



GOODS AND SERVICES TAX



GOODS AND SERVICES TAX - AN INTRODUCTION



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INTRODUCTION TO GOODS AND SERVICES TAX

The introduction of Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it has mitigated cascading or double taxation in a major way and paved the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods or services, which was estimated to be around 25%-30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Because of its transparent and self-policing character, GST would be easier to administer.

The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2006-07. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

GST AND CENTRE-STATE FINANCIAL RELATIONS

Before GST regime, fiscal powers between the Centre and the States were clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on sale of goods. In case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax) but, the tax was collected and retained entirely by the originating States. As for services, it was the Centre alone that was empowered to levy

service tax. Since the States were not empowered to levy any tax on the sale or purchase of goods in the course of their importation into or exportation from India, the Centre levied and collected this tax as additional duties of customs, which was in addition to the Basic Customs Duty. This additional duty of customs {commonly known as Counter Veiling Duty (CVD) and Special Additional Duty (SAD)} counter balances excise duties, sales tax, State VAT and other taxes levied on the like domestic product. Introduction of GST was requiring amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST.

The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST required a unique institutional mechanism that would have ensured that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needed to have Constitutional force.

CONSTITUTION (ONE HUNDRED AND FIRST) AMENDMENT ACT, 2016

To address all these and other issues, the Constitution (122nd Amendment) Bill was introduced in the 16th Lok Sabha on 19.12.2014. The Bill provided for a levy of GST on supply of all goods or services except for Alcohol for human consumption. The tax shall be levied as Dual GST separately but concurrently by the Union (central tax - CGST) and the States [including Union Territories with legislatures) (State tax - SGST)/ Union territories without legislatures (Union territory tax- UTGST)]. The Parliament would have exclusive power to levy GST (integrated tax - IGST) on inter-State trade or commerce (including imports) in goods or services. The Central Government will have the power to levy excise duty in addition to the GST on tobacco and tobacco products. The tax on supply of five specified petroleum products namely crude, high speed diesel, petrol, Aviation Turbine Fuel (ATF) and natural gas would be levied from a later date on the recommendation of GST Council.

A Goods and Services Tax Council (GSTC) shall be constituted comprising the Union Finance Minister, the Minister of State (Revenue) and the State Finance Ministers to recommend on the GST rate, exemption and thresholds, taxes to be subsumed and other features. This mechanism would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as across States. One half of the total number of members of GSTC would form quorum in meetings of GSTC. Decision in GSTC would be taken by a majority of not less than three-fourth of weighted votes cast. Centre and minimum of 20 States would be required for majority because Centre would have one-third weightage of the total votes cast and all the States taken together would have two-third of weightage of the total votes cast.

The Constitution Amendment Bill was passed by the Lok Sabha in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha on 12.05.2015. The Select Committee had submitted its Report on the Bill on 22.07.2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in August, 2016. Further the bill had been ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16th September, 2016.

GOODS AND SERVICES TAX COUNCIL (GSTC)

The GSTC has been notified with effect from 12th September, 2016. GSTC is being assisted by a Secretariat. The following major decisions have been taken by the GSTC in different meetings held by them:

- (i) The threshold exemption limit would be ₹ 20 lakh. For special category States enumerated in article 279A of the Constitution, threshold exemption limit has been fixed at ₹ 10 lakh.
- (ii) Composition threshold shall be ₹ 75 lakh. Composition scheme shall not be available to inter-State suppliers, service providers (except restaurant service) and specified category of manufacturers.
- (iii) Existing tax incentive schemes of central or state governments may be continued by respective government by way of reimbursement through budgetary route.
- (iv) There would be four major tax rates namely 5%, 12%, 18% and 28%. The tax rates for different goods and services have been finalized. Besides, some goods and services would be under the list of exempt items. The exempted services has been finalized, except services supplied by Goods and Services Tax Network which is the addition to the list of exempted services under service tax regime. Rate for precious metals is an exception to 'four-tax slab-rule' and the same has been fixed at 3%. A cess over the peak rate of GST @ 28% on certain specified luxury and demerit goods, like tobacco and tobacco products, pan masala, aerated waters, motor vehicles, would be imposed for a period of five years to compensate States for any revenue loss on account of implementation of GST. The list of services in case of which reverse charge would be applicable has also been finalized.
- (v) The five laws namely CGST Law, UTGST Law, IGST Law, SGST Law and GST Compensation Law have been recommended.
- (vi) In order to ensure single interface, all administrative control over 90% of taxpayers having turnover below ₹ 1.5 crore would vest with State tax administration and over 10% with the Central tax administration. Further all administrative control over taxpayers having turnover above ₹ 1.5 crore shall be divided equally in the ratio of 50% each for the Central and State tax administration.
- (vii) Powers under the IGST Act shall also be cross-empowered on the same basis as under CGST and SGST Acts with few exceptions.
- (viii) Power to collect GST in territorial waters shall be delegated by Central Government to the States.
- (ix) Formula and mechanism for GST Compensation Cess has been finalised.
- (x) Nine rules on registration, composition levy, valuation, tax invoice, input tax credit, payment, returns, refund and transitional provisions have been recommended.
- (xi) www.gst.gov.in, managed by GSTN, shall be the Common Goods and Services Tax Electronic Portal.
- (xii) Rate of interest on delayed payments and delayed refund has been recommended.
- (xiii) Rate of Tax Collection at Source (TCS) has been recommended.

