

GST ANALYSIS AND RECOMMENDATIONS

The Government has now announced that the Goods and Services Tax (GST) will be implemented from September 2017. The Tax which will be levied at all stages right from manufacture up to final consumption. This path-breaking reform, although it meets the longstanding demand of trade and industry to simplify and streamline the tax regime in the country. Yet, a number of loopholes need to be addressed.

Under the GST, credits of input taxes paid at each stage will be available in the subsequent stage of value addition. This makes GST essentially a tax only on value addition at each stage in the value chain. The final consumer will thus bear only the GST charged by the last dealer in the supply chain with set-off benefits at the previous stages. Further, the state which has the jurisdiction over the place of consumption, also termed as the place of supply, would be the taxing authority.

A four - tier Goods and Services Tax (GST) rate structure with classified rates of 5%, 12%, 18% and 28% would be applicable across a wide range of goods and services. To safeguard the interest of the poor and to keep inflation under check, several essential items would be exempt from tax.

The following taxes would be subsumed under GST:

- (i) **Taxes currently levied and collected by the Centre:**
 - a. Central Excise duty
 - b. Duties of Excise (Medicinal and Toilet Preparations)
 - c. Additional Duties of Excise (Goods of Special Importance)
 - d. Additional Duties of Excise (Textiles and Textile Products)
 - e. Additional Duties of Customs (commonly known as CVD)
 - f. Special Additional Duty of Customs (SAD)
 - g. Service Tax
 - h. Central Surcharges and Cesses so far as they relate to supply of goods and services

- (ii) **State taxes that would be subsumed under the GST are:**
 - a. State VAT
 - b. Central Sales Tax
 - c. Luxury Tax
 - d. Entry Tax (all forms)
 - e. Entertainment and Amusement Tax (except when levied by the local bodies)

- f. Taxes on advertisements
- g. Purchase Tax
- h. Taxes on lotteries, betting and gambling
- i. State Surcharges and Cesses so far as they relate to supply of goods and services

Keeping in mind the federal structure of India, there will be two components of GST – Central GST (CGST) and State GST (SGST). Both Centre and States will simultaneously levy GST across the value chain. Tax will be levied on every supply of goods and services. Centre would levy and collect Central Goods and Services Tax (CGST), and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State.

The input tax credit of CGST would be available for discharging the CGST liability on the output at each stage. Similarly, the credit of SGST paid on inputs would be allowed for paying the SGST on output. No cross utilization of credit would be permitted.

The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except on exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of Central Excise.

In case of inter-State transactions, the Centre would levy and collect the Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods and services under Article 269A (1) of the Constitution. The IGST would roughly be equal to CGST plus SGST.

The IGST mechanism has been designed to ensure seamless flow of input tax credit from one State to another. The inter-State seller would pay IGST on the sale of his goods to the Central Government after adjusting credit of IGST, CGST and SGST on his purchases (in that order). The exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The importing dealer will claim credit of IGST while discharging his output tax liability (both CGST and SGST) in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. Since GST is a destination-based tax, all SGST on the final product will ordinarily accrue to the consuming State.

While GST is a bold and pragmatic move to reform the tax structure and will benefit industry across sectors, there are also widespread concerns with regard to its structure and implementation. This paper seeks to highlight some of the lacunae in the GST system which need to be addressed to allay the fears of trade and industry.

Recommendations for Goods and Services Tax

1. Waive taxes on exempted entities:

Under the existing tax regime, the central and state governments exempt excise duty on establishments that manufacture goods from 11 states belonging to the North East and Hilly areas of the country. Similarly, the central government does not impose service tax on certain

services specified in the negative list.

Under the proposed Goods and Services Tax (GST) Regime, the above exempted establishments would be levied the relevant excise duty or service tax, as the case may be, and the same would be reimbursed from the annual budget. This method of exemption would lead to increase in the working capital requirement for the exempted entities. Also, there is a huge time lag between the payment of taxes and reimbursement of the same, leading to shortage of liquidity with the exempted entities.

Suggestion: The government must either waive the GST on the exempted entities or ensure that the entities receive refunds either monthly or quarterly instead of annually.

2. Introduce centralized registration

The proposed GST regime requires assesses operating from more than one state to take separate registration in the respective states. The mandatory registration in different states would increase the compliance cost and time for all companies, and would adversely affect micro small and medium enterprises (MSMEs).

Suggestion: In the interest of ease of doing business, the government must introduce centralized registration or at least zonal-wise registration system instead of the proposed state-wise registration. Also, the government must allow assesses involved in vertical business to have single registration for the purpose of claiming input tax credit.

Centre and States have not yet reached a consensus on dual control

Consensus on the issue of dual control as to which taxpayer is to be assessed by whom, between the Centre and the States has not yet been reached. This was evident in the informal meet between the Centre and the States on 20 November 2016.

