GST Transformation

The Road Ahead

July 2022

EY
Building a better working world

Table of Contents

A The GST journey

1. **Introduction** 12
   - Constitutional amendment... paved way for new regime 13
   - Compensation... is the impasse resolved? 14
   - Taxpayer's jurisdiction 15
   - Digitalization roadmap 16
   - Evolution of Law 17
2. **Present Rate Structure** 19

B Way forward - challenges and reforms

1. **Policy measures required to reform GST** 24
   - Revenue buoyancy and rate rationalization 24
   - World Class Dispute resolution 31
   - Institutional Strengthening 35
   - Ease of doing business 38
2. **Tax simplification measures** 40
   - Legislative changes 40
   - Tax administration 45
   - Avoiding litigations through clarification 47
3. **Addressing the challenges faced by industry** 52
   - Industry specific issues 52
4. **Conclusion** 85

Foreword

1 July 2017 was an epoch-making date in India's history of tax administration. The journey towards 'One Nation, One Tax' in the form of a single Goods and Services Tax ('GST') saw many ups and downs over the fifteen odd years prior to its successful culmination in 2017. No other country with a comparable size of economy and breadth of the market has ever attempted such a transformational change, and it is to the credit of the Government that it was able to forge a working consensus with Opposition ruled states to get GST to at last see the light of the day.

From a tentative start, GST has now stabilized, both from a technology as well as from a collection perspective as seen in the consistent uptick of the monthly GST collections from an average of below INR 1 lac crore per month in the initial three years[1] to INR 1.30 lac crore per month now[2].

Time has now come to look back with satisfaction and pride on what has been achieved over the last five years and look ahead on what changes are necessary to streamline and rationalize the five-tier tax rate structure, availment of input tax credits and inclusion of the remaining items in GST.

Our book, **GST Transformation - The Road Ahead**, is an effort to capture the joys and challenges of this momentous journey whilst also incorporating critical feedback and recommendations from all key stakeholders of this tax reform.

Any modern system of taxation also needs an effective, timely and robust dispute resolution mechanism.

The book draws out a detailed discussion of having a world class dispute resolution system and how it can aid in ease of doing business. Decriminalization of minor offences and providing forthright clarification on contentious industry (or trade) issues are some suggestions which have been presented.

We hope that this book initiates a healthy debate on how we can collectively make GST Transformation fit for purpose to better enable India's march towards a $5 trillion economy and beyond.

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1. echap02.pdf (indiabudget.gov.in)
2. https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1821758

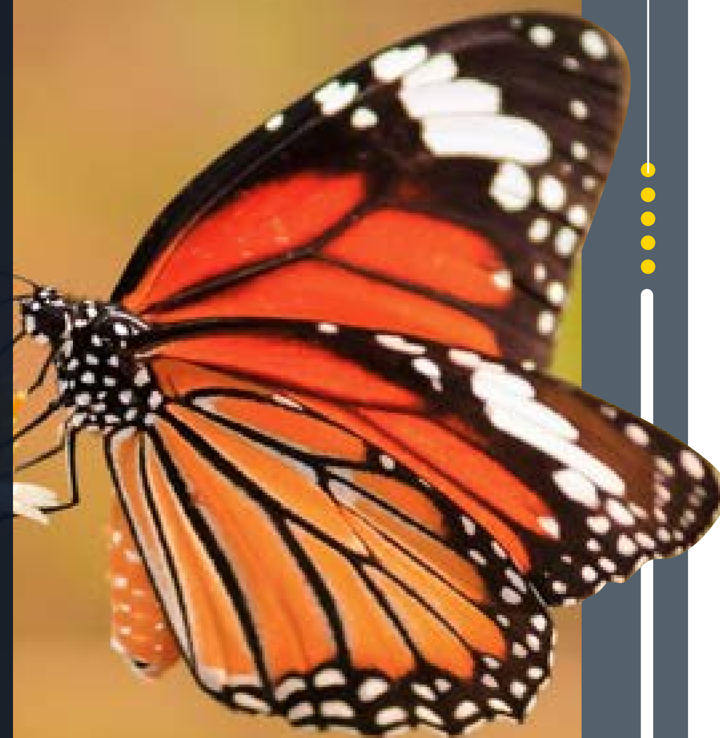
Executive Summary

The introduction of Goods and Services Tax (GST) in July 2017 has rightly been considered the most significant tax reform of independent India. The common goods and services tax levied across the entire country led to uniformity and equity in the tax system and fulfilled the long-cherished objective of 'One Nation One Tax'. A single market was created, entry into the states became open and hassle free with abolition of state entry tax and the effect of cascading of taxes was eliminated. Further, GST transformed India's business landscape by enabling firms to pay a smaller number of taxes (GST replaced 17 taxes), reduced amount of tax, and face less tax-on-tax incidences. The uniform GST rates across the states further reduced the tax burden and compliance cost[3].

While GST achieved these laudable objectives, however, any system of this size and complexity would need constant improvements with a focus on raising productivity and reducing prices. How can we make the GST more efficient and responsive to the needs of the businesses and Government?

This report focuses on three aspects in granular details.

- *Policy measures required to reform GST*
- *Tax simplification measures*
- *Addressing the challenges faced by industry*



3. https://www.cbic.gov.in/resources//htdocs-cbec/gst/Benefit.pdf

Executive Summary

Presented below are the core ideas relating to each of these recommendations:

Policy measures required to reform GST 01

The report recommends policy measures hinging on four pillars i.e., Revenue buoyancy, world class dispute resolution, institutional strengthening and enhancing ease of doing business.

A. Revenue buoyancy

Revenue buoyancy is the first and foremost pillar on which GST reform agenda can be built. As per a report[4] by the Fifteenth Finance Commission, the GST incidence of duty has fallen from the revenue neutral rate of 14 per cent to 11.8 per cent. The buoyancy in GST revenues can be boosted if the incidence of duty is raised from this current level of 11.8 per cent by rationalization of GST rates, merger of tax rate slabs, phasing away exemptions, bringing in the excluded items into the GST net (like electricity and real estate) along with strengthening of the compliance system. The measures for revenue buoyancy would include:

Rate Rationalisation	*Better Compliance framework and verification*	*Expansion of the GST ambit*

B. Creating world-class dispute resolution

A large number of litigations have brought about uncertainty for businesses and has overburdened the judicial infrastructure. The need of the hour is to set up a world-class dispute resolution system based on the following key principles:

- Conceptually differentiating between cases involving 'offence' and 'adjudication'- wherein disputes resulting from technical, procedural, and minor non-compliances should be decriminalized and shifted to adjudication process.
- Creation of GST secretariat in every state comprising of senior central and state officials to address the grievances of trade and industry. Technical and GST secretariats in the states can collectively provide institutional support.
- Capacity building for AARs (Authority for Advance Rulings) and creation of NAAAR (National Appellate Authority for Advance Ruling), supplemented by new mechanisms like private ruling and mediation could be helpful to taxpayers, expeditious constitution of appellate tribunals, alternate dispute resolution mechanism, faceless eco-system for adjudications and appeals.

