutions. The definition of taxable entity should also not include an agent of the taxable entity.

2.4. Classification of goods and services be based on international norms

No distinction should be maintained between goods and services and both goods and services should be subjected to uniform tax rates. A registered dealer should be required to collect taxes on every invoice irrespective of whether the supply is for goods or services or a combination thereof. Therefore, no classification of goods and services should be provided for in the law. This will eliminate all classification disputes. However, for statistical and other purposes, if the supplies require classification, the following principles should be adopted:

2.4.1. Harmonised System of Nomenclature (HSN) should be used for the classification of goods

2.4.2. International Standard of Industrial Classification (ISIC) should be used for classification of activities and services.

In particular, all deemed sales including serving food for human consumption, works contracts and leases, etc., may be classified as services only and taxed accordingly.

2.5. Valuation Rules should be based on consideration only

The rules for valuation of supplies should be based purely on consideration received/receivable in the transaction. Notional valuation rules like MRP based valuation, valuation in case of related party transactions, etc. should not be introduced.

In case of inter-state branch transfer of goods, the valuation rules may be drafted appropriately. There should not be any other situation demanding a notional valuation rule or valuation based on subjective criteria.

Under the present VAT law there is an ambiguity across States regarding treatment of discounts, sales commission, incentives, etc. given post sale through issue of credit notes. Appropriate provisions should be made in the GST for treatment of such discounts, commission and incentives in the taxable value

Under current provisions, definition of sale price is different in different enactments. For example, in the CST Act and in the VAT law of some of the States, 'sale price' excludes freight but in some other states like Gujarat and Maharashtra freight is part of 'sale price' and attracts VAT. It is recommended that freight and other charges recovered by the supplier separately in the invoice should also be liable for GST along with sale/supply of goods. Similar provisions should be made in respect of other reimbursements as well

2.6. Minimum number of rates of taxes

It is recommended that there should be minimum possible rates of tax. Ideally, a single rate across all goods and services is desirable. However, looking into the present circumstances, the following rate structure seems to be acceptable to begin with:

2.6.1. NIL Rate for exempted goods and services⁴

2.6.2. Nominal Rate (say 1%) for special cases⁵

2.6.3. Lower Rate for Industrial Inputs and certain specified goods and services

2.6.4. General Rate for all other goods and services – which should be the revenue neutral rate

⁴ This list may be kept at the bare minimum but must include certain essential commodities and services

⁵ Such special cases can include Bullion, jewellery, precious metals, precious & semi precious stones, and cases where the dealer opts for composition, etc.

2.6.5. Demerit Rate for Liquor, Tobacco & Petroleum Products.

The rate/s of CGST and SGST should be worked out appropriately.

There should be no authority to increase or reduce the rates except with the approval of the 'Governing Body'. Also, such increase should be across the country and not restricted to certain States or regions only

Inter-state transactions (including inter-state branch transfer of goods) should attract IGST.

The tendency of overnight changes in the rate/s should be avoided. Changes in rates should always uniformly be implemented, from the 1st of April only, across the country. Sufficient time should be given to the trade, industry and service providers to be aware about the change in rates so that they can modify their system and discharge their tax liability properly rather than facing surprises due to overnight changes in the rates.

2.7. Composition Schemes for small dealers and service providers

There should be a provision for designing optional composition scheme/s for small dealers (whether manufacturer, resellers, importer or service providers) having turnover of up to Rs. 50 lacs/ 100 lacs who may discharge their liability by paying nominal composition amount on total turnover of sales and services, in lieu of CGST and SGST.

2.8. IGST should be levied on Imports

The First Discussion Paper on GST released by Empowered Committee of State Finance Ministers suggests that both CGST and SGST will be levied on import of goods and services into the Country and the tax

revenue in case of SGST will accrue to the State where the imported goods and services are consumed.

It will be very difficult to administer / monitor, in which State the imported goods and services are ultimately consumed after clearance from the Customs Port. For example, the goods cleared from Mumbai Port may be moved to Gujarat or Andhra Pradesh by Road. In such cases, at what point of time, the SGST would be paid whether at the time of imports or in the subsequent month along with SGST payable by the assessee on their sale of goods and services.

But the Central Government would prefer to collect CGST on imports at the time of assessment of Bill of Entry by the customs authority. If, SGST has also to be paid at the time of assessment of Bill of Entry, whether all the SGST Authorities from all the States would have their offices at each Customs Port for collection of SGST payments from the importers.

