Good and Services Tax

Goods and services Tax

Goods and Services Tax is a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level.

By a constitutional amendment bill (122nd amendment bill) the new taxation regime is to be implemented in India, from April 2016. The Bill proposes to replace the current Indian tax regime which is multi-tiered. Currently, the Centre imposes excise duty on manufacture of goods, and service tax on provision of services (other than customs duty on imports). The States separately impose Value Added Tax (VAT) on the supply of goods and a portfolio of specific taxes such as entertainment tax, excise duties on alcohol for human consumption and medicinal and toilet preparations (MTP), entry tax and octroi. For mixed supply of services and goods (eg construction, restaurants), both service tax and VAT apply on the respective components. This results in a multiplicity of taxes with limited cross credits, conceptual difficulties, differential tax regimes between States and undue litigation.

GST will thus be implemented **concurrently** by the central and state governments as the Central GST and the State GST respectively.

Provisions of Bill

- The Bill proposes that both the Centre and States would be entitled to concurrently impose GST on the supply of goods and services within a State. Effectively, every supply of goods and services would be subjected to a Central GST (CGST) and State GST (SGST) on such "intra-state" supply by the jurisdictional State.
- When the supply of goods and services is between States as an "inter-state" transaction, a levy called Integrated Goods and Services Tax (IGST) would be levied by the Centre.
- The Bill empowers the formulation of principles to determine when the supply of goods and services would constitute an inter-State transaction for IGST to apply; such principles would be incorporated in the GST legislation that would be introduced after this Bill becomes law.
- Though IGST on inter-state supply of goods and services would be imposed by the Central Government, IGST Revenues would be shared between the Centre and States as per the recommendations of **the GST Council**. It is expected that the methodology of this revenue share would be coded into the GST legislation that would be introduced by the Centre after completion of this constitutional amendment.
- As indicated above, revenue sharing between the Centre and States has been a historic stumbling block on progress on GST over the past few years. Effectively, this resulted in concern by the States on relinquishing the power to tax revenue leading items such as petroleum, tobacco, medicinal and toilet preparations (MTP) and alcohol. This Bill indicates a level of agreement on these elements, as it

proposes to bring all items except alcohol within the ambit of GST. However, the Bill also provides that for certain items, this transition to GST would be immediate, while on a phased for other items. This has been illustrated below:

Petroleum products	Petroleum would be transitioned into the GST regime from a future date notified by the GST Council. It is currently unclear from the schematics of the Bill whether States would fully discontinue collecting VAT/ CST on petroleum products from this notified date, or whether the transition would be gradual. The Bill however also states petroleum products can be subjected to an excise duty imposed by the Centre; this levy would be imposed now and even after GST comes into force. Such duty can be in addition to the applicable VAT or GST imposed.
Tobacco and MTP	Items of tobacco and MTP would be covered under GST from its introduction. However, tobacco can be subjected to a separate excise duty by the Centre.
Alcohol	Alcohol products for human consumption would continue to be exclusively taxed by the States. Since the Bill specifically excludes alcohol products from the ambit of GST, bringing it within GST at a future date would require another constitutional amendment. CST on inter-state sales of alcohol would also continue. It therefore appears that the empowerment of States to tax alcohol products is intended to remain unaltered in the near future.

- Entry tax imposed by various States across India when goods enter for consumption or sale within its jurisdiction. This levy has been subjected to various legal challenges in almost all States and is currently pending resolution at various appellate fora. This also posed specific logistical difficulties for the supply chain. The Bill seeks to delete the imposition of entry tax across India and is a welcome development.
- Entertainment tax, which is currently imposed by States on a variety of activities (television, movie theatres etc.), would be now subjected to GST. This is a positive development for the entire entertainment sector which would not come within the folds of GST as it was hitherto subject to different taxes at the stages of content development, licensing and dissemination. However, taxes on entertainment at the Panchayat, Municipality or District level would continue.
- GST would be capable of being levied on the sale of newspapers and advertisements therein. This would give the governments the access to substantial incremental revenues since this industry has historically been tax free in its entirety.
- Stamp duties, typically imposed on legal agreements by the State, would continue to be levied by the States.
- The Bill has provided for a definition of services, covering “anything other than goods”, which is modelled on the regulations prevalent under the VAT regimes in the European Union. An initial reading suggests that this could be intended to further widen the scope of GST to potentially tax other items such as lottery tickets which constitute actionable claims etc.
- The Bill provides that the administration of GST would be the responsibility of the GST Council which would then become the apex indirect tax policy making body of the country. This GST Council would be formed by the Central and State level ministers in charge of the finance portfolio. The Bill also lays down various elements of how the GST Council would operate and its powers, such as determining the rate and exemptions of tax, threshold limits, framing model laws and principles of levy and apportionment of IGST, and voting powers.

Changes from Previous Bill

This Bill differs from the erstwhile bill introduced in 2011 in various ways (summarised below) which essentially indicates a level of progress having been made on various contentious issues so as to remove the impediments to this reform.

- This Bill has managed to cover petroleum products within its ambit, albeit in a phased manner. This is a welcome development since petroleum products are key industrial inputs, and therefore should be within the ambit of GST in the long term.
- States have a degree of flexibility in determining the rate of SGST within such bands so as to pursue its policies vis-à-vis relevant products.
- There is a provision for imposing a temporary additional tax at 1 percent on the inter-state supply of goods and services which would directly accrue to the originating State (and therefore would not be shared). This provision seems to be geared to assuage the concerns of those States, which have high levels of outward trade, on revenue shortfalls immediately upon removal of CST.
- The Bill provides that compensation to States on revenue loss on account of introduction of GST would be based on the recommendations of the GST Council. Therefore, the GST Council, and not the Centre, would be decision making authority on the computation of compensation to States for any revenue loss, and therefore seeks the general concerns of States towards revenue shortfalls by allowing for determination of compensation by a body with "democratic" representation by all States.
- With the objective of augmenting this "democratic" element and further widening the powers of the GST Council, this Bill widens the powers of the GST Council, to allow it to address unique situations, on:
    - Resolution of disputes arising out of its recommendations
    - Imposition of additional taxes in times of calamities and disasters
    - Introduction of special provisions with respect to all Himalayan states in India

Conclusions

This Bill has the potential to usher in monumental changes in the indirect tax regime in India, it is only a starting point. At this stage, the current Bill is an improved and more implementable version of the one introduced in 2011, mainly due to the focus on:

- An egalitarian approach to endow the representation by States in the GST Council with wider powers; and
- Various provisions for safeguards against revenue losses.

However, this Bill does leave certain questions unanswered.

- For example, the key taxing provision of Article 366(29A) which defines the various transactions of sale, lease, hire purchase, works contract etc. has been left unaltered. Since GST would be imposed on the supply of goods or services (or both), it appears that this provision could become superfluous.
- It is also unclear whether the State of Jammu and Kashmir (J&K) would be brought within GST. Service tax does not currently apply to J&K, and it enjoys differential powers to tax transactions within it.
- While this Bill is aimed at achieving constitutional empowerment for GST, clarity is urgently needed on expected rate regime for industry to prepare for the ultimate impact.
- Separately, the herculean tasks of setting up the requisite information technology infrastructure for administering GST on a pan-India basis as well as gearing up and training the revenue authorities at the Centre and State needs to be addressed.