C. Institutional strengthening

The third major recommendation relates to the institutional strengthening wherein the key ideas relate to cooperative federalism and implementation of the Taxpayer's Charter.

- **Cooperative Federalism** - Cooperative federalism forms the bedrock of GST reform under which an institutional innovation in the form of empowered committee and later the GST Council was set up. Going forward, to bridge the institutional void at state level, State GST Secretariat should be created to deal with non-policy matters. Centre and states can also form Central Business Re-engineering group to monitor standard operating manuals for various business processes.

4. Finance Commission in COVID Times - Report for 2021-26 - Volume I Main Report - October 2020 - Box 5.1

- **Taxpayer's Charter** - The Taxpayers' Charter under Income tax was formally launched by our Hon'ble Prime Minister in 2020[5]. The Charter lists out Income tax department's commitments and also, what it expects from the taxpayer. Inter alia, the charter promises to maintain privacy and confidentiality of taxpayers and reduce cost of compliance with tax laws. From taxpayer's side, the charter expects taxpayer to honestly disclose full information and fulfil his compliance obligations, keep accurate records as required by the law and make submissions in timely manner. The Government should replicate Taxpayers' Charter even under Indirect Taxes, covering GST, with both central and state level departments.

D. Ease of doing business

Ease of tax compliance significantly contributes to ease of doing business. Furthering digitalization for processes like registration, returns, payments, Input Tax Credit (ITC) and refunds, and eliminating manual reporting, cross-linking of different statutes and effective data exchange, online export proceeds tracking system for refunds, reporting of defaulting suppliers, various measures to facilitate compliances of MSMEs and bringing stability and consistency in the law could all go a long way in enhancing ease of doing business.

Tax simplification measures 02

A. Legislative changes

Simple law results in lesser disputes which ultimately benefits both the taxpayers as well as tax administration. This report highlights in detail the issues requiring Government intervention on legislative front. Some of them are as below:

Taxation of supplies - Even after five years of implementation of GST, taxpayers are finding it challenging to analyze whether a transaction is a supply under GST or not. The Government has tried to resolve some disputes but since GST coverage is vast, there is still a long way to go. The Government should engage with the trade bodies frequently and necessary clarifications should be issued from time to time.

Valuation - Existence of two sets of rules (one for Income tax and other for GST) with two different administrative bodies has made cross border trade complicated. Introduction of joint GST and Transfer Pricing agreement may be a course of action in the future.

Input tax credit -The report makes the following recommendations in relation to ITC:

- Denial of credit to the recipient should be confined only to the cases of fraud. This will protect the interest of the buyer and encourage customers to do business with small and medium enterprises.
- For effective working capital management, cross utilization of credit should be allowed between Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST). At the backend, States and Centre can settle the amount cross utilized.

5. https://pib.gov.in/PressReleseDetailm.aspx?PRID=1645472

Executive Summary

- In cases of advance payment, since the supplier has already paid the tax upfront, credit should be allowed to the recipient as soon as the tax is paid to the Government.
- ITC should be allowed where immovable property is used in the course or furtherance of business such as renting. This will keep the tax chain intact and serve the purposes of equity.

Dual taxation and control - At present, both the central and state tax administrations have the power to take intelligence-based enforcement action in respect of the entire value chain irrespective of the fact whether the taxpayer is covered under central or state jurisdiction. This practice leads to difficulty since businesses are required to submit the relevant documents and resolve queries from the department twice. Going forward, a system should be devised wherein such intelligence-based information is passed to the jurisdictional officer and the officer can act as a single point of contact for the taxpayer.

GST Council should discuss these issues and recommend suitable changes in the GST legislation for removing ambiguity and achieving simplicity.

B. Tax Administration measures

The processes like registration, tax payment and returns are the assessment functions whereas, scrutiny, audit and investigation constitute compliance verification function. While the Government has created functional owners like Directorate General of GST, Directorate of Audit, Directorate of GST Intelligence, Legal Affairs, Training and Taxpayer's services, for compliance verification and facilitation functions, there is no functional owner for the key business processes like registrations, returns and payment functions. This necessitates creation of Directorate of GST Assessment, which can serve as an intermediate layer between the Central Board of Indirect Taxes and Customs (CBIC) and the field formations. Even the scrutiny of returns can be made part of the functions of the Directorate of GST Assessment, as it involves evaluating correctness of returns. This directorate can play a role in suggesting changes in business rules pertaining to assessment function.

C. Avoiding litigation through clarifications

Under GST, there are many disputed areas where an express clarification by the lawmakers will go a long way in settling the matters and eliminating unwarranted litigation. This report discusses critical issues like employee benefits, liquidated damages, tax credit reversal in case of mergers & acquisitions, intermediary services, cross charge vs. ISD etc., which significantly impact tax compliance and require clarity.

Addressing the challenges faced by industry 03

Through our extensive experience in assisting industry players in transition to the GST regime and compliance thereafter, we have identified the industry specific issues and related recommendations on how to resolve these within the framework of GST. The report suggests solutions for the following industries:

- Automobiles
- Media & Entertainment
- Shipping and Logistics
- Power
- Virtual Digital Assets
- Construction and Real Estate
- Telecom
- Pharmaceutical and Healthcare
- E-commerce
- MSME
- Textile
- Online gaming
- Banking & Financial Sector
- Education

We hope that implementation of reforms suggested in this report would raise productivity and reduce prices for the businesses. This coupled with a clear manufacturing strategy would attract global investments, create jobs, and make India a large manufacturing economy by 2025-26.

01 Introduction
02 Present Rate Structure

A The GST Journey

Introduction

As Goods and Services Tax completes five years of its implementation, the words of our former Late Finance Minister, Arun Jaitley, in the glittering ceremony unveiled during the joint session of Parliament on the midnight of 30 June 2017, reverberates afresh in our ears

> "The Goods and Services Tax may be a destination tax, but for India it will begin an altogether new journey...[6]"

It was the culmination of a long journey that began with a formal announcement in the Union Budget of 2006-07, proposing to implement GST from 1 April 2010. It took several years for its fruition, as reform is like the slow boring of hard boards.

It required a great institutional innovation in the form of an Empowered committee of state finance ministers to carry the process forward. The Empowered committee morphed into the GST Council based on the recommendations of the Task Force created by the 13th Finance Commission headed by Vijay Kelkar (Task force report was submitted on 15 December 2009). This was the first step in creating the framework to implement national GST, bringing together the Central VAT and State VAT and covering the entire value chain. The GST Council generated a process for debates and discussions between the Centre and the states –a fine example of cooperative federalism.

The law, which was later promulgated, embodied most of the features outlined in the discussion paper. These are also contained in the 101st Constitutional Amendment Act, 2016. In addition to the legal framework, what made GST possible was the creation of a technology platform in the form of GST Network (GSTN) which enabled all the taxpayers to carry out key business processes of registration, payment of tax and submission of returns on a common platform.

