GST Constitutional Amendment Bill

A GST Café infographic on the passage of the 122nd Constitutional Amendment Bill in the Rajya Sabha

4th August, 2016

VAISH ASSOCIATES ADVOCATES

Features of the GST Constitutional Amendment Bill

122nd Constitutional Amendment Bill, 2014

DESTINATION BASED TAXATION OF SUPPLY

GST is defined as any tax on supply of goods and services other than on alcohol for human consumption.

CONCURRENT POWERS TO TAX

Parliament and state legislatures will have concurrent powers to make laws on GST to be levied on supply of goods and services. Law on inter-state supplies to be enacted by the Centre.

PETROLEUM AND ALCOHOL KEPT OUT

Petroleum to be taxed after a period of 5 years as per the Select Committee's recommendation.

COMPENSATION TO STATES

Initially a 1% origin based tax on inter-state supply of goods was envisaged in the Bill along with monetary compensation. In the final form , 1% origin based tax has not been envisaged.

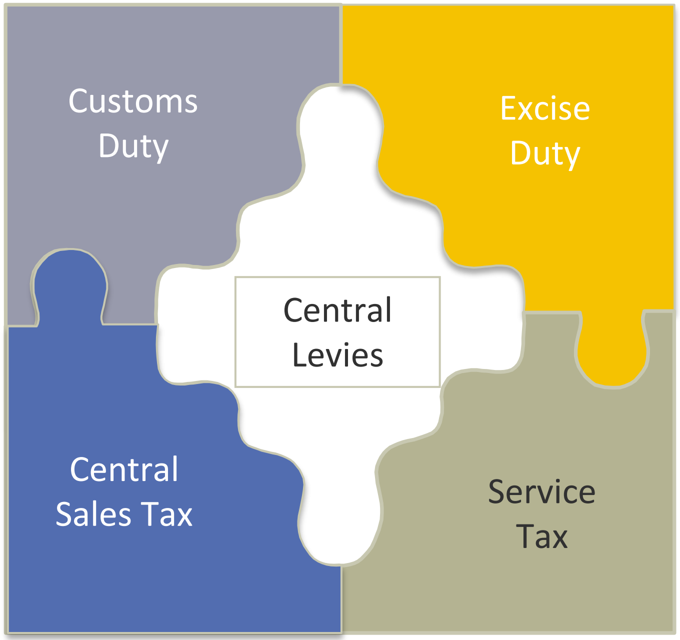
GST TO SUBSUME MOST INDIRECT TAXES

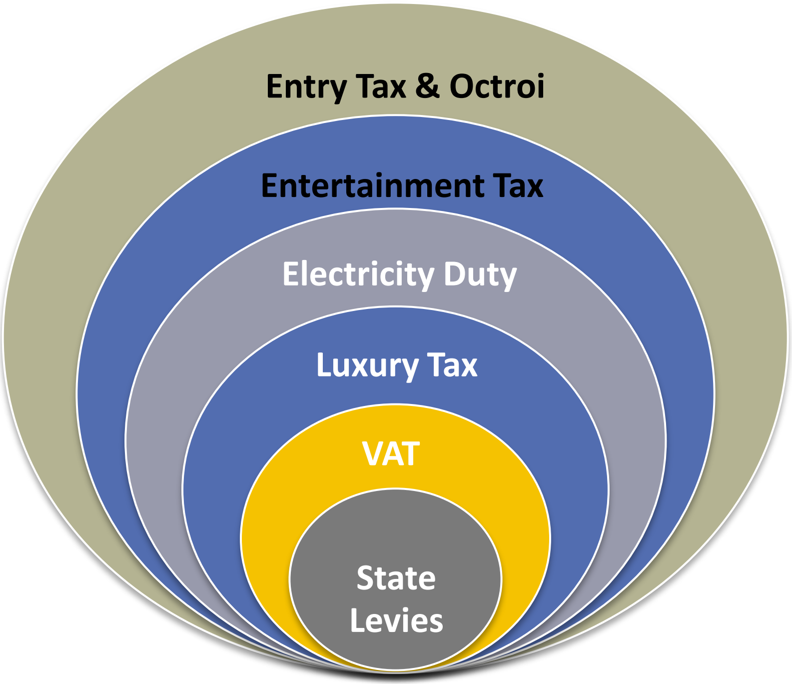
Along with Excise, State VAT/CST and Service Tax; GST to also subsume entry taxes and entertainment taxes. May apply to new sale of newspapers and provide new avenues of taxation to the government.
Stamp duties to continue.

GST COUNCIL

GST Council to be the apex policy making body for GST. The council shall also be responsible for administration of the regime.

Taxes to be subsumed





History of the GST Constitutional Amendment Bill

March, 2011: Government introduces the first version of the Bill in the LS. The bill is sent to a parliamentary standing committee which approves the legislation with some amendments on the provision of tax structure and dispute resolution mechanism in August, 2013. The Bill lapses with dissolution of LS in May, 2014.

May, 2015: LS passes the GST Constitutional Amendment Bill. Petroleum is kept out of the purview.

July, 2015: Rajya Sabha Select Committee clears the bill with few recommendations such as deletion of 1% origin based tax on inter-state supplies without consideration (such as branch transfer) and compensation to states for loss of revenue for 5 years instead of upto 5 years.

August, 2015 – March, 2016: Government is unable to push the bill through RS. The opposition wants deletion of 1% origin based tax on inter-state supply, capping of Revenue Neutral Rate (preferably at 18%) and an independent dispute redressal mechanism.

