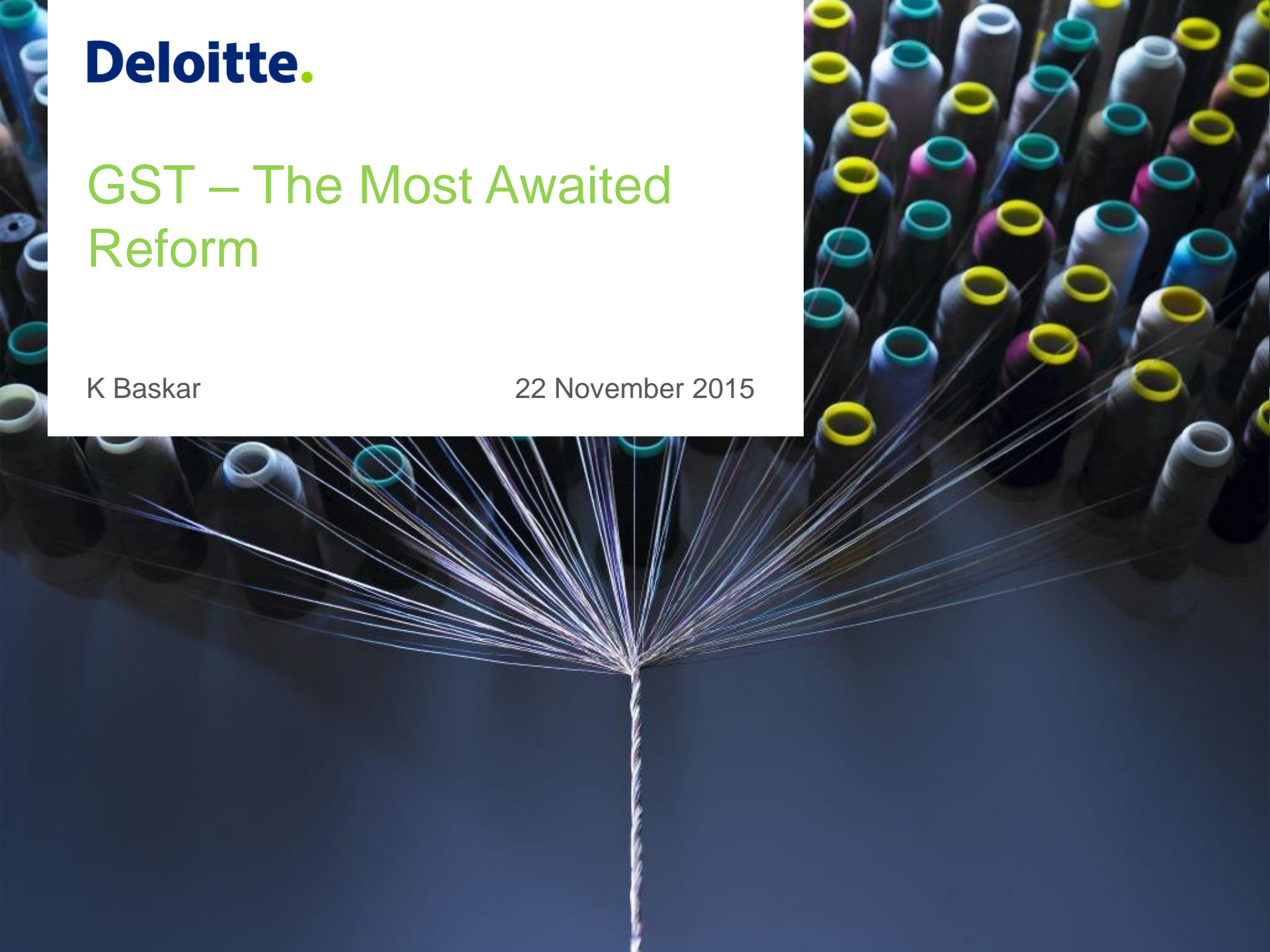


The Deloitte logo, consisting of the word "Deloitte" in a bold, blue, sans-serif font, followed by a small blue dot.

GST – The Most Awaited Reform

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22 November 2015



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- Indirect Taxation
- GST Overview
- Potential Implications
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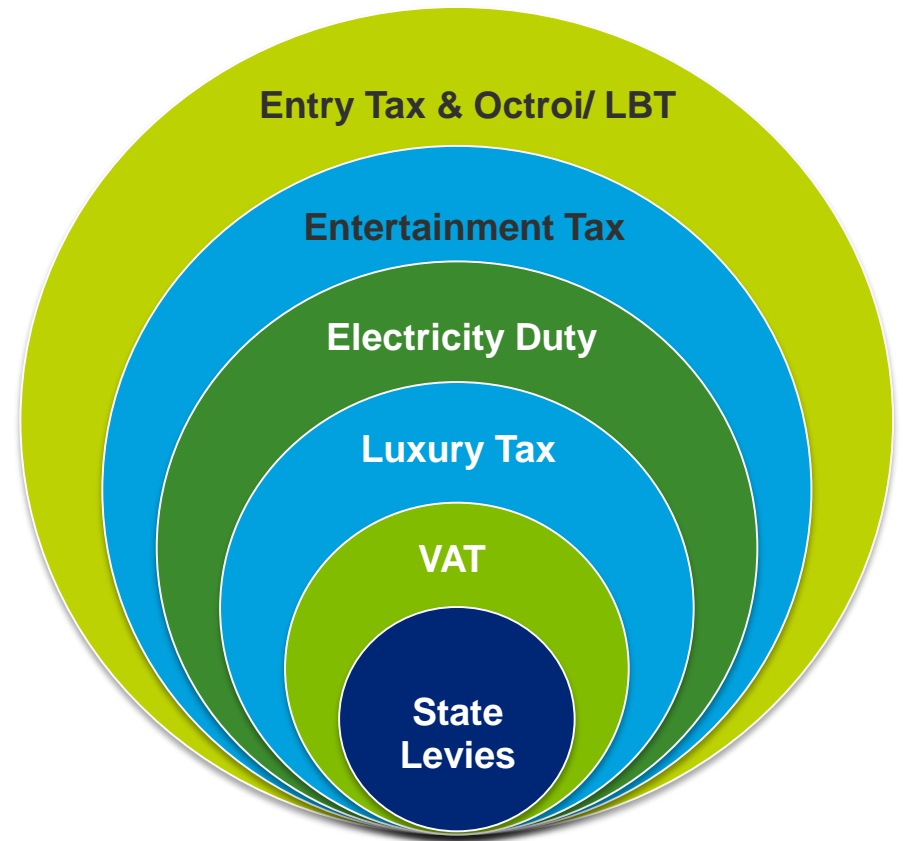
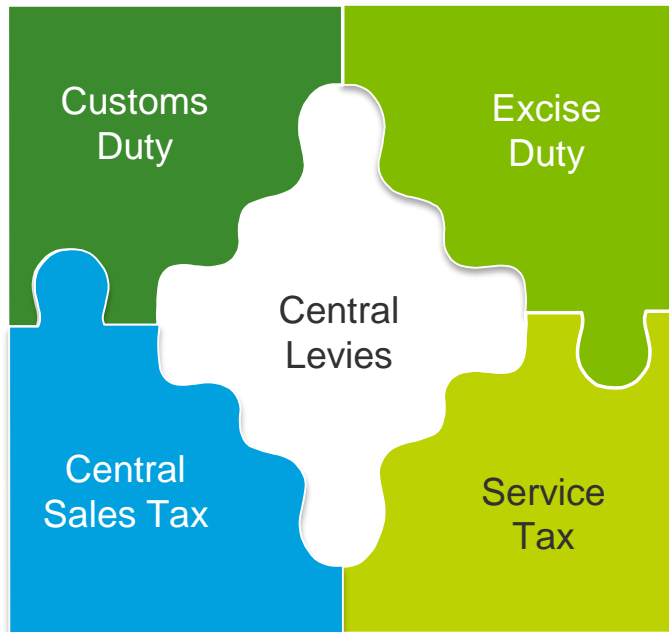
Introduction to Indirect Taxation



Introduction to Indirect taxes

- Indirect taxes contributes to about 60% of India's Gross Domestic Product (GDP).
- It is levied at various stages from import, manufacture, sale and service.
- Tax incidence is passed on to the ultimate consumer.
- Tax is paid on the value of goods supplied or services rendered.
- Types of Indirect taxes are:
 - Central levies
 - State levies
 - Municipal levies

Current indirect tax structure



Swachh Bharat Cess @ 0.5% of value of services leviable from 15 Nov '15

Central Excise Duty

- Central Excise Duty is levied on manufacture of goods in India
- The general rate of Excise Duty is 12.5%
- Following are the basic conditions for levy of Excise Duty:
 - ✓ There must be goods
 - ✓ The goods must be excisable
 - ✓ Such goods must result out of production or manufacture
 - ✓ The production or manufacture must take place in India (except in SEZ)
- The levy is on goods specified under First and Second schedule of the Central Excise Tariff Act, 1985.