There was a growing sense of optimism on GST as the country was swiftly gaining momentum towards the implementation of its most significant tax triggered business reform post-independence – a game changer. Feeding India's dream to become a 'Manufacturing Heaven', seamless adoption of the GST regime was supposed to be a strong step forward. Such was the gravity of this change, that the shift from "Multiple Indirect Tax System" to "Single Unified Tax System" would change every known business dynamic for the trade and industry operating in India and those planning to enter the Indian Market.

This book charts the course of transition of the central and state law of indirect taxation fusing into a common GST and evaluates the way forward in three segments: (i) policy measures required to reform GST; (ii) tax simplification measures; and (iii) addressing the challenges faced by the industry.

6. https://youtu.be/1Gf0MXRjUOI

Constitutional Amendment... paved way for a new regime

The much-awaited Constitution (122nd Amendment) Bill, 2014 for ushering in Goods and Services Tax was tabled in the Lok Sabha on 19 December 2014[7], post its approval by the Union Cabinet. Article 246A (giving powers to Center and states to make laws w.r.t. GST), Article 269A (powers for levy and collection of GST on inter-state transactions), Article 279A (constitution of GST Council) were inserted in the Indian Constitution and Articles 271, 286, 366, 368 and List I (Union List) and List II (State List) of the Seventh Schedule were amended. The Bill was a reflection of the Union Government accepting all major demands of the State Governments such as compensation, CST equivalent tax for inter-state transactions accruing to the origin state, petroleum not to be taxed under GST at inception, and alcohol to be completely kept out.

On 3 August 2016, Rajya Sabha approved the bill with amendment in respect of (i) deletion of 1% additional tax on all inter-state supply of goods and (ii) providing full compensation to the states for first five years towards the losses if any, incurred due to implementation of GST. Subsequently, Lok Sabha cleared the bill unanimously on 8 August 2016. The Constitution 122nd Amendment Bill for GST was enacted in the form of Constitution 101st Amendment Act, 2016, after receiving the necessary assent of the Hon'ble President on 8 September 2016. The key features of the Constitutional amendments include:

- Granting power to Parliament and State legislatures to make laws w.r.t GST.
- Subsuming of various taxes and duties into GST.
- Levy and collection of GST in the course of inter-state trade or commerce.
- Formation and role of GST Council.
- Amendment in the union and the state List.
- Provision for compensation to states for loss of revenue on account of implementation of GST.
- Empowering Centre and the states to continue to levy and collect duties and taxes on certain petroleum products.

7. https://gstcouncil.gov.in/brief-history-gst

This was followed by constitution of GST Council comprising of (i) Union Finance Minister as its Chairman (ii) Union Minister of State in-charge of Finance as member and (iii) Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government, as its members.

The consensus between the Centre and the states on GST rate, thresholds and dual administrative control were the other important areas the Government had to deal with for implementing GST. Draft of the Model GST law underwent changes basis decision of GST Council and the Union Cabinet.

Implementation of GST on 1 July 2017, one of the most significant tax reforms, marked a historic moment for the country.

> Digitalization in the GST framework has helped the Government to sharpen the provisions with an objective to bring simplicity and reduce compliance burden.

Compensation... is the impasse resolved?

There was a long-drawn debate between the Centre and the states on the issue of compensation. The manufacturing states like Maharashtra, Gujarat, Tamil Nadu feared a revenue loss due to abolition of CST. Out of total revenue on account of CST during 2016-17, nearly 39 percent went to these states. A lot of these revenues were expected to shift to highly populated consumption states in view of GST being destination-based consumption tax. The idea, initially mooted by the Centre of imposing non-creditable one percent additional tax on GST, was dropped after hectic parleys between the Government and the industry.

The Government had committed to compensate the states for a limited period towards reduction in CST rates, which was contingent on the implementation of GST. The states however, insisted on a constitutional guarantee for such compensation. Various negotiations and deliberations ultimately resulted in compensation related provision being made part of the Constitutional Amendment Act.

The adoption of the GST was made possible by the states ceding almost all their powers to impose local-level indirect taxes and agreeing to let the prevailing multiplicity of imposts be subsumed under the GST. While the states would receive the SGST component of GST, and a share of IGST, it was agreed that revenue shortfalls arising from transition to the new indirect tax regime would be made good from a pooled GST Compensation Fund for a period of five years from the GST implementation date, till June 2022. This corpus, in turn, is funded through a compensation cess that is levied on certain 'demerit' goods. The items include tobacco products, aerated waters, and certain passenger motor vehicles.

During October 2020, the GST Council had extended the levy of compensation cess beyond the transition period of five years for such a period as may be required to meet the revenue gap due to COVID-19 related disruptions. The opinion of the Attorney General of India was cited to put forward the argument that GST compensation has to be paid for the transition period from July 2017 to June 2022, but the compensation gap cannot be bridged using the Consolidated Fund of India.

In the 45th meeting of GST Council, it was brought out that the revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22. Thereafter, vide Notification G.S.R. 468(E). No. 1/2022-Compensation Cess F. No. S-31011/11/2022-ST-II-DOR dated 24th June, 2022, the Government has extended the levy of Compensation Cess until 31 March 2026 .

Table 1.1 - List of goods attracting Compensation Cess and rate[8]

Description of Goods	Rate of Cess
Pan-masala	*60 percent*
Pan masala containing tobacco 'Gutkha'	*204 percent*
Aerated waters	*12 percent*
Caffeinated Beverages	*12 percent*
Coal, briquettes, and similar solid fuels manufactured from coal	*INR 400 per tonne*
Motor vehicles for the transport of not more than 13 persons, other than LPG, CNG and Diesel driven vehicles with certain Cubic Capacity	*15 percent*

8. https://cbic-gst.gov.in/pdf/compensation-tax/notfctn-1-compensation-cess-english.pdf

Taxpayer's jurisdiction

Dual control and jurisdiction over taxpayer base under GST were one of the vexed issues that required several deliberations between Center and the States before a solution was finally found. It relates back to the ninth GST Council meeting held in January 2017[9], in which the consensus on this long pending issue was reached. Many members of the Council were in favor of single inter-face for the taxpayer and complete cross empowerment in the Integrated Goods and Services Tax (IGST) premised on the concept of pooled sovereignty of the Centre and the states. Discussion also hovered around vertical split vs. horizontal split of taxpayers, ratio of division, delegation of powers under Article 269A in line with the one under Article 269 of the Constitution.

In respect of cross-empowerment to ensure single interface under GST, following decisions were taken by the Council:

01

Taxpayers shall be divided between the Central and the State tax administrations.

02

For taxpayers having turnover up to INR 1.5 crore,[10] all administrative control over 90 percent of the taxpayers shall vest with the State tax administration and 10 percent with the Central tax administration.

03

For taxpayers whose turnover exceed INR 1.5 crore, all administrative control shall be divided in the ratio of 50 percent each between Central and the State tax administration.

04

The division of the taxpayers may be switched between the Centre and the states at such interval as may be decided by the Council.