The States have been insisting on sole administrative control on assesses having annual turnover up to INR 1.5 Crore inclusive of goods and services.

Suggestion: The said issue is that the same tax payer should not be assessed by both the Centre and the relevant State and clarity on the issue is most crucial prior to the roll out of the GST. The Government should consider this matter before GST is put into force in September 2017.

3. Publish information materials in vernacular language:

The government has prepared the Model GST Law in English. Further, all the acts, rules, regulations and FAQ regarding GST are available in English language. Entrepreneurs of many establishments in India may not have proficiency in English language to understand the Model GST Law and the rules associated with it.

Suggestion: The government must translate the existing GST rules and regulations in vernacular languages so that it can be better understood by all the assesses, especially in the MSME sector.

4. Capacity building at tax departments:

GST is being introduced for the first time in the tax history of India. Most officials in the tax department are not conversant with the GST Laws, GST Network and the method of assessment under the new regime. This constrains their ability to conduct proper assessment, audit and refund of taxes under the new regime.

Suggestion: The government must introduce a comprehensive training programme to familiarize all the assessing officers, right from the top to the bottom in the tax departments of both the central and all the state governments, with the concept of GST, the information technology infrastructure of GST, the assessment, audit and refund procedures under the new regime.

5. Exempt registration of casual dealers:

The proposed GST regime requires dealers who conduct transactions or business occasionally to be registered with the tax department even if they fall below the threshold limit. Further, the validity of the certificate of registration expires after 90 days from the date of registration. The proposed GST regime also requires casual dealers to pay in advance the estimated tax liability of such occasional transaction at the time of application for registration.

This adds to paper work and compliance cost to casual dealers who operate on small margins. Moreover, the advance tax payment requirement would increase the working capital needs of such dealers.

Suggestion: The government may waive the registration requirement for such dealer and instead accept statement of purchases and supply of goods or services for the purpose of filing tax returns. Also, casual dealers should be allowed to pay tax after receiving payment from their customers (instead of the requirement of advance payment). The tax department may convert the registration status of casual dealers into dormant and waive them from filing any tax returns in case no transaction is recorded for more than 12 months. The registration status may be turned active upon submission of relevant documents

6. Ease cancellation procedure:

The government has provided cumbersome procedure for cancellation of registration under GST. The procedure includes online submission of GST REG-14 Form, Form 19 and other relevant documents including the details of closing stock. Also, the tax authority does not allow a taxable person who has registered voluntarily to cancel his registration within one year. Thus, people, who registered voluntarily, have to file returns under GST because of the one-year lock-in period. All these procedures lead to undue compliance cost and time for MSMEs.

Suggestion: The government must simplify the cancellation procedure and remove the one-year lock-in period for cancellation.

7. Simplify returns filing for MSME sector:

The Model GST Law requires all assesses, who have not opted for composition scheme, to file around 37 tax returns every year. These include three returns every month – GSTR-1, GSTR-2

and GSTR-3 – and one annual return. If an MSME fails to comply with this filing requirement, it cannot claim input tax credit.

Suggestion: The government must exempt MSMEs from the above norms for filing returns at least in the initial few years. MSMEs must be allowed to file single return, instead of three separate returns, on a monthly basis at least for the first five years.

8. **Eliminate conditionality for tax credit:**

Under the proposed Goods and Services Tax regime, a business entity can claim input tax credit for the tax component paid to the supplier of the input. However, the entity may not receive input tax credit if the supplier of the input fails to deposit the input tax so paid by the entity to the government. This policy of denial of input tax credit to the buying entity for the fault of the supplier would force large firms to consolidate their vendors and weed out small suppliers.

Therefore, the government must consider unconditional credit of input taxes irrespective of whether it is paid to the authority by the goods or services supplier.

In another instance of restrictive input tax credit, the model GST Law envisages some restriction on CENVAT credit for tax paid on certain works contract, if the contract involves purchase of goods and services. Similarly, the government may deny CENVAT credit for taxes paid on purchase of motor vehicles if the vehicles are purchased for purposes other than transportation of goods.

Thus, business entities buying motor vehicles for the transportation of their executives may not be eligible for CENVAT credit under the proposed Goods and Services Tax.

Suggestion: The government must consider the withdrawal of these restrictions in administering CENVAT credit. The tax department should not punish genuine buyers for the failure of sellers to deposit tax. The department must devise mechanism to identify defaulting suppliers in these cases.

9. **Prepare MSMEs for GST:**

By all likelihood, government may introduce the proposed GST regime from April 2017. GST is a completely new tax regime for Indian companies, especially the MSMEs as they have no knowledge of the concept, compliance procedure, including the use of IT infrastructure. Therefore, MSMEs need to incur cost for training themselves to adapt to the new tax regime.