Meaning of term “Manufacture”



Facts of the case

- The Assesse is engaged in packing combination of mixture of rice, dehydrated vegetables and spices in the name of ‘rice and spice’
- The mixture was in a predetermined proportion and was mixed with preservatives to have a longer shelf life
- The assessee has been paying ‘nil’ rate of duty based on classification under chapter 11.01 of Central Excise Tariff - applicable to products of milling industry



Issues for consideration

Whether the process of mixing amounts to manufacture? If so has the classification of goods been made rightly by the assessee under chapter 11.01?



Observations of the Supreme Court of India

It was held that the mixing process performed by the assessee didn’t amount to manufacture and excise duty was not payable :

- As the essential characteristics of the input product still remains the same after processing. The original identity of the product remains same.
- Therefore, classification of rice under chapter 11.01 – product of milling industry, was apt, though excise duty was not required to be paid in the present case

Valuation-Central Excise



Facts of the case

- The Assesse is engaged in manufacture of motor cars in India
- The cars were sold at a price below the cost of production of the cars with an objective to penetrate the market and handle competition
- The sale price charged to the wholesale dealers was considered as assessable value and excise duty was paid accordingly



Issues for consideration

Whether sale price (below cost) can be considered for assessment purposes?



Observations of the Supreme Court of India

- It was held, that for arriving at the assessable value, ordinary price which was cost of production with normal profit shall be considered since:
 - Price is not the sole consideration and the assessee had an extra commercial consideration to penetrate the market
 - Ordinary price doesn't mean sale price of majority of products but normal price at which goods should have ordinarily been sold in the market

Customs Duty

- Customs Duty is levied on importation and exportation of goods into/outside India
- The rate of duty has been specified in the Customs Tariff Act, 1975 (*General 10%*)
- Following are the basic conditions for levy of customs duty:
 - ✓ The levy of duty is on goods
 - ✓ The goods must be imported into or exported from India
 - ✓ General exemptions and benefits under FTA are available
- The taxable events are as follows:
 - For import: When the goods are cleared for home consumption
 - For export: When goods cross territorial waters of India

Valuation-Customs



Facts of the case

- Ms Ferodo India Pvt Ltd. has imported inputs and capital goods, for manufacture of break liners and break pads, from its parent company situated in UK
- It also paid license fee according to its agreement with its parent Company. Also, royalty on sale price of product sold was also payable for disclosure of secret promises, formulae and information, which was necessary for process of manufacture



Issues for consideration

Whether royalty/license fee paid shall form part of the assessable value for the purpose of customs valuation?



Observations of the Supreme Court of India

- It was held that, in the present case, royalty/license fee shall not form part of the transaction value for the following reasons:
 - The aforesaid service costs are includable to the assessable value only if the payment is a pre-requisite condition for importation of the said goods
 - However, the payments of royalty/license fees was entirely relatable to the manufacture of brake liners and brake pads and has no nexus to imported goods

Service tax

- Service tax is charged on provision of services.
- The rate of service is 14%.
- Additionally, levy of 'Swachh Bharat Cess (SBC)' at 2% has been proposed in Finance Bill 2015.
- SBC is levied at 0.5% on all the services except those which are exempted from service tax
- Following are the basic conditions for levy of service tax:
 - ✓ Service should have been provided or agreed to be provided
 - ✓ It should be provided for a consideration
 - ✓ It must be provided from one person to another
 - ✓ It must be provided in the taxable territory as per Place of Provision of Services Rules
 - ✓ Service must not be specified in the negative list
- The recent amendments brought out that 'any expenditure incurred by the service provider in the course of providing taxable services would be includible in the value of such services.'

Applicability of Service tax on notional income



Facts of the case

- Reliance Infratel Limited (Assessee) had leased optical cable network for 10 years to Reliance Communications Ltd., under a contract stipulating nominal rentals during initial 5 years and considerably inflated rentals during remaining 5 years;
- Assessee argues on scope and ambit of Sec 67 of Finance Act, that term “gross amount charged” does not embrace within its ambit ‘notional income’ arising out of accounting treatment under AS-19;



Issues for consideration

- Whether service tax is applicable on differential lease rentals disclosed in accordance with AS-19?



Observations of the CESTAT (Mumbai)

- CESTAT held that the “gross amount” definition r/w “consideration” includes income arising from contractual obligation and does not seek to tax “notional income”; hence, such notional income would not be taxable for service tax purposes,

Valuation-Service tax



Facts of the case

- Idea Mobile Communications Ltd. was selling the SIM cards to its subscribers
- The Sales tax authorities demanded sales tax on sale of SIM card which included activation charges
- The service tax authorities also demanded service tax on activation charges as well as value of SIM card



Issues for consideration

Whether the value of SIM Cards is to be included in the value of services for the purpose of levy of Service tax?



Observations of the Supreme Court

- The intention of the service provider is not to sell the SIM card independently but incidental to the service which was being provided
- Therefore, the value of SIM Cars sold to the mobile subscribers are to be included in the value of services provided.

Applicability of service tax in a works contract



Facts of the case

- Kone elevators is engaged in manufacture, supply and installation of lifts involving civil construction
- Kone elevators' obligation was to supply the lift based on specification of the customer and install the same in the customers premises
- In the contract terms, it was the duty of the customer to keep the site ready for installation



Issues for consideration

Whether the contract was a 'works contract' or 'a contract of sale'?



Observations of the Supreme Court

- The Honorable Supreme Court held the transaction to be a “works contract” and not mere “sale of goods” for the following reasons:-
 - If there are two contracts, namely, for purchase of components and for installation, the former would constitute a “sale” and the latter as “services”.
 - Once there is composite contract for supply and installation, the same should be treated as “works contract”.
 - Therefore, the transaction of supply and installation of lifts constitutes as a “works contract”.

Transfer of responsibility to discharge ST liability



Facts of the case

- The Appellant had entered into contracts with seven agencies (the Advertisers) to provide taxable service by providing space to such parties for display of advertisements and in the contract it was provided that the responsibility to pay Service tax and other advertisement tax will be of the Advertisers
- Two Advertisers had not reimbursed the appellant for the Service tax component. Consequently, the Appellant failed to pay Service tax on the services rendered by them



Issues for consideration

- Whether responsibility to discharge service tax liability can be transferred?



Observations of the CESTAT (Mum)

- It was held that Service tax burden can be transferred by contractual arrangement to the other party but, the assessee cannot ask the Revenue to wait for discharge of the liability till it has recovered the amount from its contractors.

Export of service – FIRC received in rupees



Facts of the case

- The Appellant was engaged in export of services
- The foreign inward remittance certificates issued in relation to consideration for such export of services was received in Indian Rupees



Issues for consideration

- Whether services would qualify as exports even if consideration is received in INR ?



Observations of Mumbai CESTAT

- Even though the appellant has received the payment in INR, in view of FEMA notification issued by RBI that same is deemed to be convertible foreign exchange and accordingly condition as allowed under Rule 3(ii) of Export of Service Rules stands fulfilled.

VAT & CST

- VAT is a state subject and hence levied and collected by the selling State.
- CST is levied on inter-state sale transaction.
- Each state shall have its own VAT law.
- The rate of VAT in Karnataka varies from 0%, 1%, 5.5%, 14.5% or 20%. The rates may be different in each state as prescribed in the laws of the respective states.
- The rate of CST shall be the VAT rate from the state where sale takes place (except a standard rate of 2% where C Forms are issued)
- Input tax credit of VAT can be availed and set-off against output VAT / CST liability

Applicability of VAT on sale of intangible goods



Facts of the case

- Parent company for Tata group has entered into a 'TATA brand equity and brand promotion equity' agreement with its subsidiary companies, setting out various standards to protect, enforce and enhance the image of 'TATA brand'
- The parent company also charges a consideration for transfer of this agreement which is in the form of trademarks



Issues for consideration

Whether transfer of trademarks will be subject to VAT under Maharashtra VAT Act?