05

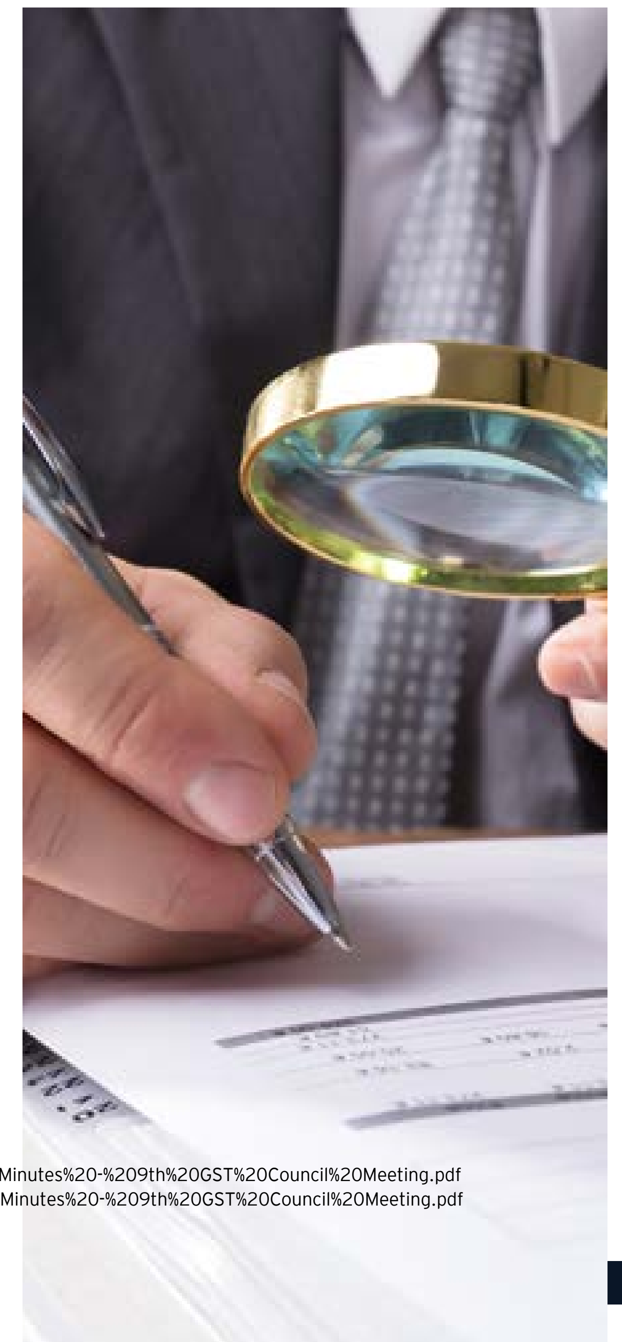
Both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain.

06

Powers under the IGST Act shall be cross-empowered to the State tax administration on the same basis as under the CGST and the SGST Acts either under law or under Article 258 of the Constitution but with the exception that the Central tax administration shall alone have the power to adjudicate a case where the disputed issue relates to place of supply.

07

The territorial waters within twelve nautical miles shall be treated as the territory of the Union of India, but the power to collect the State tax in the territorial waters shall be delegated by the Central Government to the states.



9. https://gstcouncil.gov.in/sites/default/files/gst%20rates/Signed%20Minutes%20-%209th%20GST%20Council%20Meeting.pdf
10. https://gstcouncil.gov.in/sites/default/files/gst%20rates/Signed%20Minutes%20-%209th%20GST%20Council%20Meeting.pdf

Digitalization roadmap

The GST Portal, developed by GSTN, by harnessing a most emerging state of art technology and robust Governance framework, was a unique and complex IT initiative by the Government. It became a backbone of a new indirect tax regime by not only providing GST related IT system-based services to taxpayers and tax officers, but also performed the function of back-end settlement of IGST collections amongst Centre, State and Union Territories, helping the Government in monitoring tax compliance and facilitating exchange of information amongst stakeholders, including taxpayers, States and the Central Government, Accounting offices, banks, and RBI. The Centre and State indirect tax administrations which used to work under different laws, regulations, procedures, and formats and consequently, the IT systems worked as independent sites were integrated into one common and shared infrastructure and a uniform interface for the taxpayer.

IT Portal covers online registrations, returns, tax payment, settlement of IGST payment (like a clearing house), tax refunds and other applications, e-way bill generations and generation of business intelligence and analytics. System is also integrated with ICEGATE system of the Customs enabling seamless disbursals of refund to the exporters. Taxpayer convenience, improving ease of compliance and minimizing human interface were some of the key objectives of the GST network.

Designing a system of unprecedented tax regime at the scale of merging tax systems of 36 states/UTs and CBIC and GST Suvidha providers into a single system was a significant achievement. Information and data security in GST system was an overarching theme, and multi-tier design ensured that the sensitive and valuable information stayed deep into the technology system. It also provided offline tools to enable taxpayers to prepare return offline and then submit it on the portal.

Organization of information and digitalization of applications facilitated efficiency in business processes and optimum utilization of human resources. With advent of new technology, tax compliance became more convenient as the complex business processes have been abstracted behind workflow-based system design.

E-way bill

E-way bill mechanism, introduced to ensure that goods transported complied with the GST Law, became an effective tool to track movement of goods and check tax evasion. The new provisions aimed at removing the ills of the erstwhile way-bill system prevailing under VAT regime in different states, which was a major contributor to the bottlenecks at the check posts. Moreover, different states prescribed different e-way bill rules which made compliance difficult. The digital interface has facilitated faster movement of goods, improved turnaround time of vehicles and helped the logistics industry.

E-invoicing

Introduction of e-invoice in a phased manner is seen as a major break-through for reporting of Business to Business (B2B) invoices as also export invoices. Taxpayers will continue to create their GST invoices on their own ERP Systems and report to 'Invoice Registration Portal (IRP)' in a standard format, called 'schema' and notified as Form GST INV-1.

E-Invoice has contributed significantly to business processes by way of standardization, inter-operability, auto-population of invoice details into GST return and other forms like e-way bill, reduction in transcription errors, processing costs and disputes among transacting parties, improvement in payment cycles and thereby improving overall business efficiency, system level matching of ITC with output tax, reconciliation with purchase orders and so on. Complete trail of B2B invoices may also eliminate tax evasion.

> Introduction of e-way bill and e-invoicing system, changes in procedure relating to return filing and input tax credits, taxation of transactions involving unregistered persons and real estate and the continuous effort of the Government in reducing compliance burden of MSMEs are some of the key differentiators in the evolution process.

Evolution of law

Launching a reform and then continuously improving or adapting it to the ground level realities is an integral part of implementation. GST, when enacted in 2017, was admittedly a work-in-progress and its implementation is still ongoing. The stability of GST law was marred by several amendments and clarifications issued from time to time, albeit helping the Government in shaping / sharpening it to plug loopholes, remove ambiguity, making it more compliance friendly and at the same time, check tax evasion. In the process, it is giving rise to instability, uncertainty, and complexity in comprehending the legal provisions and procedural aspects.