Suggestion: The government must work with industry bodies to conduct training programmes for MSMEs at subsidized cost.

10. **Reconsider threshold limit:**

The GST Council has decided the threshold turnover limit of Rs 20 lakh for applicability of GST. In case of North Eastern States, the threshold limit is Rs 10 lakh. This is far lower than the present threshold limit of Rs 1.50 crore under the Central Excise Law. The far lower threshold limit would increase the tax burden of MSMEs and raise their working capital

requirement. More importantly, the turnover, under the proposed GST regime, would be calculated by including all taxable and non-taxable supplies, exports of goods and or services and so on.

Suggestion: The government must reconsider this threshold limit to reduce the tax burden of MSMEs. Further, the government should not consider non-taxable services and export of goods and services while calculating aggregate turnover.

11. Exempt tax on supply of free sample goods:

Under the proposed GST regime, the sample goods distributed free of cost by companies would attract relevant tax. Similarly, services provided by assesses without any consideration would be taxed under the relevant GST rate.

This is contrary to the present condition where free samples are not levied value added tax or central sales tax. Similarly, free services do not attract service tax under the existing regime. The proposed move to tax free goods and services may raise the marketing cost of companies and adversely impact the margins of MSMEs.

Suggestion: The government must exempt free goods and services from GST.

12. Eliminate waybills or transit forms:

Under the existing rules of Sales Tax, sales tax authorities dispense waybills to dealers either physically or online for the purpose of moving goods from one place to another. The continuation of this procedure under the proposed GST regime would add to the compliance burden of MSMEs.

Suggestion: The tax department need not continue this procedure under the GST regime as all movement of goods can be tracked on the GST website. The elimination of waybills or transit forms would reduce the compliance burden for MSMEs under the GST regime.

13. Minimize ambiguity in definition of inter-state and intra-state transactions

Under the existing service tax regime, the central government imposes uniform service tax irrespective of whether the transaction is between two assesses in the same state or different states. However, under the GST regime, intra-state services attract Central GST and State GST, while inter-state services attract Integrated GST besides Central GST and State GST. There are instances where a service provider is actually registered in one state but offers his service from a different state to a client who is located in the same state. The tax department must clarify whether it would treat such services as inter-state or intra-state. Ambiguous definition on inter-state and intra-state services would attract confusion and dispute.

Suggestion: The government may classify such services as inter-state services where the service provider and his client have registered business units in two different states, but the service provider offers his services from the client location. Such transactions attract Integrated GST which is eligible for input tax credit.

14. Introduce input tax credit for works contractor:

The main advantage of GST is the availability of input tax credit for taxes paid on raw materials and intermediate goods used in the process of manufacturing finished goods.

However, the Model GST Law does not permit works contractors to claim input tax credit for goods and services (other than plant and machinery) used in constructing industrial or commercial property. Also, under the existing tax regime, the central government offers abatement of 70% for works contracts. However, the Model GST Law does not prescribe any such abatement rate in a works contract pertaining to under-construction properties.

Suggestion: The government must offer input tax credit to works contractors and also specify abatement rate for constructing industrial or commercial property.

15. Remove restriction on coverage of goods:

The Draft Registration Rules of GST allows assesses to trade in only five goods under single registration. Under this rule, MSMEs dealing in more than five goods need to take more than one registration, thereby increasing their compliance burden.

Suggestion: The government must eliminate such restriction on the number of goods that are covered under single registration.

16. Introducing efficient dispute resolution mechanism:

As in any other tax regime, GST may also lead to some disputes between the tax department and assesses. The Model GST Law does not prescribe any mechanism to settle such dispute. An efficient dispute resolution mechanism is required to settle disputes in a time-bound manner.

Suggestion: The government may consider the formation of dispute resolution committees in all the states and union territories for hearing such disputes. These committees must be staffed with experts from legal and audit profession.

17. Inclusion of all goods under GST:

The proposed GST regime excludes certain goods such as alcoholic liquor, petroleum products and electricity. These goods would continue to be taxed under the existing tax regime. The non-inclusion of these goods has rendered the aim of GST 'to create a unified market' an unfinished agenda.

Suggestion: The government must bring these goods under the proposed GST regime.

18. Remove subsidies from value of goods and services:

According to the Model GST Law, government subsidies provided under various schemes

would be included while valuing goods and services for the purpose of determining tax liability. This would increase the effect of tax liability and defeat the very purpose of providing subsidies.

Suggestion: The tax department should not add subsidy while calculating the value of goods and services.

19 Exempt stock transfer from imposition of GST :

Under the existing tax regime, stock transfer of goods from one state to another does not attract value added tax or central state tax.

However, the Model GST Law envisages imposition of Integrated GST for inter-state stock transfer of goods. Even stock transfer within the same state would attract GST in case the assessee has more than one registration in the state.

