

Insights of Indian GST

One Country! One Market! One Tax!

The **Article 246 of Constitution of India** read with **schedule VII** provides for the division of taxation powers between the centre and states. Currently, indirect taxes are imposed on goods and services. These include excise duty by centre, sales tax by states, service tax by centre, octroi and entry tax by states, customs duty by centre etc. For taxes imposed by states, the tax rates may vary across different states.

The concept of Value Added Tax (VAT) was introduced for central excise duty (first as MODVAT and then as CENVAT). Prior to this, excise duty was levied on both inputs used and the output produced. This meant that an amount paid as tax on the input was subject to taxation again at the output level (with limited set offs). This was applicable to each intermediate good in the manufacturing process. This “tax on tax” led to cascading of taxes. This problem was sought to be addressed by the VAT regime under which tax paid on the inputs is deducted from the tax payable on the output produced. Similarly, sales tax also had a cascading effect through the distribution chain. All states have now adopted the concept of VAT for state sales tax. The issue of cascading taxation was partly addressed through the VAT regime. However, certain problems remained. For example, several central and state taxes were excluded from VAT. Further, goods and services were taxed differently, thereby making the taxation of products complex. Some of these challenges are sought to be overcome with the introduction of the Goods and Services Tax (GST).

The comprehensive GST regime intends to subsume most indirect taxes under a single taxation regime. In India GST will be value added tax levied across goods and services by both centre and state on a common base. This is expected to help broaden the tax base, increase tax compliance, and reduce economic distortions caused by inter-state variations in taxes.

GST in India required Constitutional amendment

- ✓ In 2011, the Constitution (115th Amendment) Bill, 2011 was introduced in Parliament to enable the levy of GST. However, the Bill lapsed with the dissolution of the 15th Lok Sabha.
- ✓ Subsequently, in December 2014, the Constitution (122nd Amendment) Bill, 2014 was introduced in Lok Sabha. The Bill was passed by Lok Sabha in May 2015 and referred to a Select Committee of Rajya Sabha for examination; the select committee submitted its report in July 2015.
- ✓ The bill was finally passed by Rajya Sabha on 3rd August 2016 with some amendments; those amendments were further ratified in Lok Sabha on 8th August 2016.
- ✓ Constitutional amendment requires ratification by atleast 50% of states; which has been achieved within 23 days as follows :

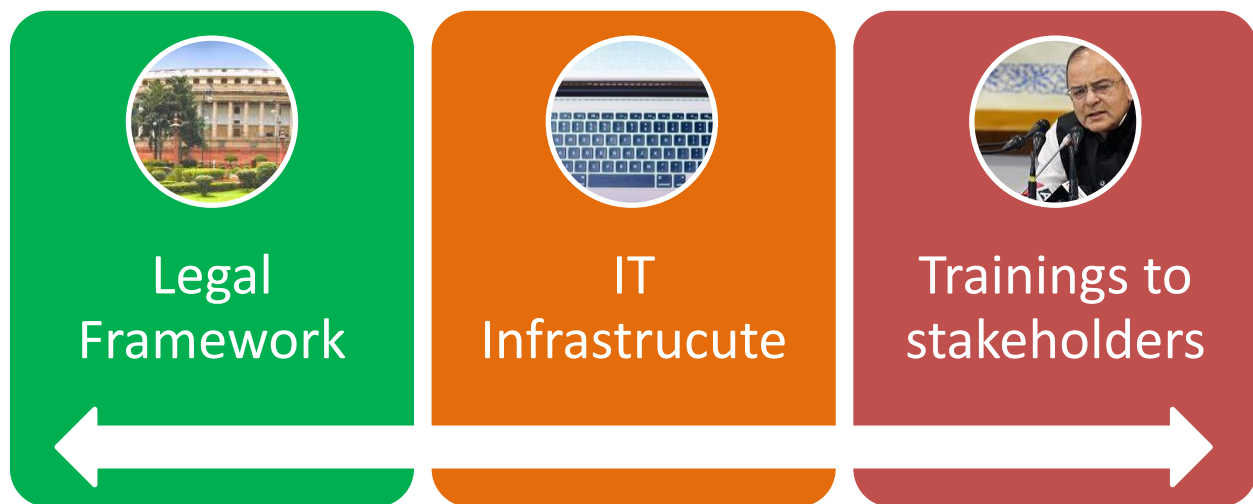
State wise status of GST bill ratification