GST Return filing system

One of the significant deviations from the initial framework of the GST Law is the return filing system. Modalities under GST envisaged electronic return filing, uploading of invoice level information, auto-population of information relating to ITC from returns of supplier to that of recipient, invoice level information matching and auto-reversal of ITC in case of mismatch. However, owing to unprepared GST ecosystem and complexity of return forms, the originally envisaged key returns were deferred and a new simpler and self-assessed summary return, GSTR-3B, was introduced - initially for two months and later extended before being a permanent part of the return filing system. The originally envisaged system-verified flow of ITC was kept in abeyance, rendering the system prone to ITC frauds.

In October 2020, the GST Council decided to incrementally incorporate the features of the new return system in the present GSTR-1 / GSTR-3B filing scheme, making it a default filing system. In the whole process, the originally envisaged system-verified flow of ITC through "invoice matching" has not been implemented and the same is proposed to be replaced with the entire new scheme of credit availment.

Credits transitioning into GST

As GST sought to consolidate multiple taxes into one tax, it was very essential to clearly spell out arrangements to ensure smooth transition from the old tax regime to GST. This was needed especially, to provide for carry forward of tax credits earned in the pre-GST regime, that were available with the taxpayers on the day of roll out of GST and ensure that such credits were not lost. Elaborate provisions were embedded to carry forward accumulated and unutilized CENVAT Credit (under erstwhile Central laws) and Input Tax Credit (under State VAT laws), allowing it to be transitioned into GST and utilized against GST liability.

However, rejection of transitioned credit claimed by taxpayer became one of the most contentious issues giving rise to large number of Writ petitions being filed before the High Courts (HC) and the Supreme Court of India (SC). Issues on transitional credit mainly involved non-filing of TRAN-1 and TRAN-2 forms within the timelines prescribed, technical glitches encountered by taxpayers in transitioning such credits on GSTN Portal and so on.

Input tax credit

GST was introduced with some of the fundamental objectives – one of the key elements being seamless tax credits across the supply chain without any distortion. While some of the conditions imposed for claiming input tax credit under the law became deterrent to credit availment, further restriction on such claim basis non-compliance by the supplier has proved a bone of contention. This was mainly attributable to change in the return filing system and related provisions for credit matching.

In the absence of matching, taxpayer availed ITC on self-assessment basis without any restriction, and not taking cognizance of ITC reflected in GSTR-2A. The restriction was therefore imposed by allowing only a specified percentage of credit not reflecting in Form 2A. This percentage was reduced from time to time, making the credit availment provisions more stringent.

Additional restriction was imposed on claiming ITC if details of invoice were not furnished by the supplier in the statement of outward supply and communicated to the recipient. Provisions for claiming ITC have been made stringent in Budget 2022 in as much as the taxpayer cannot claim credit due to various non-compliances by the supplier. This has been done mainly to address the fraudulent claims made by few taxpayers.

Measures to enforce compliance have been enhanced further by restricting certain registered persons from utilizing credit in excess of 99 percent of output tax.

Anti-Profiteering provisions

With the implementation of GST in the country, the major apprehension was that the new indirect tax reform will lead to inflation in prices of goods and services, at least in the initial phase. This was a common phenomenon observed world over, whenever GST / VAT was introduced in other countries, making it a disincentive rather than an advantage to the economy. In order to ensure that the taxpayers do not unjustly benefit from a reduction in tax rate or enhanced input tax credit under GST, Government had cast an obligation on taxpayer to rightfully pass on the benefit to customer in the form of commensurate reduction in price of goods or services. For administering compliance of the Anti-Profiteering provisions, lawmakers constituted a framework of bodies.

Tax on unregistered dealer (URD)

There has been a significant departure in the provisions relating to the reverse charge mechanism for procurement made from URD. The provision which cast the obligation on recipient of goods or services to pay tax in respect of supplies made by unregistered supplier was made operational and later amended, as a trade facilitation measure, to remove such taxability in the hands of recipient except in cases as may be prescribed. Currently, specified inputs like cement (URD procurement) in the real estate sector have been covered under RCM.

Easing compliance burden on MSMEs

Some of the major amendments in the law, facilitating ease of compliance for MSMEs included changes in composition scheme, inclusion of supplier of services under the scheme, ease of payment and return filing, relief from the requirement of registration for service providers up to specified limit and so on.

Implementation of e-way bill system

Introduction of provisions relating to the e-way bill from April 2018 was a major milestone achieved in the journey of GST. A GST impact study conducted by EY-World Bank for the Ministry of Road Transportation and Highways found that removal of commercial tax check-posts by the states, post implementation of the GST, led to the reduction in trip time by around 17.45 per cent. The Government made changes to e-way bill system by providing exemption in respect of small intra-state consignments from such compliance.

E-invoicing

In June 2019, the GST Council implemented e-invoicing system under GST in a phased manner for all B2B transactions. At the same time, the Council also recommended that invoices issued to unregistered persons shall have Dynamic QR Code affixed to it. The e-invoicing which finally took off in October 2020 after putting all IT infrastructure in place, was initially made applicable to turnover threshold of more than INR 500 crores in a financial year. Ten websites were notified as common GST Electronic Portal for preparation of e-invoice.

Insurance, Banking and Financial institutions, GTAs and Passenger Transport service providers have been kept outside the purview of e-invoicing. The turnover threshold was later reduced to INR 100 crores effective 1 January 2021 to INR 50 crores effective 1 April 2021 and currently it is INR 20 crores effective 1 April 2022. It means, all those taxpayers whose turnover at any time starting FY 2017-18 onwards was more than INR 20 crores, had to comply with e-invoicing requirements from April 2022. All mid and small size entities had to ramp-up their processes and IT system to enable them to comply with new e-invoicing regulations.