Observations of the Bombay High Court

- The transaction will come under the preview of Maharashtra VAT laws and VAT has to be charged on the consideration for following reasons:
 - Right to use trademark is transferable right
 - 'Sale' is defined under Maharashtra Sales tax Act, 1985 to include transfer of right to use any goods for any purpose
 - The law doesn't specify that the transfer has to be unconditional one

GST Overview



GST around the globe

- France was the first country to adopt GST in 1954
- There are two types of GST systems; unified and dual.
- Most of the countries have a unified GST system.
- Brazil and Canada follow a dual system where GST is levied by both, Union as well as State Governments
- There are 160 countries in the world that have implemented VAT / GST.
- Number of countries based on region are stated in the table
- Highest rate of GST is in Hungary (27%) and lowest rate in Nigeria (5%)

No.	Region	No. of Countries
1	ASEAN	7
2	Asia	19
3	Europe	53
4	Oceania	7
5	Africa	44
6	South America	11
7	Caribbean, Central & North America	19

Source: "Countries implementing VAT or GST"
http://www.treasury.gov.my/pdf/ucapan/2014/National_GST.pdf

Need for GST

Tax Cascading:

- No set-off of State VAT against Central levies and vice versa
- No set-off of CST levied on inter-state sales

Complexity in determining nature of transaction – Sale vs. Service:

- Difficulty in splitting a composite transaction into ‘sale of goods’ portion and ‘services portion’
- Taxation base in works contract more than 100% in certain cases

Lack of uniformity in provisions and rates:

- Inconsistency in definition of concepts, rates, classification of goods, computation etc.