1. Assam (12 August 2016)
2. Bihar (16 August 2016)

3. Jharkhand (17 August 2016)
4. Himachal Pradesh (22 August 2016)
5. Chhattisgarh (22 August 2016)
6. Gujarat (23 August 2016)
7. Madhya Pradesh (24th August 2016)
8. Delhi (24th August 2016)
9. Nagaland (26th August 2016)
10. Maharashtra (29th August 2016)
11. Haryana (29th August 2016)
12. Telangana (30th August 2016)
13. Sikkim (30th August 2016)
14. Mizoram (30th August 2016)
15. Goa (31st August 2016)
16. Odisha (1st September 2016)

Now president assent is awaited on the bill; to become GST Constitutional Amendment Act, 2016

The Government has a target date of 1st April 2017 to roll out this big bang tax reform, its tough target however its achievable & the detail action plan is as follows:



Establishing Legal framework

- ✓ Passage of the Constitution Amendment Bill from Parliament: ***(Achieved on 8th August 2016)***
- ✓ Ratification by 50% States: ***(Achieved on 1st September 2016)***
- ✓ Presidential Assent of Constitution Amendment and notification in official Gazette: ***(Expected before 15th September 2016)***
- ✓ Cabinet Approval for Formation of GST Council: ***(Expected in the month of September 2016)***
- ✓ Recommendation of Model GST laws by GST Council: ***(Expected before 15th November, 2016)***
- ✓ Cabinet Approval for the CGST and IGST laws by Centre and for SGST laws by ALL states: ***(Expected before 1st December 2016)***

- ✓ Passage of CGST and IGST laws in the Centre and passage of SGST laws in ALL states: (**Winter Session 2016**)
- ✓ Notification of GST Rules: (**by the end of Feb, 2017**)

IT Infrastructure

Goods and Services Tax Network (GSTN): Not-for-profit, non- Government Company set up by Centre and States to provide shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders.

- ✓ Frontend Processes: Common modules for registration, returns and payments being developed by GSTN
- ✓ Backend Processes: Modules for backend processes of tax authorities such as processing registration/returns, assessments, audit, appeals, etc.
- ✓ Development of GST Frontend and Backend for 17 States by GSTN: **End December 2016**
- ✓ CBEC's Backend systems: **End November 2016**
- ✓ Backend systems of 14 States: **End November 2016**
- ✓ Backend systems of Pr. CCA, Banks, RBI & State accounting authorities: **End November 2016**
- ✓ Testing and integration of GST frontend and backend of all stakeholders: **Jan – March 2017**

Trainings to Stakeholders

60,000 officials of Centre and State Governments to be trained on GST laws and IT framework: till lowest level assessing officer in States and Centre

Training on GST Laws:

- ✓ **Phase I:** Source Trainer's workshop (25 officers) – **Completed**
- ✓ **Phase II:** Master Trainer Sessions (350 officers) – **Completed**
- ✓ **Phase III:** Trainer Sessions (1000 officers) – **Till October 2016**
- ✓ **Phase IV:** Last leg training sessions (60,000 officers): **End December 2016**
- ✓ **Training on GST IT systems:** To be held in similar pyramidal structure by GSTN: **December 2016 – March 2017**
- ✓ **Outreach and sensitisation for trade and industry:** Stakeholder consultation and outreach workshops to be organized across the country – have already started with Hyderabad and Jaipur: **To be completed by March 2017**

Benefits of GST (Why GST)

- ✓ It would mitigate cascading or double taxation in a major way and pave the way for a common national market.
- ✓ The biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated around 30 Percent.
- ✓ Introduction of GST would also make Indian products competitive in the domestic and international markets.
- ✓ It would instantly spur economic growth
- ✓ This tax, because of its transparent character, would be easier to administer

Salient Features of GST

The salient features of GST are as under:

- (i) **Supply would be the Taxable event:** GST would be applicable on supply of goods or services against the present concept of tax on the manufacture of goods or on sale of goods or on provision of services
- (ii) **Destination Based Taxation:** Consuming state will gain due to this shift from origin based taxation to destination based taxation; Parliament shall by law, on recommendation of GST council, provide for compensation to states for loss of revenue arising on account of implementation of GST upto 5 years as per clause 19 of the constitutional amendment bill
- (iii) **Dual Taxing Structure:** The new Article 246A intends to grant concurrent powers to the Union and state legislatures to make laws with respect to GST. The power to make laws in respect of supplies in the course of inter-state trade or commerce will be vested only in the Union Government. States will have the right to levy GST on intra-state transactions including services. It would be a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST)
- (iv) **Integrated GST (IGST):** It would be levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre so that the credit chain is not disrupted
- (v) **BCD + IGST on Imports of Goods:** It would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties (BCD)
- (vi) **Rates to be debated in GST Council:** CGST, SGST & IGST would be levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GST Council
- (vii) **Central taxes that would be subsumed within the GST**
 - ✓ Central Excise duty (**Entry 84**)
 - ✓ Duties of Excise (Medicinal and Toilet Preparations) (**Entry 84**)
 - ✓ Additional Duties of Excise (Goods of Special Importance) (**Entry 84**)
 - ✓ Additional Duties of Excise (Textiles and Textile Products) (**Entry 84**)
 - ✓ Additional Duties of Customs (commonly known as CVD) (**Entry 83**)
 - ✓ Special Additional Duty of Customs (SAD) (**Entry 83**)
 - ✓ Service Tax (**Entry 92C**)
 - ✓ Cesses and surcharges insofar as far as they relate to supply of goods or services (**Article 271**)
- (viii) **State taxes that would be subsumed within the GST**
 - ✓ State VAT (**Entry 54**)
 - ✓ Central Sales Tax (**Entry 54**)
 - ✓ Purchase Tax (**Entry 54**)
 - ✓ Luxury Tax (**Entry 62**)
 - ✓ Entry Tax (All forms) (**Entry 52**)
 - ✓ Entertainment Tax (not levied by the local bodies) (**Entry 62**)
 - ✓ Taxes on advertisements (**Entry 55**)

- ✓ Taxes on lotteries, betting and gambling (**Entry 62**)
- ✓ State Cesses and surcharges insofar as far as they relate to supply of goods or services
- (ix) **Potable Alcohol Excluded:** GST would apply to all goods and services except Alcohol for human consumption
- (x) **Petroleum products also excluded for the time being:** GST on petroleum products would be applicable from a date to be recommended by the Goods & Services Tax Council in terms of clause 5 of Article 279A
- (xi) **Tobacco and tobacco products:** They would be subject to GST. In addition, the Centre could continue to levy Central Excise duty
- (xii) **No more entry tax & octroi:** There is a provision to **remove imposition of entry tax/ Octroi across India**
- (xiii) **Entertainment tax:** The tax imposed by states on movie, theatre, etc., will be subsumed in GST, but taxes on entertainment at panchayat, municipality or district level will continue
- (xiv) **GST on Sale of Newspaper and advertisements:** GST is likely to be levied on the sale of newspapers and advertisements and this will give the Government access to substantial incremental revenues
- (xv) **Stamp Duties will continue:** Stamp duties, typically imposed on legal agreements by the state, will continue to be levied by the states
- (xvi) **GST Council:** Newly inserted article 279 in the constitution of India provides for the constitution of GST Council by the president within 60 days from the date of the passing of the Bill and also provides for the appointment of members of the GST Council and its composition and powers to make recommendations
- (xvii) **Administration of GST will be the responsibility of the GST Council, which will be the apex policy-making body for GST:** It will recommend Rates, rate bands, base, thresholds, taxes to be subsumed; Special provisions for Arunachal Pradesh, Assam, J&K, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; Date for application of GST to petroleum products etc.
- (xviii) **Members of the GST Council are Central and State ministers in charge of the finance portfolio:** In the GST Council, the Centre will have a one-third vote and all states combined will have two-third vote. Quorum for GST Council is 50% of total members and for majority of Council decisions 75% of the weighted votes of the members present and voting
- (xix) **Threshold exemption:** A common threshold exemption would apply to both CGST and SGST. Taxpayers with a turnover below it would be exempt from GST. A compounding option (i.e. to pay tax at a flat rate without credits) would be available to small taxpayers below a certain threshold. The threshold exemption and compounding provision would be optional (**GST Council to debate & recommend these limits**)
- (xx) **Minimum Exemptions:** The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as far as possible
- (xxi) **Exports would be zero-rated**
- (xxii) **Input Credit:** Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST paid on inputs may be used only for paying SGST. In other words, the

two streams of input tax credit (ITC) cannot be cross utilised, except in specified circumstances of inter-State supplies, for payment of IGST.