SALIENT FEATURES OF GST

The salient features of GST are as under:

- (i) GST is applicable on "supply" of goods or services as against the earlier concept of tax on the manufacture of goods or on sale of goods or on provision of services.
- (ii) GST is based on the principle of destination based consumption taxation as against the earlier principle of origin based taxation.
- (iii) It is a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre is called Central GST (CGST) and that is levied by the States [including Union territories with legislature] is called State GST (SGST). Union territories without legislature levy Union Territory GST (UTGST).
- (iv) An Integrated GST (IGST) is levied on inter-State supply (including stock transfers) of goods or services. This is collected by the Centre so that the credit chain is not disrupted.
- (v) Import of goods is treated as inter-State supplies and is subject to IGST in addition to the applicable customs duties.
- (vi) Import of services is treated as inter-State supplies and is subject to IGST.
- (vii) CGST, SGST /UTGST & IGST is levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GSTC.
- (viii) GST replaced the following taxes levied and collected by the Centre earlier:
 - 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) Cesses and surcharges insofar as they relate to supply of goods or services.
- (ix) State taxes that subsumed within the GST are:
 - a) State VAT;
 - b) Central Sales Tax;
 - c) Purchase Tax;
 - d) Luxury Tax;
 - e) Entry Tax (All forms);
 - f) Entertainment Tax (except those levied by the local bodies);
 - g) Taxes on advertisements;



- h) Taxes on lotteries, betting and gambling;
- i) State cesses and surcharges insofar as they relate to supply of goods or services.
- (x) GST will apply to all goods and services except Alcohol for human consumption.
- (xi) GST on five specified petroleum products (Crude, Petrol, Diesel, Aviation Turbine Fuel & Natural gas) would be applicable from a date to be recommended by the GSTC.
- (xii) Tobacco and tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.
- (xiii) A common threshold exemption would apply to both CGST and SGST. Taxpayers with an annual turnover of ₹ 20 lakh (₹ 10 lakh for special category States as specified in article 279A of the Constitution) are exempt from GST. A compounding option (i.e. to pay tax at a flat rate without credits) is available to small taxpayers (including to specified category of manufacturers and service providers) having an annual turnover of up to ₹ 75 lakh. The threshold exemption and compounding scheme would be optional.
- (xiv) 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 well as across States as far as possible.
- (xv) Exports would be zero-rated.
- (xvi) Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST/UTGST paid on inputs may be used only for paying SGST/UTGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilized, except in specified circumstances of inter-State supplies for payment of IGST. The credit would be permitted to be utilized in the following manner:
 - a) ITC of CGST allowed for payment of CGST & IGST in that order;
 - b) ITC of SGST allowed for payment of SGST & IGST in that order;
 - c) ITC of UTGST allowed for payment of UTGST & IGST in that order;
 - d) ITC of IGST allowed for payment of IGST, CGST & SGST/UTGST in that order.ITC of CGST cannot be used for payment of SGST/UTGST and vice versa.
- (xvii) Accounts would be settled periodically between the Centre and the State to ensure that the credit of SGST used for payment of IGST is transferred by the originating State to the Centre. Similarly the IGST used for payment of SGST would be transferred by Centre to the destination State. Further the SGST portion of IGST collected on B2C supplies would also be transferred by Centre to the destination State. The transfer of funds would be carried out on the basis of information contained in the returns filed by the taxpayers.
- (xviii) Input Tax Credit (ITC) to be broad based by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.
- (xix) Electronic filing of returns by different class of persons at different cut-off dates.
- (xx) Various modes of payment of tax available to the taxpayer including internet banking, debit/ credit card and National Electronic Funds Transfer (NEFT) / Real Time Gross Settlement (RTGS).