3rd August, 2016: Bill is passed by the RS after four key amendments (discussed later). Notably, the Revenue Neutral Rate is not capped in the Bill.

Way Forward: Amended Bill needs to be passed by the LS, where the Government has clear majority. Following that, the Bill is required to be ratified by at least 15 state legislatures before the Presidential Assent.

Key Changes in the 2016 Bill

Deletion of 1% Additional Levy

Origin Based Additional Levy on inter-state supply of goods not incorporated in the Final draft. Select Committee Report had suggested that the levy would have caused cascading effect.

Compensation to States

Monetary compensation to be provided for 5 years rather than up to 5 years as per Select Committee's report.

Dispute Resolution

GST Council shall establish a mechanism to adjudicate any dispute arising out of its recommendations. Disputes may be Centre vs. States or States vs. States.

Devolution of Taxes

The amendments state that the CGST and the centre's share of IGST will be distributed between the centre and states. This is merely a restatement of the provisions in clearer terms.

Replacement of the term IGST

As IGST was not defined, it has been replaced by 'goods and services tax levied on supplies in the course of inter-state trade or commerce'. Further, a technical change has been made

Way Forward towards the Rollout

LAUNCH OF GSTN

It is understood that GSTN (the IT backbone) is ready for launch.

RATIFICATION AND PRESIDENTIAL ASSENT

The GST Amendment Bill is required to be ratified by at least 15 state legislatures.

One key takeaway from the Rajya Sabha debates is that states may block the ratification if past dues are not cleared by the Centre due to CST rate reduction

REVENUE NEUTRAL RATE

A plethora of different rates are being proposed for the GST regime with the range of 15.5 per cent to 26 per cent. .

ENACTMENT OF GST STATUTE

Though a draft of the model CGST law and IGST law is being circulated, it is not clear whether the statute would be introduced as a money bill or a finance bill.

In case it is introduced as a money bill, expedited rollout may be expected. However, Constitutionality of the Acts may be challenged in such a case.

Further, underlying Rules, Notifications and Regulations would also have to be notified.

Meeting April, 2017 deadline looks quite probable.

Preparing for GST

Planning for GST: How VA can assist

Exercises needed to be undertaken

	Planning and Strategization	Execution
Marketing Teams	• Pricing and Margin Analysis • Revisit of promotional schemes, warranty and discounts	• GST Process Impact Analysis and Re-design • GST Integrity Analysis
Operations	• Supply Chain Network Design • Contract review • Make vs. Buy Decisions	
Finance	• Planning for transition • Tax representations • Working Capital Changes • GST Updates • Training and SOP	
IT and Systems	Tax procedures, Master data management, Process alignment, Cutover management and Business analytics	

VA provides an unique blend of knowledge of accounting and law. Our team size and attention of Leadership can be leveraged for transitional exercises with a competitive edge over other law firms and accounting firms. This can help extract value for the businesses.

Implications of GST on the Manufacturing Sector

Sr. No.	Issue	Present scenario	GST scenario
1	Inputs purchased inter-state	• Inputs are purchased inter-state at a concessional rate of 2% (CST) • No set-off is available of CST paid • CST becomes a cost	• Set-off of IGST paid will be available
2	Capital goods purchased inter-state	• There are restrictions on availability of ITC on purchase of capital goods in various States • Manufacturers overcome ITC restrictions by carrying out inter-state purchase of capital goods at concessional rate of duty	• ITC restrictions on purchase of capital goods may not continue
3	Distribution	• Manufacturers / dealers align their supply chain to tax considerations and establish multiple stocking points in distribution network	• Retention for stock transfers being absent vs. working capital impact of IGST to be factored • The distribution framework would require a revisit – 2% CST vis-à-vis destination based GST levy
4	Valuation	• MRP based valuation and Transaction value based regime majorly	• MRP valuation method done away with • **Valuation of advances, free supplies and related party transactions are poised to present complications. In the proposed regime, comparison and cost construction the only valuation methods proposed. This is an unnecessary complication which could have been avoided**

Implications of GST on the Service Sector

Sr. No.	Issue	Present scenario	GST scenario
1	Goods vs. Service	• The distinction between goods and services becomes important as Centre can tax only services and States can tax only sale of goods • Taxation of works contract is very complex	• Taxation of works contract is expected to become simpler provided goods and services carry same rate of tax
2	Taxation base	• In case of certain works contracts (AMC contract), the aggregate of taxation base for the purpose of VAT and service tax exceeds 100 per cent	• The taxation base is expected to remain below or equal to 100% of transaction value • Valuation of free supplies and related party transactions are poised to present complications
3	Tax on Tax	• VAT on service tax is an issue - AMC, Software	• CGST and SGST are to be levied only on the supply value of goods / services
4	Excise duty	• Excise duty is levied if a new commodity comes into existence in the process of executing a works contract	• The taxable event would change from “manufacture” to “supply” thereby eliminating the need of a separate incidence of tax

Implications of GST on Trading and E-commerce Sectors

Sr. No.	Issue	Present scenario	GST scenario
1	Loss of CENVAT credit/VAT for Traders	• Cross utilization of CENVAT credit is not available	• The traders can cross utilize the GST credits.
2	Determining the location for Warehousing	• The location is determined based on the preferred location for sale	• Unified taxation regime would make the warehousing less relevant
3	E-Commerce transactions	• Only Commission is charged to tax. No liability on E-commerce operator/aggregator to pay/assess tax.	• Separate ecosystem for e-commerce operators. Tax on B2C transactions between buyer and seller also to be deposited by the E-commerce operators.

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