Complexities in tax administration lead to increase in compliance costs

GST – Glimpse



Tax on supply of goods, or services or both



Destination based consumption tax



Shift of focus from manufacture / sale / service to supply

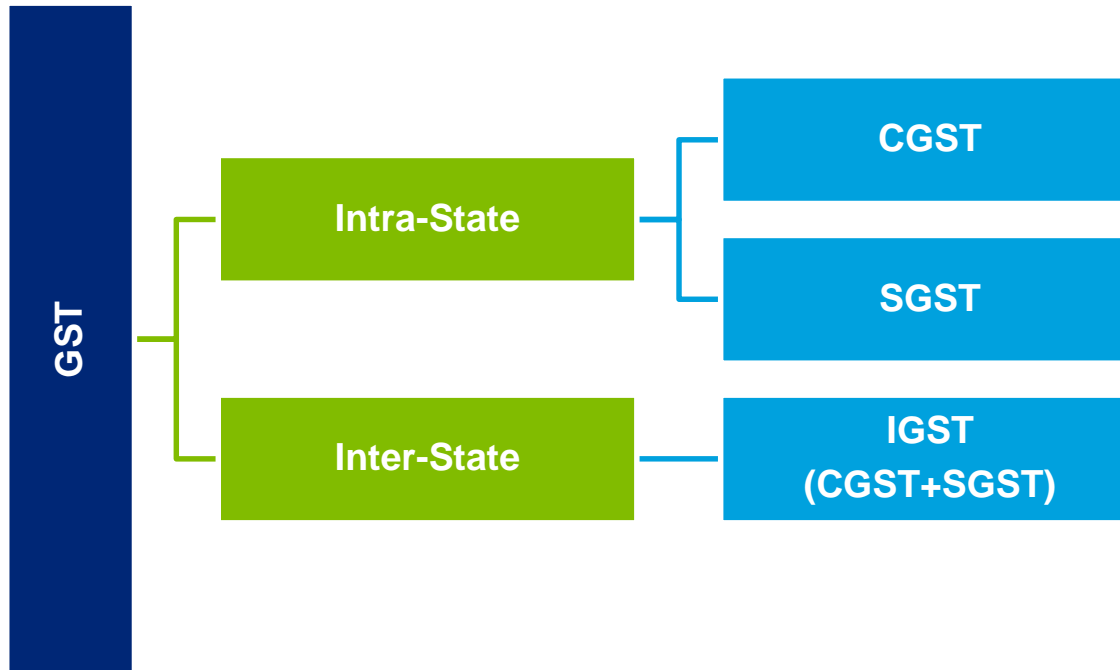


Integration of Central levies, State levies and local levies

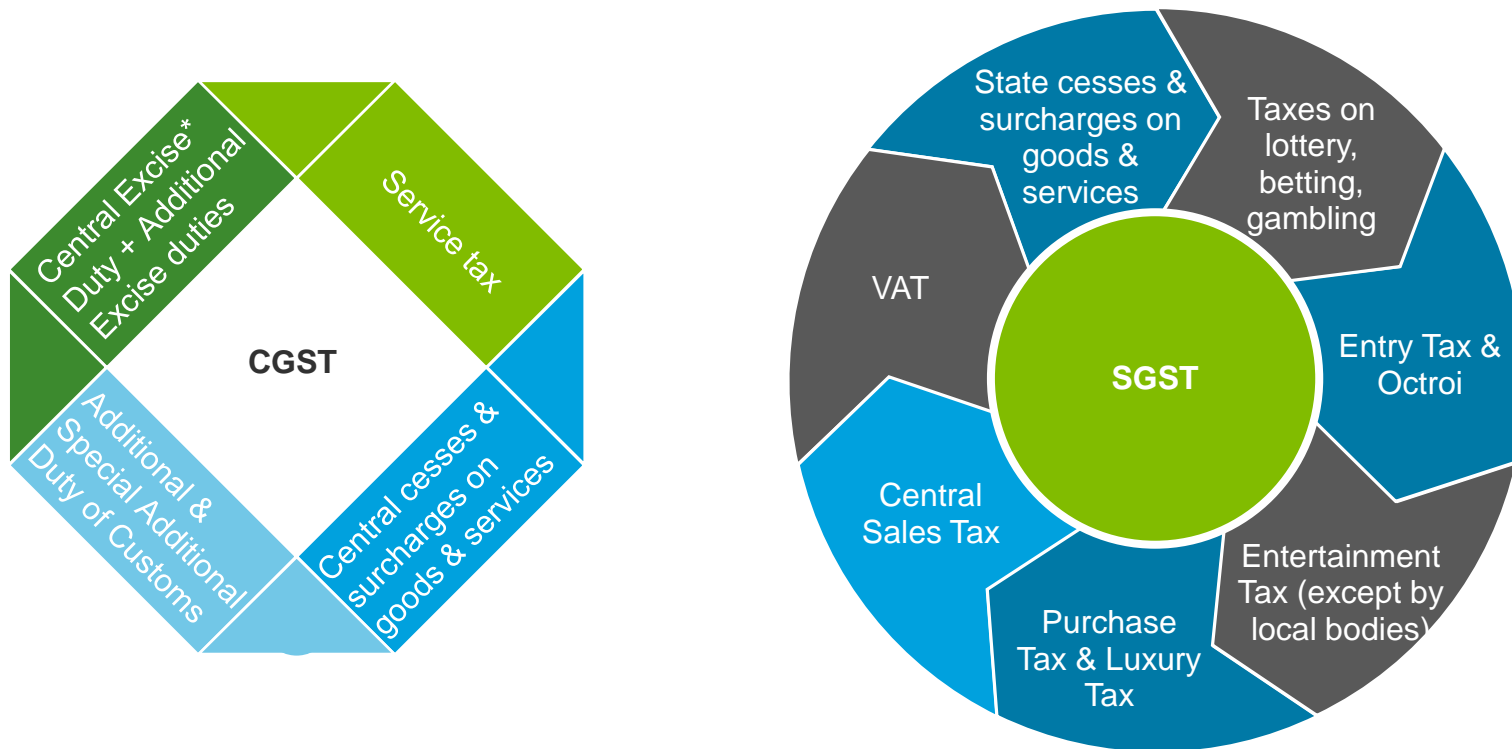


Seamless credit across entire supply chain and across all the States

Proposed GST Model



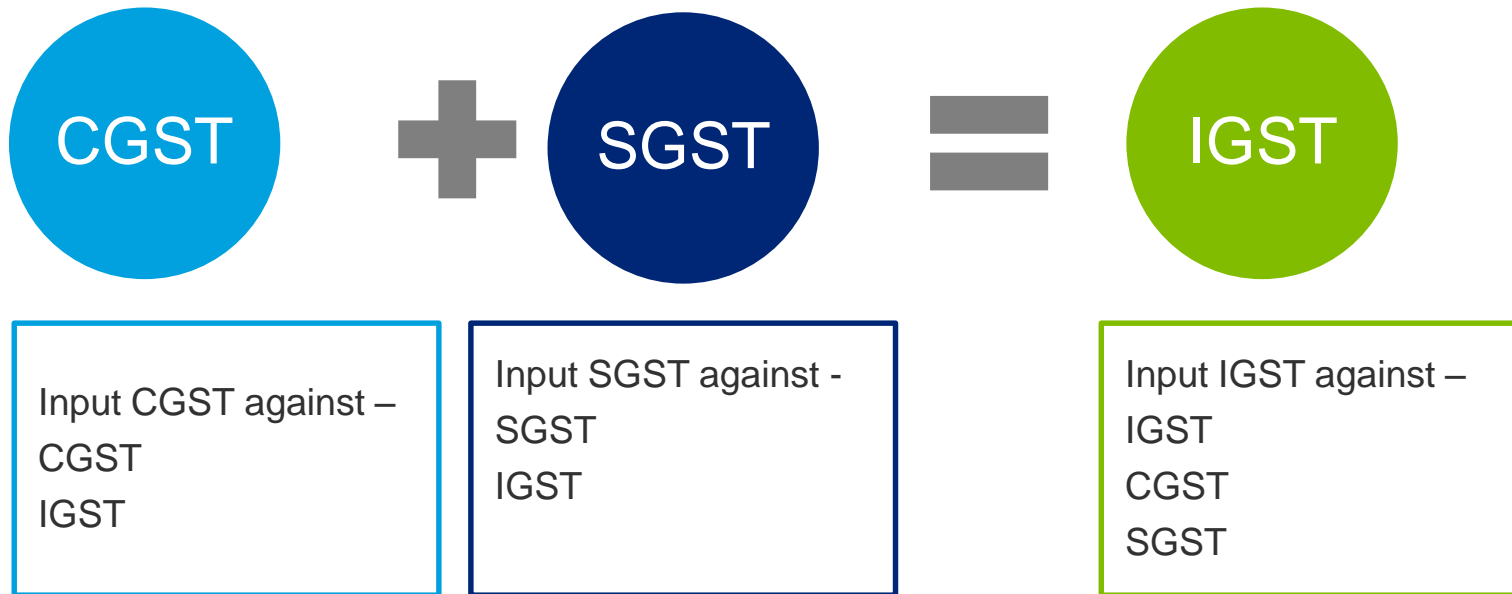
Taxes to be subsumed in GST



Note:

- 1) Alcoholic beverages for human consumption are proposed to be kept out of the purview of GST
- 2) GST on petroleum products would be levied from a notified date recommended by the GST Council
- 3) * Includes Excise duty levied under Medicinal & Toilet Preparations (Excise Duties) Act, 1955

GST Credit Mechanism



Additional tax on inter-state supply

- Centre to levy an additional one percent of tax over and above IGST on supply of goods in the course of inter-state transactions for a consideration.
- It would be levied for a period of 2 years
- GST Council may recommend to extend it beyond 2 years
- This additional tax would be origin based and not destination based
- Credit of this additional tax would not be available*
- Power to exempt goods from levy of such tax shall be with the Government of India
- Principles to determine the place of origin from where supply of goods takes place in the course of inter-state trade will be formulated by the Parliament

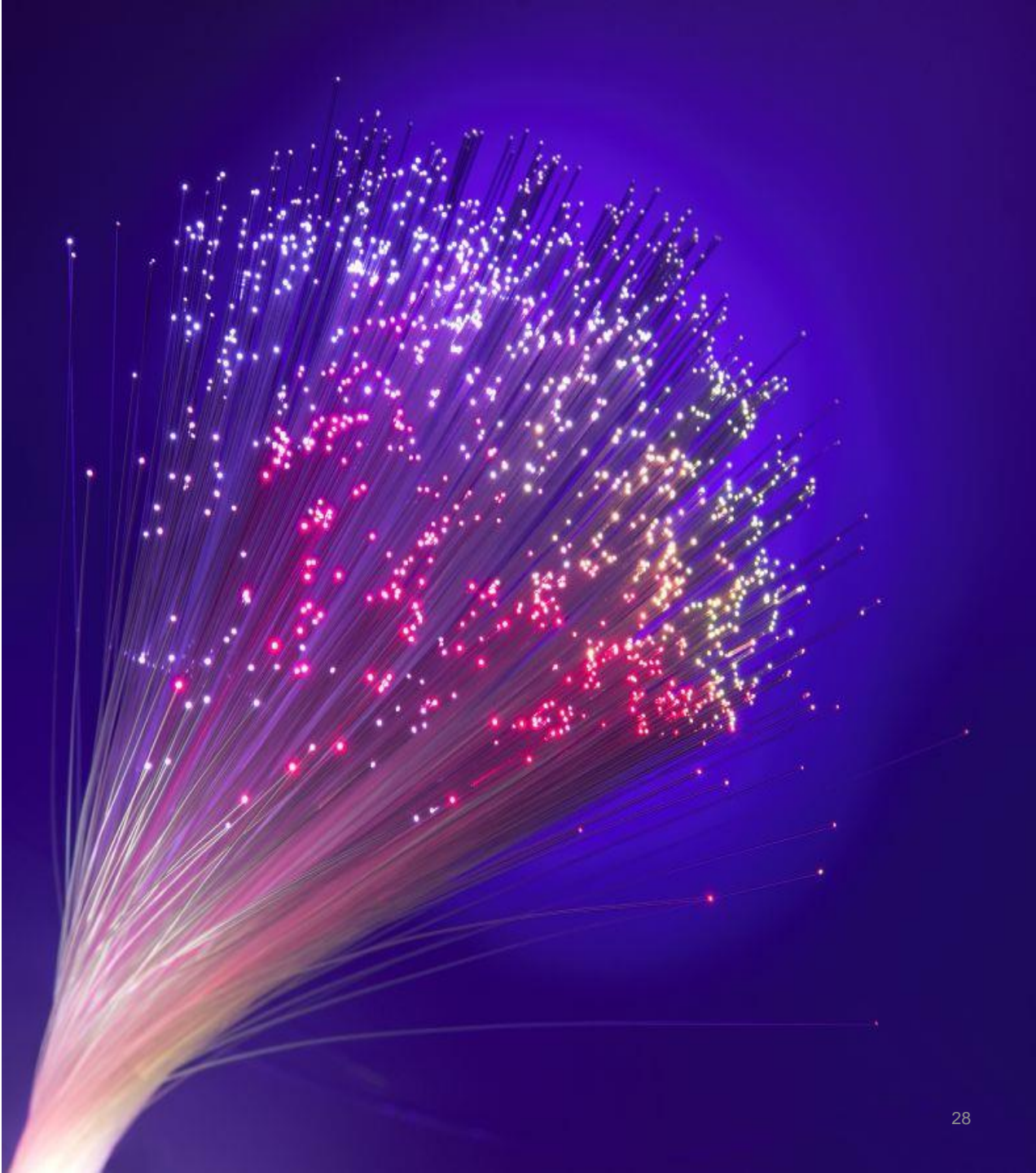
“GST with CST... is this what Government intends?”

- *As per Finance Ministry press note*

Select Committee Report

- Additional tax of 1% should apply only on supplies made against a consideration.
- Definition of term “supply” to mean “all forms of supply made for a consideration”.
- Definition of term “band” to be as follows, “Range of GST rates slightly higher than the floor rate within which CGST or SGST may be levied on any specified goods or services or any specified class of goods or services by the Central or a particular State government as the case may be.”
- 100% compensation to states for first 5 years.
- Cap on GST rate at 20% and a reduced rate of 14%.
- Deliberations on fiscal autonomy and revenue generating abilities of municipalities and panchayats.