- (xxi) Obligation on certain persons including government departments, local authorities and government agencies, who are recipients of supply, to deduct tax at the rate of 1% from the payment made or credited to the supplier where total value of supply, under a contract, exceeds two lakh and fifty thousand rupees.
- (xxii) Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date.
- (xxiii) Obligation on electronic commerce operators to collect 'tax at source', at such rate not exceeding two per cent (2%) of net value of taxable supplies, out of payments to suppliers supplying goods or services through their portals.
- (xxiv) System of self-assessment of the taxes payable by the registered person.
- (xxv) Audit of registered persons to be conducted in order to verify compliance with the provisions of Act.
- (xxvi) Limitation period for raising demand is three (3) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in normal cases.
- (xxvii) Limitation period for raising demand is five (5) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in case of fraud, suppression or willful mis-statement.
- (xxviii) Arrears of tax to be recovered using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person.
- (xxix) Officers would have restrictive powers of inspection, search, seizure and arrest.
- (xxx) Goods and Services Tax Appellate Tribunal would be constituted by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. States would adopt the provisions relating to Tribunal in respective SGST Act.
- (xxxi) Provision for penalties for contravention of the provision of the proposed legislation has been made.
- (xxxii) Advance Ruling Authority would be constituted by States in order to enable the taxpayer to seek a binding clarity on taxation matters from the department. Centre would adopt such authority under CGST Act.
- (xxxiii) An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.
- (xxxiv) Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.

BENEFITS OF GST

Make in India:

- (i) Will help to create a unified common national market for India, giving a boost to Foreign investment and "Make in India" campaign;

- (ii) Will prevent cascading of taxes as Input Tax Credit will be available across goods and services at every stage of supply;
- (iii) Harmonization of laws, procedures and rates of tax;
- (iv) It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;
- (v) Ultimately it will help in poverty eradication by generating more employment and more financial resources;
- (vi) More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports;
- (vii) Improve the overall investment climate in the country which will naturally benefit the development in the states;
- (viii) Uniform SGST and IGST rates will reduce the incentive for evasion by eliminating rate arbitrage between neighboring States and that between intra and inter-State sales;
- (ix) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption, which in turn means more production thereby helping in the growth of the industries . This will create India as a "Manufacturing hub".

Ease of Doing Business:

- (i) Simpler tax regime with fewer exemptions;
- (ii) Reductions in the multiplicity of taxes that are at present governing our indirect tax system leading to simplification and uniformity;
- (iii) Reduction in compliance costs - No multiple record keeping for a variety of taxes- so lesser investment of resources and manpower in maintaining records;
- (iv) Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc;
- (v) All interaction to be through the common GSTN portal- so less public interface between the taxpayer and the tax administration;
- (vi) Will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions;
- (vii) Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system;
- (viii) Timelines to be provided for important activities like obtaining registration, refunds, etc;
- (ix) Electronic matching of input tax credits all-across India thus making the process more transparent and accountable.

Benefit to Consumers:

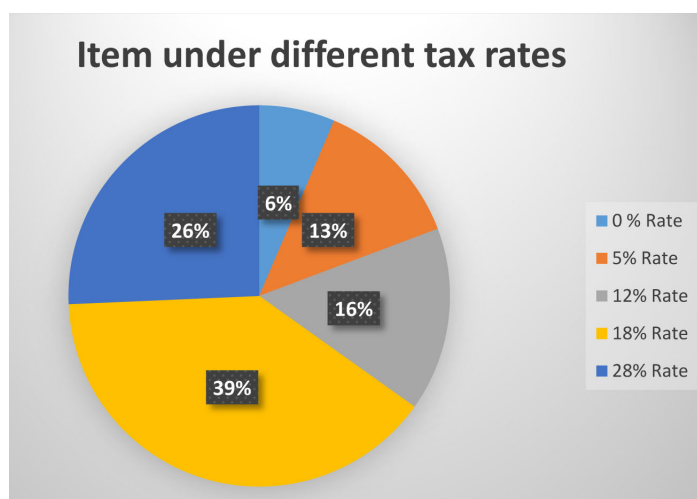
- (i) Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier;
- (ii) It is expected that a relatively large segment of small retailers will be either exempted from tax or will suffer very low tax rates under a compounding scheme- purchases from such entities will cost less for the consumers;
- (iii) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption.