The above complications can be resolved by levying IGST on imports. The Centre only shall collect IGST and transfer the credit to the State (in which the imported goods are consumed) to the extent of IGST Credit used for payment of SGST.

Sale in the course of import {presently covered by Section 5(2) of the CST Act} should continue to remain exempted from payment of GST/IGST.

2.9. *No tax should be levied on exports*

Exports of goods as well as services should continue to be zero rated (i.e. there should be no tax on outputs with appropriate mechanism for corresponding credit/refund of input tax credits)

Supplies to SEZ Units/Developers should also continue to be zero rated.

Supplies to other exporters may be taxed at normal rates with corresponding refund to the exporter at the time of export. This will avoid the necessity of any kind of declaration forms and will restrict the refund cases to pure exporters only.

2.10. No fresh exemptions

The new law should avoid granting of fresh exemptions of any nature. Existing incentives should be allowed to last till their normal guaranteed period. However, they may be converted into cash refund or such other mechanism

2.11. Uniform threshold limit

The present thought to prescribe different threshold limits for Goods and Services would lead to disputes regarding interpretation of subject matter of tax being classified as Goods or Services (especially with reference to presently defined deemed sale transactions). It is therefore recommended that threshold for Central GST for services may also be identical as for goods in the lines similar to State GST where it is considered that a threshold of gross annual turnover of Rs.10 lakh both for goods and services may be adopted. In fact, we would like to recommend a common threshold for Centre as well as State GST.

2.12. Input Tax Credit should be seamlessly available on 'Business Entity Concept'

Input Credit of Taxes paid on all legitimate business expenses (both Goods & Services) incurred should be allowed irrespective of their nexus with production and sale of the Goods/ Services. Since all these expenses are allowed in computation of Business Income, there appears to be no

rationale to restrict the credits. One of the major components of costs for manufacturing sector is fuel and other energy like electricity. At present, treatment of ITC on fuel is different in different states. Some States allow restricted credit while others have classified fuel under the negative lists. It is recommended that full input tax credit be allowed on fuels as well, so that there is no cascading effect of taxes.

Damages and obsolesce whether due to natural or other causes are unavoidable in various industries. Such losses are integral part of the business costs. It is recommended that such losses should be treated as business losses and should not result in reversal of input tax credits

It is recommended that immediate Input Tax Credits should be available to the purchasers without waiting/ insisting for verification of deposit of tax by the suppliers. The suppliers should be penalized for non-remittance of taxes collected from the purchasers and not vice-versa

Full input tax credit should be allowed on all capital goods in the year of purchase/acquisition itself. Such full credit should be allowed even in cases where the capital goods are used for both taxable as well as exempted supplies/services.

The dealers/ service providers, opting for composition scheme, may be denied the benefit of input tax credit or they may be permitted for restricted input tax credit depending upon the composition scheme so designed.

3. Procedural Matters

3.1. Registration process should be simple and electronic

GST registrations to the existing Service tax assesseees as well as existing VAT dealers should be granted automatically without any hassles

Electronic Provisional Registrations may be granted to the new assesseees immediately over internet so as to enable them for making payment of taxes, etc. Final registrations may be granted to them on scrutiny of documents/place of business etc. within a reasonable time (say within a week).

Certificates to the existing dealers/assesseees may be sent through courier with an adequate grievance redressal system

Responsibility to collect and pay tax must be necessarily on the supplier. Aberrations in the past to this general rule [e.g. tax on GTA services] should be strictly avoided under the GST system. However, provisions for reverse charge on services received from overseas suppliers, who do not have office or establishment in India, may have to continue in the absence of any other feasible option

3.2. Payment of taxes should be electronic or manual

Mode of payment of tax whether electronic or otherwise should be left open to the convenience of the assesseees.

Adequate time (of at least a month) should be given to the assesseee to compute and pay the tax.

Adjustment of excess tax paid any time in the past should be allowed unconditionally.

3.3. Filing of Return should be simple, common and electronic

A single return should be required to be filed for all the components of GST (i.e. CGST, SGST and IGST). Common return format for State and Centre would help comparison on the basic transactions and turnover while simplifying compliance and reducing the number of returns. The information forming part of the return would also be available to both the State and Central authorities while undertaking scrutiny / audit

Irrespective of the quantum of tax liability of an assessee, uniform periodicity for filing returns may be prescribed

Frequency of filing returns – ideally half yearly returns or at the most quarterly returns may be prescribed, though payment of taxes may be monthly.