Potential Implications



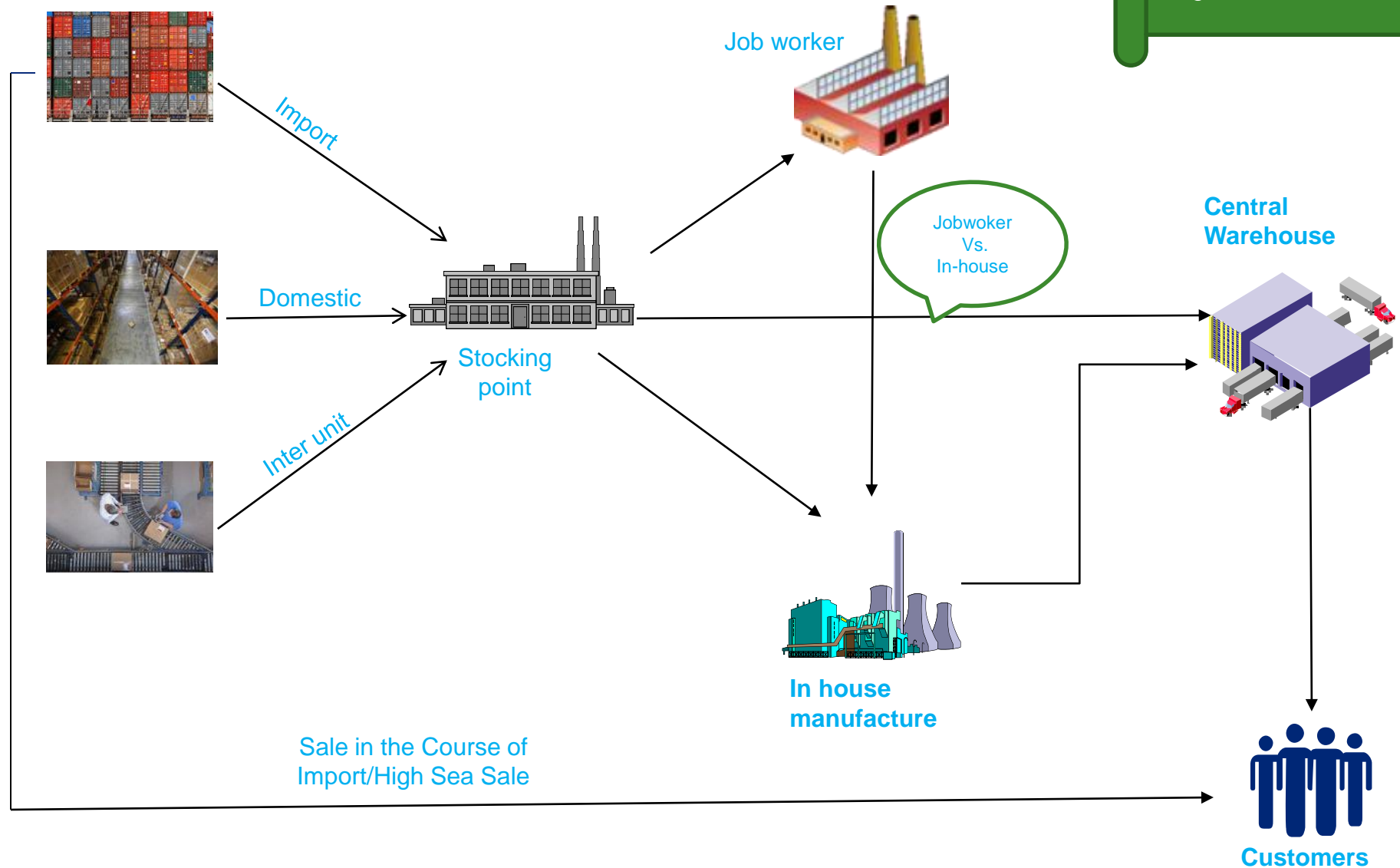
Representative impact of GST on SAP

SAP Modules	Sub-modules						
Financial	General Ledger	Book Close	Accounts Receivable	Accounts Payable	Tax	Consolidations	SPL
Costing	Cost Element	Cost Center	Profit Centers	Internal Orders	ABC Costing	Product Costing	
Material and Procurement	Requisitions	Purchase Orders	Good Receipts	Inventory Management	Bill Of Materials	Master raw materials	
Asset Management	Purchasing		Depreciation	Sales		Tracking	
Projects	Make to Order			Plant Shut Down	Third Party Billing		
Human Resources	Employment History	Payroll	Training	Career Management			
Production	Capacity Planning	Master production scheduling	Material requirements planning		Shop Floor		
Plant Maintenance	Labor		Material			Down time and outages	
Quality	Planning	Executions	Inspections		Certificates		
Sale and Marketing	RFQ	Sales Orders	Pricing	Picking	Packing	Shipping	

None
 Minimal
 Moderate
 Significant

Typical Supply Chain Process flow

Relevance of Sale in Transit, Sale in the course of Import and High Sea Sales ???



Supply chain re-assessment

Warehouse

- Eliminate the need to have separate State wise warehouses to save CST

Transportation

- Rationalization of distribution and transportation routes as tax ceases to be the deciding factor

Logistics

- Improved efficiencies
- Reduction in inventory
- Reduced working capital
- Reduction of IT Costs in deploying ERP in multiple warehouses.

Opportunity

- To explore alternate supply chain models
- Outsourcing versus in-housing decisions
- Shift to 3PL service providers

Potential Implications

Manufacturing Sector

Sr. No.	Issue	Present scenario	GST scenario
1	Inputs purchased inter-state	<ul style="list-style-type: none"> Inputs are purchased inter-state at a concessional rate of 2% (CST) No set-off is available of CST paid CST becomes a cost 	<ul style="list-style-type: none"> Set-off of IGST paid should be available Additional tax of 1% to become cost
2	Capital goods purchased inter-state	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> ITC restrictions on purchase of capital goods may not continue If ITC restrictions are not imposed, manufacturer's choice between intra-state and inter-state purchase could be influenced by 1% additional tax
3	Distribution	<ul style="list-style-type: none"> Manufacturers / dealers align their supply chain to tax considerations and establish multiple stocking points in distribution network 	<ul style="list-style-type: none"> Retention for stock transfers being absent vs. working capital impact of IGST to be factored The distribution framework would require a revisit – 2% CST vs. 1% Additional tax

Potential Implications

Service Sector

Sr. No.	Issue	Present scenario	GST scenario
1	Goods vs. Service	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Taxation of works contract is expected to become simpler provided goods and services carry same rate of tax
2	Taxation base	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> The taxation base is expected to remain below or equal to 100% of transaction value
3	Tax on Tax	<ul style="list-style-type: none"> VAT on service tax? - AMC, Software 	<ul style="list-style-type: none"> CGST and SGST are expected to be levied only on the supply value of goods / services
4	Excise duty	<ul style="list-style-type: none"> Excise duty is levied if a new commodity comes into existence in the process of executing a works contract 	<ul style="list-style-type: none"> The taxable event would change from “manufacture” to “supply” thereby eliminating the need of a separate incidence of tax

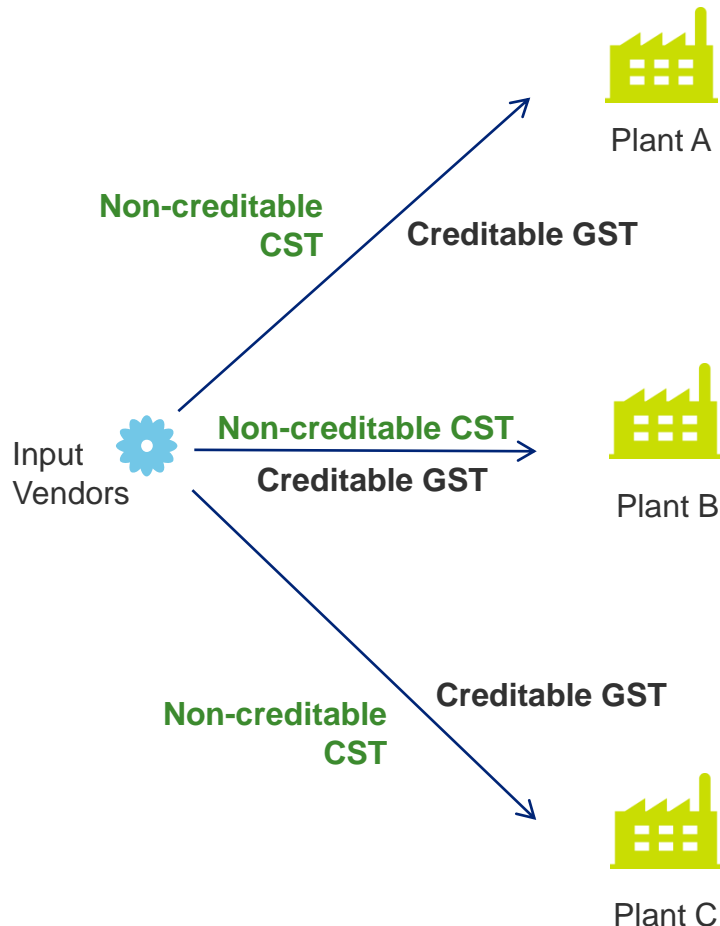
Potential Implications

Traders

Sr. No.	Issue	Present scenario	GST scenario
1	Loss of CENVAT credit/VAT	<ul style="list-style-type: none">Cross utilization of CENVAT credit of Service tax and Excise Duty and VAT Input Tax Credit is not possible	<ul style="list-style-type: none">The traders can cross utilize the GST credits.
2	Determining the location for Warehousing	<ul style="list-style-type: none">The location is determined based on the rate of tax applicable at the location of sale.	<ul style="list-style-type: none">Unified taxation regime would make the warehousing less relevant