Suggestion: The government must exempt GST on stock transfer, both inter-state and intra-state.

20 Concession on interest, penalty and imprisonment for MSME sector:

The Model GST law does not prescribe any concession on interest and penalty for defaulting assesses in the MSME sector. The existing service tax regime offers a concession of 3% on the interest to be paid by service providers whose taxable services is less than Rs 60 lakh per annum.

Suggestion: The government must introduce concession in interest and penalty payment for assesses in the MSME sector. Also, the provision for imprisonment should be less stringent in case of assesses in this sector.

21. Provision of input tax credit for outsourced work:

In some cases, manufacturers outsource a part of the production process to external job worker. The Model GST Law does not allow manufacturers to claim input tax credit for the taxes paid on the raw materials or any other inputs added by the job worker. This would discourage manufacturers from outsourcing their process to external job workers.

Suggestion: The government must allow manufacturers to claim input tax credit for taxes paid on the raw materials or any other inputs added by the job worker

22. Eliminating reverse charge mechanism for goods:

Under the existing tax regime, reverse charge mechanism is applicable to only services sector and not for transactions in goods. However, under the proposed Goods and Services Tax regime, the government intends to extend the reverse charge mechanism to some specified goods. This would constrain the working capital position of small and medium enterprises who buy goods for their operations.

Typically, under a B2B transaction involving sale of goods by one company to the other company, the seller of the good provides credit line to the buyer of the good. The credit line is

generally for a period of 30 days or 90 days within which the buyer can pay the value of the good as well as the applicable tax to the seller. However, under the reverse charge mechanism, the buyer of the good has to pay the applicable GST rate on the good immediately after the vendor sells the good and raises invoice, irrespective of whether the vendor provides credit line. This reduces the time available for the buyer to pay tax on the goods purchased even though the seller offers credit line. This would affect the liquidity of the buyers in the micro, small and medium enterprises.

Suggestion: The government must reconsider the extension of reverse charge mechanism for goods.

23. Eliminating Advance Charge Mechanism:

The proposed Goods and Service Tax regime would introduce advance charge mechanism for payment of taxes on all goods by the seller. There are some instances where the buyer of the goods pays the value of the goods to the seller in advance before even receiving the physical possession of the good. Under the existing tax regime, the seller of the goods can deposit the tax on the good with the tax authority after making physical delivery of the good to the buyer. However, under the proposed Goods and Service Tax regime, the seller will have to make the tax payment immediately after he receives the advance money from the buyer irrespective of when he delivers the goods to the seller. This requirement of advance tax payment would constrain the working capital position of the selling company and hence need to be reconsidered.

Suggestion: The government must reconsider the requirement of advance tax payment to ease the constraints faced by the seller.

24. Reconsider multiple registration of service tax providers:

Under the existing tax regime, service providers have to register with only one authority and have to file only two returns annually. The returns are filed half-yearly, once each for the April-September period and October-March period. However, under the proposed Goods and Services Tax regime, service providers need to register with as many states as they operate and they have to file monthly returns of the tax. This adds to the compliance burden, especially of small tax payers.

Suggestion: The government must reconsider the procedure of multiple registration and filing of monthly returns in the interest of ease of doing business.

25. Reconsider tax collection at source for E-commerce companies:

Under the current regime, e-commerce companies adopting the marketplace model are not responsible for the payment of tax by the entity that sells goods through its online platform. However, under the proposed Goods and Services Tax, e-commerce companies must deduct tax, on behalf of the seller, and deposit the same with the relevant tax authority. Therefore, they must register with the tax offices of all the states where they operate and file separate tax returns in all these offices. This would increase the compliance cost and hence the margin of e-commerce companies, especially the start-up companies who operate on thin margins.

Suggestion: The government must reconsider the tax collection compliance of E-commerce companies to ease the procedures.

26. **Simplification and Rationalization:**

The ultimate objective of introducing Goods and Services Tax regime is to simplify and rationalize the highly distorting multiple tax structure that exist today.

However, the decision of the GST Council to introduce a four-tiered rate structure – 5 per cent, 12 per cent, 18 per cent and 28 per cent defeats the very objective of simplicity in tax system. Multiple tax structure leads to ambiguities and litigation, thereby increasing the cost of doing business in the country. Further, the GST council decided to introduce a cess on demerit goods such as tobacco, pan masala, and luxury items such as cars to compensate states for a possible revenue loss.

In 2008, the Empowered Committee under the Chairmanship of former Finance Minister of West Bengal Dr. Asim Dasgupta recommended a simple tax structure by subsuming all cesses into the central GST. The continuation of the practice of imposing cess under the GST regime is a retrograde move and must be reconsidered by the government.

Suggestion: The central government must devise alternative way for compensating state governments for the revenue loss.