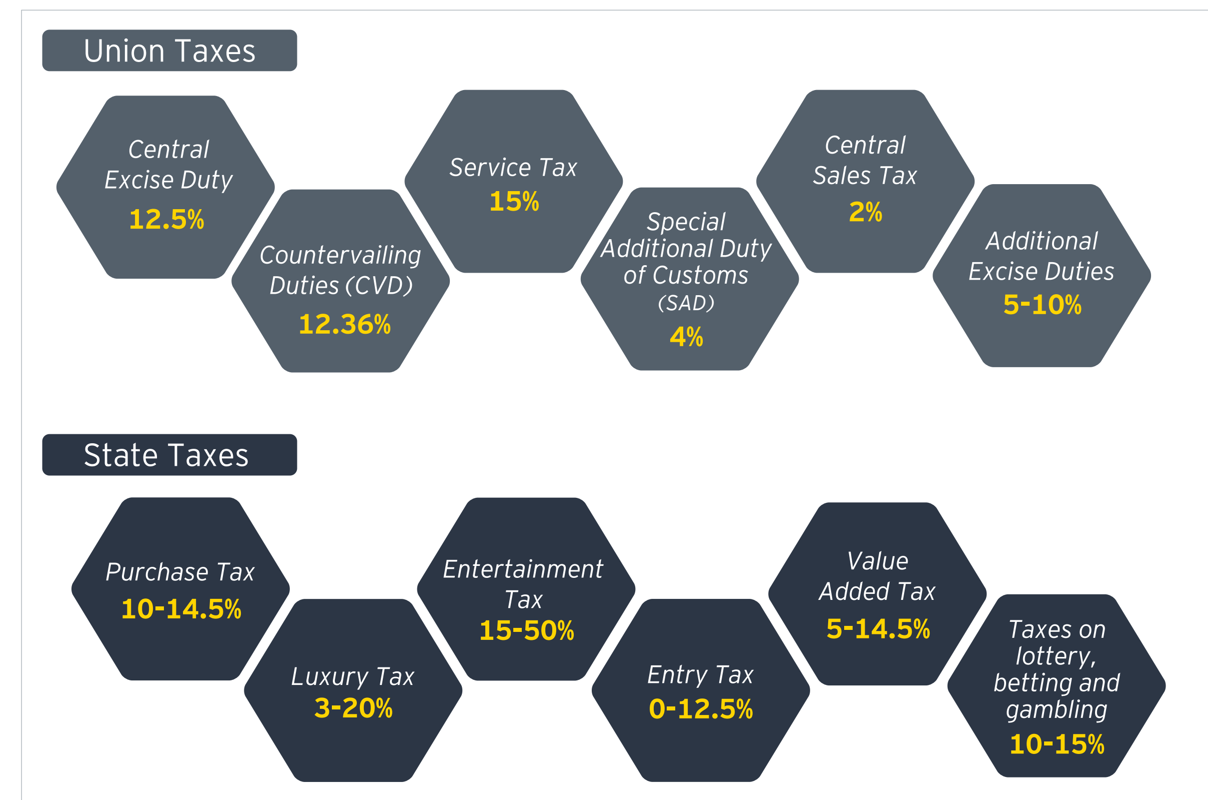
Key Takeaways

Between the time GST law was implemented and the one that is today, we see the law evolving to meet its desired objectives. There have been significant changes in the GST framework, some of which are key to digitalization and others helping the Government to sharpen the provisions with an objective to bring simplicity, reduce compliance burden and at the same time plug loopholes. Introduction of e-way bill and e-invoicing system, changes in procedure relating to return filing and input tax credits, taxation of transactions involving unregistered persons and real estate and the continuous effort of the Government in reducing compliance burden of MSMEs are some of the key differentiators in the evolution process.

Present Rate Structure

With multiple taxes under erstwhile indirect tax regime, the rate structure was totally distorted. Under VAT, while it started with a common two-tier rate structure across the country, over the period, the individual states had changed the rates and the same product attracted different VAT rate across the country. This led to a chaos for trade and industry. The tax structure under the erstwhile regime can be summarized as follows:

Table 2.1 - Tax structure under earlier Indirect Tax regime[11]



11. XV Finance Commission Report for 2021-26

Under GST, it was desirable to have a rate structure which had a minimal adverse impact on inflation.

In India, due to vast income inequality, there was a need for multiple tax rate structure. It meant that different items used by different segments of society had to be taxed differently. A committee, headed by the Chief Economic Advisor Dr. Arvind Subramanian, was appointed to recommend possible tax rates under GST that would be consistent with the present level of revenue collection of Centre and states. The committee submitted its report to the Union Finance Minister in December 2015.

It made recommendations on a number of issues such as revenue neutral rate (RNR), distribution of RNR between the Centre and states, structure of rates, potential price impact of GST, bands for GST, compensation cess, tax treatment of precious metals, and tax treatment of certain commodities such as alcohol, electricity, education, and health.

The committee suggested that the RNR should lie between 15 percent and 15.5 percent (Centre and states combined) but with a preference for the lower end of that range.

On structure, in line with growing international practice (among 115 countries with VATs, 49 have a single rate, and 28 have two rates[12]) and with a view to facilitating compliance and administration, India should strive toward a one-rate structure as the medium-term goal. However, the committee recommended a two-rate structure. In order to ensure that the standard rate is kept close to the RNR, the maximum possible tax base should be taxed at the standard rate. It was recommended that lower rates be kept around 12 percent, with standard rates varying between 17 and 18 percent. The committee also recommended that the rate for sin/demerit goods should be fixed at about 40 percent.

The committee proposed to bring down overall exemptions to less than 100 (as against erstwhile 300 for Centre) to achieve revenue neutrality for Centre. It also suggested that bringing electricity and petroleum within the scope of GST could make Indian manufacturing more competitive; and eliminating the exemptions on health and education would make tax policy more consistent with social policy objectives.

GST Council, in its 4th meeting on 3 November 2016, decided on the following:

Table 2.2 – Determination of GST rates basis rates under earlier regime

	GST Rates	Earlier rate structure merging into GST rates
Lower		>= 3.00 percent - < 9.00 percent
Standard 1	**12 percent**	>= 9.00 percent - < 15.00 percent
Standard 2	**18 percent**	>= 15.00 percent - < 21.00 percent
Higher	**28 percent**	>= 21.00 percent

During the past five years, as a part of rate rationalization, majority of goods from 28 percent bracket have been moved to 12 percent/ 18 percent tax bracket.

12. IMF Country Report No. 18/255 on India - August 2018

GST Council further decided that:

1

There shall be a category of goods which shall be exempt from GST and this would include items like food grains.

2

Supply of services shall generally be taxed at the rate of 18 percent.

3

NCCD shall continue to be levied and its proceeds shall continue to be allocated to NDRF.

4

A committee of officers of the Central Government and State Governments (Fitment committee) shall carry out an exercise of fitment of goods in the various slab rates.

During the past four years, as a part of rate rationalization, majority of goods from 28 percent bracket have been moved to 12 percent/ 18 percent tax bracket.

At present, the goods covered under different slab rates are:

Exempt

Food grains, cereals, milk, jaggery, common salt, etc.

5%

Coal, sugar, tea and coffee, drugs and medicine, edible oil, packaged food, etc.

12 %

Fruit juices, vegetable juices, beverages containing milk, jams etc.

18%

Kitchenware, hair oil, soap, toothpaste, glass fibre, refrigerators etc.

28%

Air conditioner, dish washing machine, motor vehicles, cigars, and cigarettes etc.

Cess

Motor cars, Tobacco, Coal, Aerated waters etc.

Further, pearls, precious or semi-precious stones, diamonds (other than rough diamonds), precious metals (like gold and silver), imitation jewelry attracts GST @ 3 percent and rough diamonds attracts tax @ 0.25 percent

Similarly, various services are taxed as follows[13]:

Exempt

Education, healthcare, residential accommodation, etc.

5%

Goods transport, rail tickets (other than sleeper class), economy class air tickets, cab aggregators, restaurant services, selling space for advertisements in print media etc.