Potential Implications

Reduces the tax credit loss on - inter-state purchases



Particulars	Manufactured Goods	
	Present	GST
Input	1000	1000
Excise @ 12.5%	125	-
GST @ 20% + 1% Addl. Tax	-	210
Eligible credit	-125	-200
CST @ 2%	22.5	-
Eligible credit	Nil	-
Effective cost	1022.5	1010

Notes:

1. Value of input is assumed at Rs. 1000
2. GST is assumed @ 20%

Legends:

Text in **dark green**: Existing i.e. pre-GST

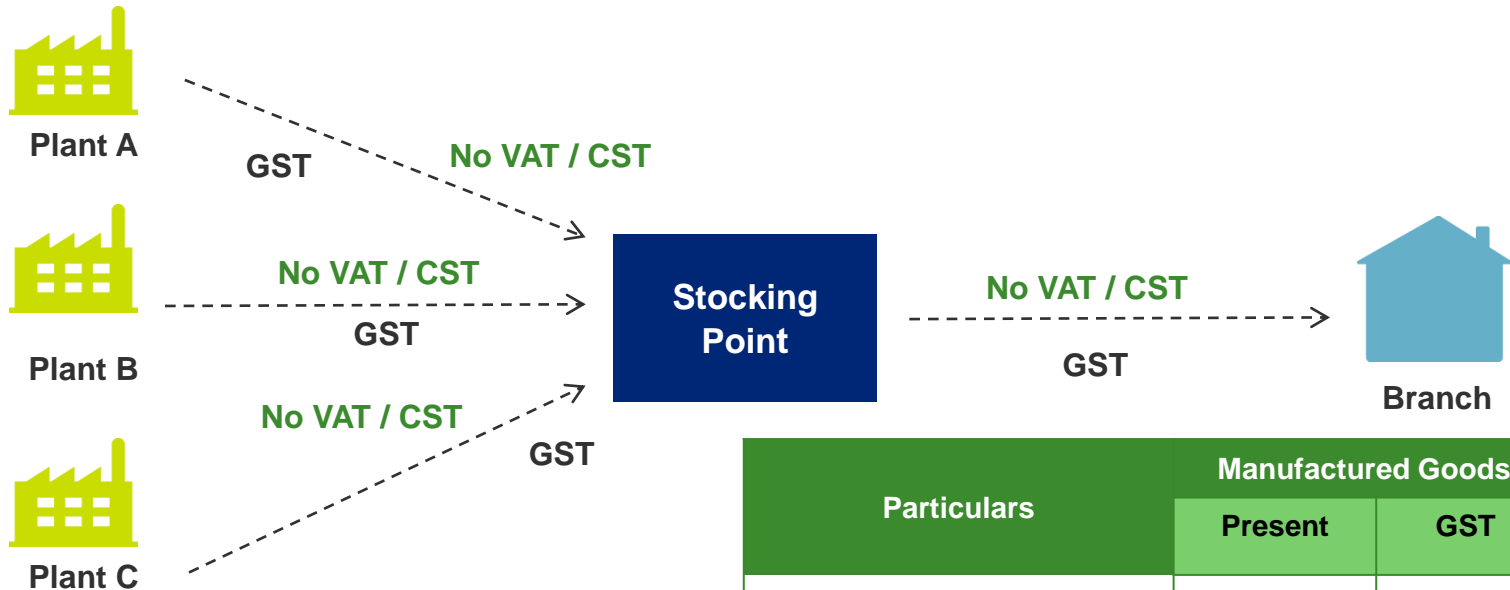
Text in **gray**: Proposed i.e. GST

Legend for movement of goods

→ Intra-state purchase

Potential Implications

Change in working capital requirement of manufacturers



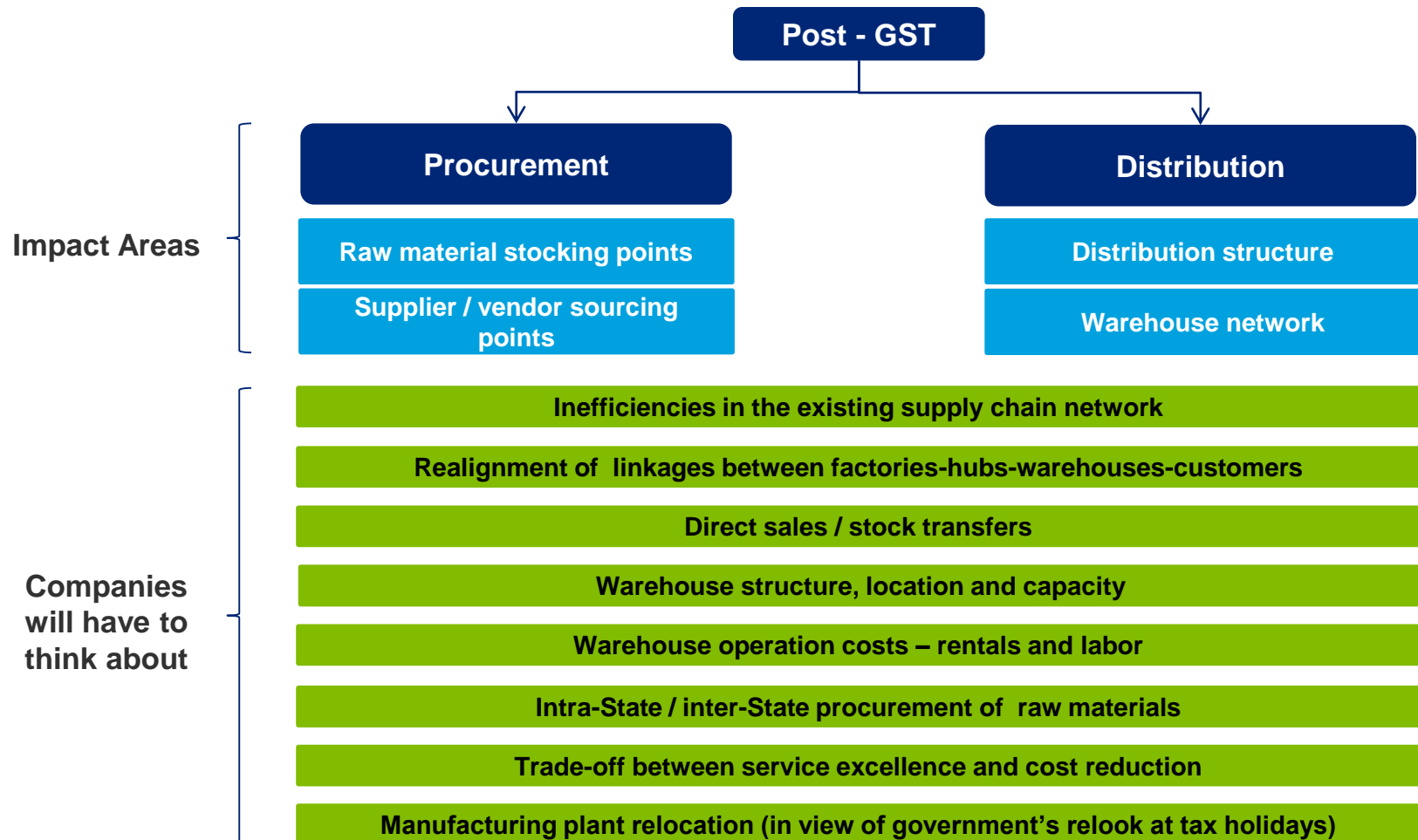
Particulars	Manufactured Goods	
	Present	GST
Output – Transferred to *Name of Client*	1000	1000
Excise @ 12.5% on Mfg.	125	-
GST @ 20% on Transfer	-	200
CST / VAT on Transfer	-	-
Stock transfer value	1125	1200
Increase in working capital req		75