The credit would be permitted to be utilised in the following manner:

- a) ITC of CGST allowed for payment of CGST;
- b) ITC of SGST allowed for payment of SGST;
- c) ITC of CGST allowed for payment of CGST & IGST in that order;
- d) ITC of SGST allowed for payment of SGST & IGST in that order;
- e) ITC of IGST allowed for payment of IGST, CGST & SGST in that order.

- (xxiii) **Accounts would be settled periodically between the Centre and the State:** It is to ensure that the SGST used for payment of IGST is transferred by the Centre to the Destination State where the goods or services are eventually consumed. Similarly the IGST used for payment of SGST would be transferred by the originating State to the Centre.
- (xxiv) **Harmonized Law:** The laws, regulations and procedures for levy and collection of CGST and SGST would be harmonized to the extent possible.

Analysis of Constitutional Amendment bill, 2016

The GST Bill provides for the following changes in the existing Constitution of India

- ✓ Deletion of 1 Article
- ✓ Amendment of 10 Articles
- ✓ Amendment of 2 Schedules
- ✓ Insertion of 3 new Articles

- ☞ **Article 246A:** Special provision creating legislative competence to levy Goods and Services Tax
- ☞ **Article 269A:** Levy and collection of Goods and Service tax in the course or interstate trade and commerce
- ☞ **Article 279A:** Goods and Service Tax Council

Analysis of above amendments is as follows:

- ✓ **Dual GST:** Both the Centre and States given concurrent powers to levy GST
- ✓ **IGST:** Centre given exclusive powers to levy GST on supplies in the course of inter State trade and commerce and imports into India
- ✓ **Taxable event will be supply:** GST defined as any tax on supply of goods and services other than on alcohol for human consumption
- ✓ **Centre empowered to formulate rules for the Place of Supply**

GST shall subsume various indirect taxes being levied by the Union and the State governments (**Refer Point vii & viii above**)

Taxing powers currently not merged in GST and therefore to continue with the Union or State as the case may be:

- ✓ Excise duty on petroleum products (Union) – To be merged in GST as per the recommendation of GST Council

- ✓ Tax on sale of petroleum products (State) – To be merged in GST as per the recommendation of GST Council
- ✓ Tax on alcoholic liquor for human consumption (State)
- ✓ Tax on entertainment and amusement levied and collected by Panchayat/Municipality/ Regional Council/ District Council
- ✓ Stamp Duties

Following Non-GST Taxes will continue to be levied by Centre and State

Central ‘Non-GST’ Taxes

- ✓ **Entry 83-** Duties of customs including export duties (*usually referred to as Basic Customs Duty*)
- ✓ **Entry 89-** Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights
- ✓ **Entry 90-** Taxes other than stamp duties on transactions in stock exchanges and futures markets
- ✓ **Entry 92A-** Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce
- ✓ **Entry 92B-** Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter State trade or commerce

State ‘Non-GST’ Taxes

- ✓ **Entry 49-** Taxes on lands and buildings
- ✓ **Entry 53-** Taxes on the consumption or sale of electricity
- ✓ **Entry 56-** Taxes on goods and passengers carried by road or on inland waterways
- ✓ **Entry 57-** Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III
- ✓ **Entry 59-** Tolls
- ✓ **Entry 60-** Taxes on professions, trades, callings and employments
- ✓ **Entry 63-** Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty

By Saurabh Chhabra

Executive – Content creation & Acquisition
Tax and Accounting

LexisNexis® (A Division of RELX India Pvt Ltd)

14th Floor, Building No. 10, Tower B,
DLF Cyber City, Phase - II,
Gurgaon - 122002 | Haryana