12%

Construction of road, bridge, railway, business class air travel, hotel/ lodges (upto INR 7500), cinema tickets (value up to inr 100) etc.

18%

Works contract, telecom services, financial services, IP rights, hotel/ lodges (value more than INR 7500), cinema tickets (value more than INR 100) etc.

28%

Race club services, amusement facilities and sports event etc.

13. As per data available on CBIC website

B Way forward
Challenges and reforms

01 Policy measures required to reform GST
02 Tax simplification measures
03 Addressing the challenges faced by industry
04 Conclusion

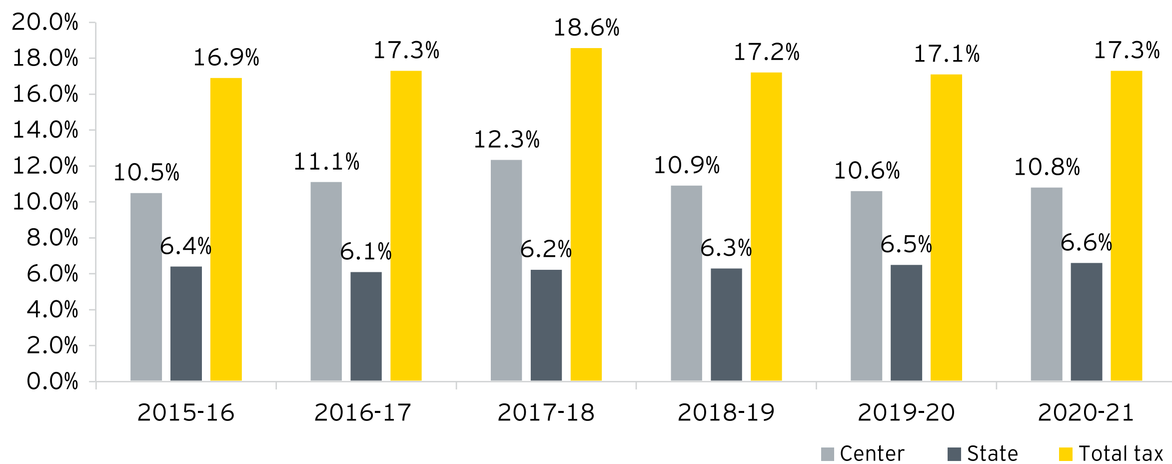
Policy measures required to reform GST

Revenue buoyancy and Rate rationalization

Out of the four pillars on which the GST reform agenda can be built, the first and foremost is revenue buoyancy. For the last 25 years, India's tax-to-GDP ratio has been stuck between 16-18 percent, severely constraining our fiscal capacity to devote more resources to our underinvested sectors. Any state in a large country like India cannot discharge its developmental function with such a low fiscal capacity. Even at our levels of per capita income, we should be nearer to a 20 per cent tax-to-GDP ratio given the norms of other emerging market economies.

The Goods and Services Tax (GST) reforms, due to its inherent design, offered the prospect of raising the tax-to-GDP ratio by at least two percentage points[15]. Under the GST regime, the entire value chain is optimized for the purpose of taxation through seamless flow of credit and taxing the value addition at each stage. This design should inherently generate higher buoyancy.

Chart 1.1- Tax as a percentage to GDP[14]



14. As per media reports
15. https://www.business-standard.com/article/opinion/gst-a-turning-point-121062101630_1.html

The initial year of GST did show higher buoyancy than the pre-GST era. In the first year of implementation of GST, revenues grew by 11.9 percent and the buoyancy was 1.2. A buoyancy ratio over 1 shows progressiveness in the revenue growth and opens the prospect of a rising tax-to-GDP ratio. This is a significant improvement over the pre-GST period when the buoyancy ratios for State VAT and Central indirect taxes like Central Excise and service tax were less than 1.

However, the higher buoyancy than the pre-GST regime did not continue for other years under GST. Many factors have contributed to this. Policy issues like successive reduction in tax rates and inverted duty structure and the consequent compromise of the revenue neutrality of GST rates have affected the revenue performance. Research has indicated that operational issues like weaknesses in its IT system, non-compliance in filing tax returns and issues in settlement of input tax credit dampen the efficiency of GST.

Figures of tax collection since the implementation of GST are given below. The new normal for GST collection has become more than INR 1.1 lakh crore a month. This must be further strengthened to ensure that GST is able to achieve higher buoyancy.

Chart 1.2 - MoM collection of CGST, SGST and IGST in INR crores[16]

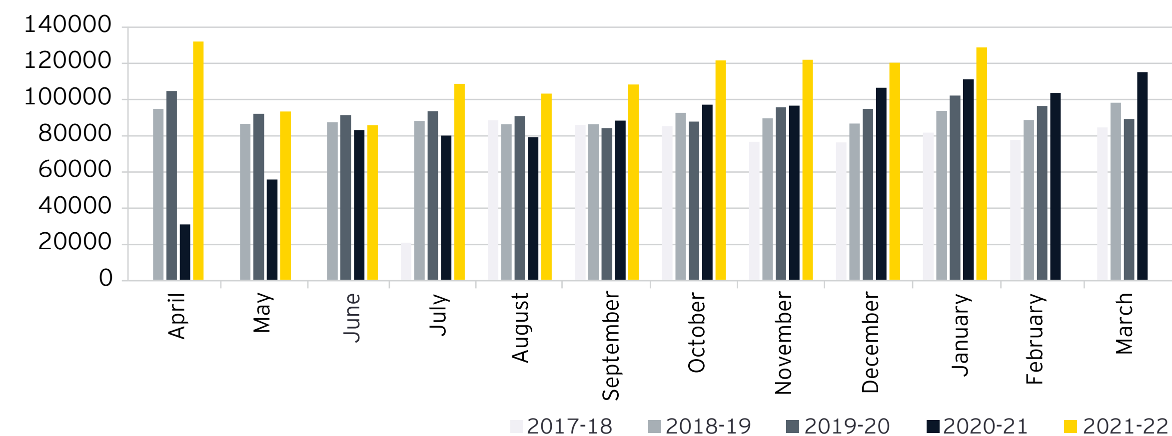
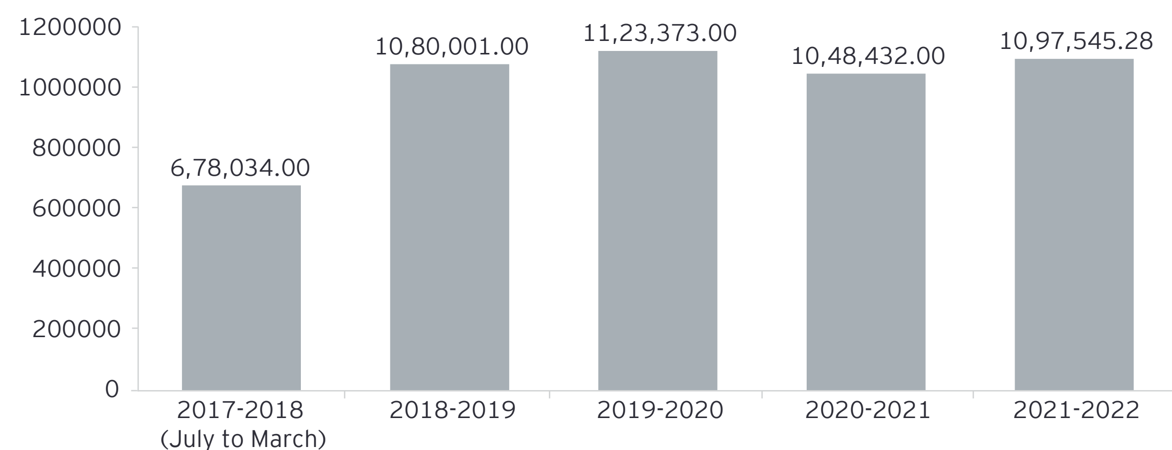