Notes:

1. Value of output is assumed at Rs. 1000
2. GST is assumed @ 20%

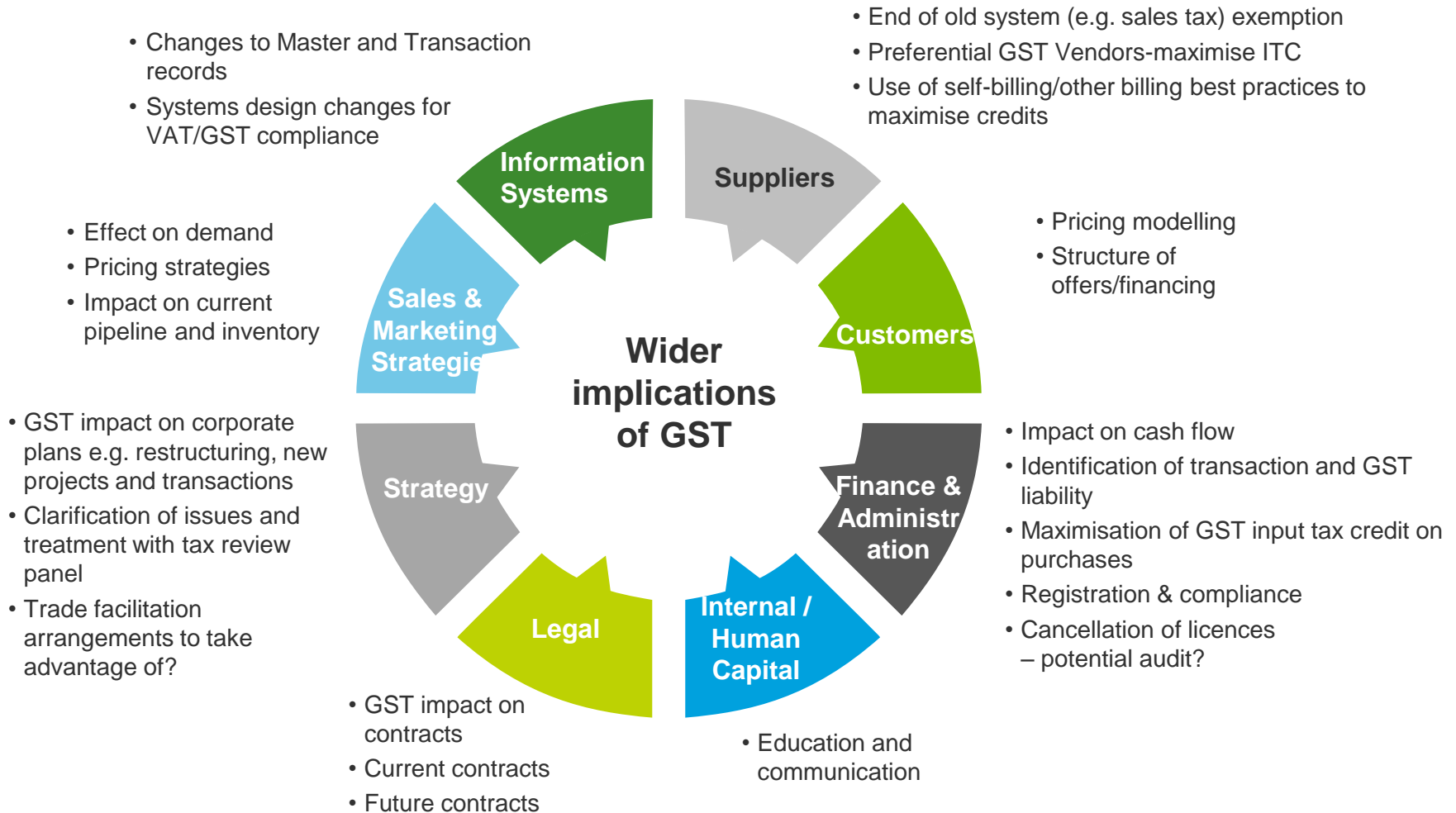
Post GST Supply Chain Scenario – Need to review & optimize key parameters

Post-GST, there will be a need for rationalization of network models which were created to avoid CST



Potential Implications

On overall business



Report of Joint Committees on Business Processes under GST



Registration

Web based interface to fill the forms.
Taxpayers to apply for State specific GST registrations separately.

Permanent Account Number (PAN) based registration

Real time validation of Company Identity Number (CIN), Unique Identification Number (UID) and PAN.

Upon submission, an Application Reference Number (ARN) will be generated, which can be used to track the status of the application.

Applications (along with documents, information) will be passed to concerned State / Central tax authorities.

Registration

On approval by State and Central tax authorities, the GST Identification Number (GSTIN) and Registration Certificate will be generated.

The existing registrants would automatically get migrated to GST.

Mandatory amendments for the changes in constitution of business, principal business, details of partner/ MD, change in commodities / services.

Additional information requirements compared to current forms are passport number (in case of foreigner), UID / DIN no. of authorized signatory, date on which liability to pay tax arises, details of bank account (IFSC, PIN code), etc.

Payment

Payment to be made only through challan.

Challans to be generated only through GST Network portal. Manual challans not allowed

Unregistered tax payers to be granted temporary registration number for payment of tax and generation of challan.

Payment to be made under any of the following modes:-

Internet Banking, Credit/Debit cards

Over the Counter payments through authorized banks

Through RTGS/NEFT

Procedures for sharing of information by banks, GST Network portal, RBI and Tax authorities have been prescribed.

Accounting codes for payment of CGST, SGST, IGST and additional tax proposed.

Refund

Erroneous tax payment

- Taxpayer to apply for refund of payment due to error in mention of GST registration number or nature of tax.
- Inadvertent excess payment of tax at the option of taxpayer can be adjusted against future liability or refunded.

For exporter of goods

- Exporter to upload required documents online along with refund application.
- Refund to be granted upon verification of documents.
- Refund to be granted on basis of proportionate credit available to ratio of goods exported.

For exporter of services

- Exporter required to submit Bank Realization Certificates for sanction of refund.
- Separate application for refund on account of export of goods and services.

Refund (Continued)

For deemed export of goods and services

- Can be claimed by supplier or buyer depending on whether IGST is recovered by supplier or input credit is claimed by the buyer.
- Application to be submitted along with certificate from a Chartered Accountant.

Provisional assessment

- Final return to be filed within 90 days from settlement of issue. Speaking order to be passed.
- For refunds, principle of unjust enrichment to apply.

Refund of pre-deposit/on account of order of appellate authority/tax paid during investigation.

- Refund application along with CA certificate to be filed by taxpayer.

No credit of tax paid on inputs/input services used for manufacture of exempt goods/provision of exempt services available.

Refund (Continued)

Refund of carry forward input tax credit(ITC)

- Accumulated ITC on account of inverted duty structure to be refunded.
- Refund of ITC also to be allowed to service providers paying tax under partial reverse charge mechanism.

Refund on account of incentives provided by supplier

- Refund application along with CA certificate to be filed by taxpayer.
- ITC available to the buyer to also be reduced.
- Refund to be rejected on account of mismatch between credit note issued by supplier and debit note issued by buyer.

General features

- Online refund application to be filed along with prescribed documents.
- Refund to be filed within 1 year from prescribed relevant date.
- Option to file application for refund either through GST Network portal or respective State/Central tax portals.

Refund (Continued)

General features(continued)

Refund to be disbursed by Government electronically.

Recommended rate of interest for delay in payment of refund at 6%.

Recommended rate of interest for default in payment of GST at 18%.

May provide option for adjustment of refund claims against outstanding demands.