GOODS AND SERVICES TAX NETWORK

Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 27 States who have opted for the same. GSTN has selected 34 IT, ITeS and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs would develop applications to be used by taxpayers for interacting with the GSTN.

TAX RATES

The tax rates for 1211 items were released in GST Council meeting on 18th May, 2017 and for services on 19th May, 2017. The tax rates for 74% of the items are at or below 18% and balance items at 28% rate. One of the major change in Goods and Services is that there are multiple tax rates based on the usage of the services. This is a significant shift from the existing process of having a single rate for all the services.



The final rates for the goods and services have been notified on 28th June 2017 wide various notifications for the Central Taxes and States have notified the same accordingly.

GOODS AND SERVICES TAX - KEY CONCEPTS

Goods and Services Tax (GST) is a comprehensive tax on supply of goods or services or both. It eliminates the cascading effect of taxes, as GST is imposed at every stage of supply chain and the input credit is available in across the supply chain. The uninterrupted credit in the supply chain ensures that the end consumer purchases goods and services at a lower price and to ensure this the government has introduced the Anti-profiteering clause based on the experience in Malaysia where GST was implemented from 1st April 2015.

Under GST, taxes are paid at all stages in the supply chain i.e. from manufacturing to the end sale to the consumer. Taxes are levied at all the stages and input tax credit is available to the extent of the tax paid during the purchase. The end consumer will not pay taxes directly to GST authorities; the retailer pays the taxes on behalf of the end consumer. The overall idea of having GST in India is to increase the tax base over a period, and this will result in lower tax rates over a period. Various scholars estimate that the GDP is expected to go any number between 0.5% to 2%. And it is also anticipated that it will promote the ease of doing business in India.

Another significant shift in the taxes under GST is the introduction of destination-based consumption taxation in place of origin-based taxation. That means GST will be the tax revenue for the state where ultimately the goods or services are consumed. GST moves with the movement of goods and services and there is seamless movement of input tax credit also along with goods and services in the entire value chain, except the cases where the credit chain breaks.

Certain key terms are as under:

Supply: Tax incidence in case of GST is 'supply'. Supply includes all forms of supply of goods or services or both such as sale, exchange, transfer, license, barter, rental, lease or disposal made or agreed to be made for consideration by a person in the course or furtherance of business.

The above definition is an inclusive definition means that any other form or transaction can also be built in the definition of supply.

Time of Supply: time of supply refers to the tax point at which the tax liability has to be accounted, and tax invoice has to be issued. Under GST there are two tax points one for the supply of goods and another for the supply of services.

The significant change as per time of supply is that taxes have to be levied even on receipt of advance from customers for the supply of goods or service or both, unlike the earlier taxation system where it was applicable only for services.

Consideration: in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit, whether refundable or not, given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

From the above definition, it is evident that even if the consideration for the supply of goods or services or both is not received in cash, still it has to be treated as consideration for the supply.

Furtherance of Business: furtherance of business refers to the inward supply of goods or services being used for carrying out the business or for business purpose. If any of the inward supplies are used for non-business purpose or for employee related activities or for personal consumption, then input tax credit is not eligible under GST.

Goods: unlike in Central Excise, there is no concept of manufacture or input. Under GST, anything has to be classified as goods or services. Goods according to GST means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply; Any physical item which has an Harmonised System of Nomenclature (HSN) code is deemed to be goods under GST.

Service: This means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

Capital Goods: This means goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Composite Supply: This means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Mixed Supply: This means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

Input Tax Credit: In GST input tax credit can be availed on inward supply of goods or service or both if the same are used for furtherance of business. Since GST is charged on both goods and services, input credit can be availed on both goods and services (except those which are on the exempted/negative list).