Revision of returns should be permissible till one year from the end of the Financial Year.

3.4. Other Procedural Aspects

In general it should be self assessment. However, in specific circumstances assessments by the department, if any, should be done (completed) within the period of two years from the end of the financial year.

No revision of assessments post appeal should be permissible so as to bring finality of proceedings.

Audits by Chartered Accountants should be prescribed for a turnover exceeding Rs. 100 lakhs to ensure better compliance without increasing the cost of administration or burden on the departmental officers.

At the end of each departmental audit, an order/report should be issued to the assessee even in absence of any demand.

There should be common national level advance ruling mechanism and the facility of obtaining advance ruling on all the tax matters (whether CGST, SGST or IGST) should be made available to all assessees (whether existing or prospective assessees and whether Indian or not). The advance ruling mechanism should be made faster with adequate fees.

3.5. Hassle free Refunds based on trust

The return itself should work as an application for refund (like I T refunds).

Provisional refunds to the extent of 80% should be granted within a week's time of filing the return. The final refund should be given within a month's time

The rate of interest on refunds should be the same as that of delayed payments by the assessees

The precise documentary/procedural requirements should be laid down in the law itself so as to avoid uncertainties/autocracy on the part of the officers

3.6. Border Check Posts & Declaration Forms should be eliminated

The border check posts have been a serious impediment to free trade between States. Under the GST, there would be a foolproof mechanism to monitor and control inter-state movement and transactions. It is therefore recommended that the check post at borders should exist only for the purpose of security.

It is recommended that the system of declaration forms, entry and transit permits, etc., which are prevailing in the present system, should be completely eliminated. This would save a lot on paper work and precious man-hours, which can be better utilized to ensure compliance under the GST system. The levy of IGST on inter state movement of goods (which includes sales as well as branch transfers) would bring all the transactions on the mapping list which provides for effective control by the Government.

4. Transitional Issues

4.1. Liability in case of ongoing works/turnkey contracts and leases should not increase

The implementation of GST represents a paradigm shift in the basis of indirect taxation. In case of inclusive contracts of long term duration, it may be difficult for the supplier to economically survive in case the impact of fresh taxation is huge. As a transitional measure, it is therefore recommended that the indirect tax on on-going works contracts/turnkey contracts and lease transactions be discharged on similar basis as was being discharged prior to the introduction of GST. This can be done by restricting the GST liability to the extent of tax payable under the existing system till the completion of such on-going contracts/ agreements.

4.2. Dispute Settlement Scheme for existing laws may be introduced.

In order to settle the current disputes in classification, valuation, etc., a dispute resolution scheme may be introduced under the existing State and Central laws to reduce the level of pending litigation in the country. The proceeds from such scheme can be fruitfully utilized for developing infrastructure for GST implementation

4.3. Existing Credits should not be hampered.

The existing credits in CENVAT Account or the State VAT Account should not be hampered on the transition date. The same should be easily available under the GST Regime against the CGST and the SGST liability respectively

Credit for tax component contained in the inputs, WIP and finished goods in stock on the eve of introduction of GST should be carried forward and allowed in the new GST Regime

There should be adequate provisions for accounting the credit contained in the goods and services in transit

Refund of pre-GST taxes on export of goods should be allowed under the GST Regime as well

4.4. Adequate Transition time should be given to the industries.

Adequate Transition time should be given to the industries. Till stabilisation, lenient view for procedural lapses to be taken (i.e. Penal provisions should not be invoked except in the cases of intentional evasion)

4.5. Sufficient care should be taken to move from receipt to accrual basis for services

There should be adequate provisions to deal with the service tax payments on the amounts which get realized post introduction of GST and credits of input services procured prior to the introduction of GST but paid thereafter. It is recommended that both the payment as well as credit should be available as per the existing provisions i.e. on receipt/payment of the amount. However, such transitional provisions should exist for a reasonable time period only.

4.6 For smooth transition to the new system it would be necessary to develop a nation wide adequate I T infrastructure.

The removal of declaration forms and full grant of credit will need sufficient monitoring. It is recommended that this monitoring should be done through the development of a robust IT infrastructure with least possible human intervention.

4.7 An awareness campaign through print and electronic media

The provisions of GST should be publicized in sufficient advance and an awareness campaign should be undertaken in print and electronic media

4.8 Training to the staff and change of mindset

Sufficient training should be imparted to the staff regarding the provisions of GST. It is important to apprise them for the change of mindset required from the control based regime to the trust based one.