Returns

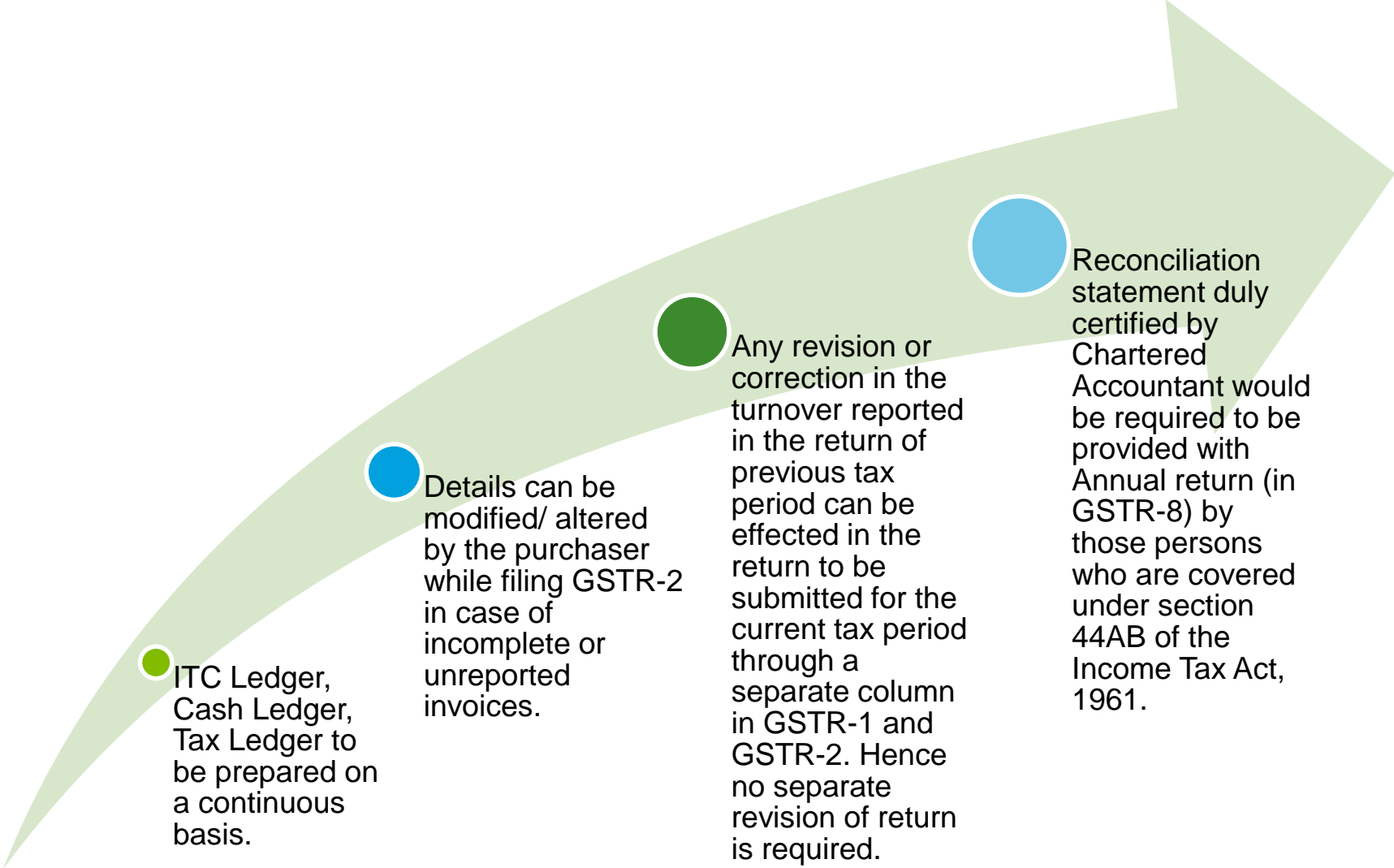
Common e-return for CGST, SGST, IGST and additional tax.

Every registered person including casual, non-resident dealer, compounding dealer. required to file a return.

Separate return for each registration will be required to be submitted.

Submission of return would only be through online mode. Option of offline generating and preparing return to be available but the same would have to be uploaded subsequently.

Returns (Continued)



ITC Ledger, Cash Ledger, Tax Ledger to be prepared on a continuous basis.

Details can be modified/ altered by the purchaser while filing GSTR-2 in case of incomplete or unreported invoices.

Any revision or correction in the turnover reported in the return of previous tax period can be effected in the return to be submitted for the current tax period through a separate column in GSTR-1 and GSTR-2. Hence no separate revision of return is required.

Reconciliation statement duly certified by Chartered Accountant would be required to be provided with Annual return (in GSTR-8) by those persons who are covered under section 44AB of the Income Tax Act, 1961.

Returns (Continued)

The nature and periodicity of returns are as under:-

Sl. No.	Return	For	Due Date	To be filed by
1	GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10 th of next month	All regular tax payers and casual/ non-resident tax payers
2	GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	15 th of next month	All regular tax payers and casual/ non-resident tax payers
3	GSTR 3	Monthly return (other than compounding taxpayer and ISD)	20 th of next month	All regular tax payers and casual/ non-resident tax payers
4	GSTR 4	Quarterly return for compounding taxpayer	18 th of next month	Compounding taxpayers
5	GSTR 5	Periodic return by non-resident taxpayer	Last day of registration	Non-resident taxpayers

Returns (Continued)

Nature and periodicity of returns

Sl. No.	Return	For	Due Date	To be filed by
6	GSTR 6	Return for Input Service Distributor	15 th of next month	
7	GSTR 7	Return for Tax Deducted at Source	10 th of next month	
8	GSTR 8	Annual Return	By 31 st December of next FY	All regular taxpayers (Simple annual return to be filed by compounding taxpayer-format not notified)

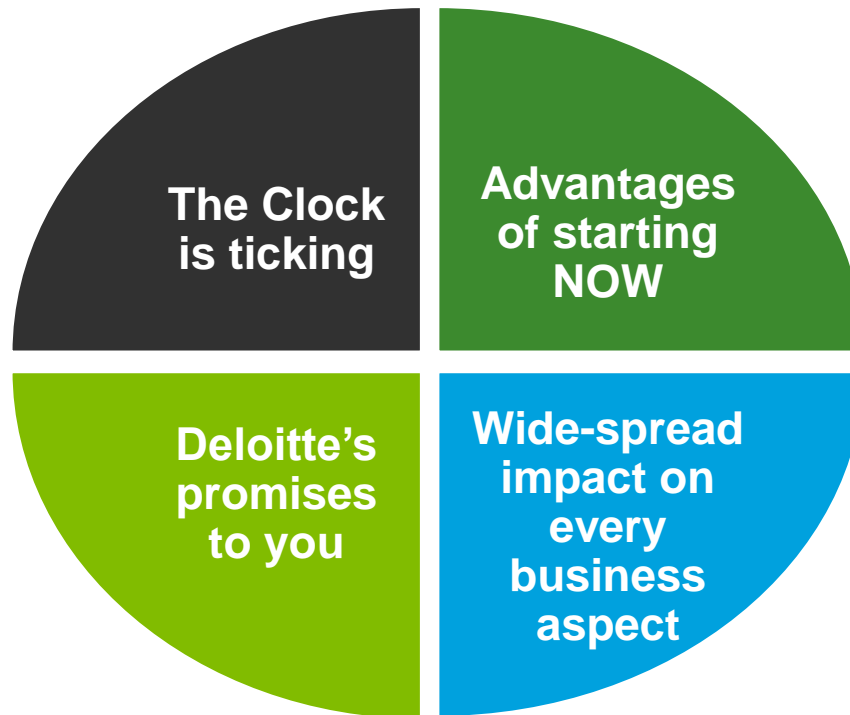
Why get started early?

So much to do, yet so little time

- Set-up project team
- Customers/ vendors contract renegotiation
- Mapping of supply chain with VAT/GST model
- Analysis of VAT/GST implications on business
- Negotiation/lobbying with authorities
- Change management

Committed GST team to serve you

- Strong GST technical skills and implementation experience
- Excellent project management capabilities
- Strong global network support
- Consistent collaboration among Deloitte member firms



Early bird catches the worm

- Companies that prepared early came off best
- Minimize unnecessary rush
- Lack of preparation caught many businesses out

All business aspects affected

- Sales and marketing strategies
- Suppliers
- Customers
- Finance & administration
- Human capital
- Information System
- Accountability
- Business efficiency

Questions



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