Chart 1.3 - YoY collection of CGST, SGST and IGST in INR crores[17]



16. GST Collection - as per data available on GST portal
17. https://www.gst.gov.in/download/gststat_interactive

The Fifteenth Finance Commission in its report based on an IMF study has said that the GST incidence of duty has fallen from 14 per cent – the revenue neutral rate – to 11.8 per cent[18]. The buoyancy in GST revenues can be further boosted if the incidence of duty is raised from the current level of 11.8 per cent. Increasing the tax buoyancy requires a slew of policy measures, including rationalization of GST rates and merger of the slabs suggested by the Fifteenth Finance Commission[19]. The other measures would include phasing out exemptions and bringing in more excluded items into the GST net (like electricity and real estate) coupled with a strengthened compliance system.

Revenue buoyancy can be achieved by a number of measures covering the following three areas:

01	Rate rationalization
02	Better compliance
03	Enhancing the coverage of the GST by including excluded areas like petroleum, real estate etc.

01 Rate rationalization[20]

There were at least four different estimates of the RNR before its implementation.

The Task Force appointed by the FC-XIII: RNR at 12 per cent (5 per cent for the CGST and 7 per cent for the SGST). The Task Force noted that this was a steep decrease from the combined CENVAT and VAT of 20.5 per cent.

IMF: RNR of 11.6 per cent. It used the national accounts data on final consumption and supply and use tables for 2011-12. Very few exemptions were considered.

NIPFP: RNR in excess of 17 per cent with different scenarios.

Report on RNR and structure of rates chaired by the then Chief Economic Adviser: RNR of 15 per cent (preferred estimate) and 15.5 per cent (alternative estimate).

The arithmetic average of these RNR estimates is around 14 percent. A change in tax structure can be said to be revenue neutral if the modified tax is able to realize revenue comparable to the original tax regime, relative to the tax base. In this sense, the much-needed revenue neutrality of GST stands compromised. Despite having a four-tier rate structure, in September 2019, the RBI estimated that after multiple rate adjustments, the effective weighted average GST rate declined from 14.4 percent at the time of GST inception to 11.6 percent. The IMF also indicated that the current effective tax rate is around 11.8 per cent.[21]

It is important to restore the revenue neutrality of the GST rate, which is reduced due to multiple rate structure and several downward adjustments of rates. The rate structure can be rationalized by merging the rates of 12 percent and 18 percent. The system can be operated with a three-tier rate structure of a merit rate, standard rate, and demerit rate. The demerit rate can be further increased, and exemptions can be minimized.

With respect to the three-tier rate structure, the proposed rates should be 8%, 15% (merging 12% and 18% rate) and 30% (increase from the current rate of 28%). Further, once compensation cess is abolished, the current rate of 28% can be increased to 40%. This is likely to help in achieving RNR and will increase tax to GDP ratio.

There is also a need to revisit the GST rates on tobacco and gold. Traditionally, taxation in the tobacco sector has been fixated on cigarettes. Even though out of a total annual tobacco production of 800 million kg, only 250 million kg approximately go into cigarette production. The GST rates on tobacco leaves, which are levied on a reverse charge basis, need to be raised from the present level of 5 percent to 25 percent. This will increase the revenue to the extent tobacco and its leaves are used in the manufacturing of exempted products. This will also signal the use of GST taxation as an instrument to curb tobacco consumption. On gold, there is a need to increase the GST rate of 3 percent to 5 percent on equity consideration as more than 80 percent of gold and gold ornaments purchased and owned are by the top decile of the population.[22]

Further, coal currently attracts GST @ 5 percent besides the compensation cess @ INR 400 per ton. The tax rate on coal can be further increased once power sector is included within the GST ambit.

In order to re-establish RNR, the large number of exemptions need to be phased out. When GST was implemented, there were 90+ State VAT exemptions and about 300+ Central Excise exemptions. There is a need to restrict GST exemptions only to those items that were VAT exempt in the pre-GST period. This was the consensus reached by the Centre and the state in the various committees created. Identifying individual items for moving them from exemption to 5% category can be a cumbersome task. The Government can alternatively phase away the GST exemptions given to the goods which were earlier exempted under Central Excise so that all those goods will now go to 5% tax bracket and will ultimately result in increased revenue collection.

Due to embedded input tax costs, exemptions have a regressive effect. A key finding is that the indirect incidence of the current GST disproportionately burdens poorer households, undoing the objective behind having exemptions. The lowest quintile faces an additional 2.5 percent effective GST rate since ITC is not available in respect of exempt goods (and input tax costs are thus likely passed on to the final consumer).[23]

While there is a need to increase tax rate for revenue buoyancy, there is a necessity to provide tax benefits to sectors engaged in green and renewable energy. The entire procurements for renewable energy sector, including renewable energy devices and their parts, should be reduced to five percent rate.

A simpler rate structure with fewer exemptions, however, would be less progressive. With the consumption basket of the rich taxed at higher rates than that of the poor, the GST, as presently designed, has an effective tax rate rising with household consumption. A revenue-neutral reduction in the number of rates may raise the effective rates for poorer households while reducing those for richer households. This is the key cost of moving to a simpler system.

There are likely significant benefits from lower costs of compliance and administration. The literature on VAT compliance costs shows that there is broad variation across countries; however, there is a consensus that compliance costs are regressive, and administrative costs increase with complexity. While evidence on India is nascent and remains to be assessed as experience with the GST is gained, anecdotal evidence from large firms indicates sizable increases in costs, which may be even more burdensome for smaller firms. Streamlined rates would also weaken incentives to lobby for lower rates.

In conclusion, revenue neutrality rate of GST needs to be restored through implementation of some of the significant rate rationalization measures listed below:

- Phasing out a majority of exemptions and bringing them under five percent tax bracket.
- Shifting to a three-tier rate structure of "8 (merit rate) – 15 (standard rate) – 30 (demerit rate)" percent by merging 12 percent and 18 percent into 15 percent slab and increasing demerit rate from current 28 percent to 30 percent.
- 30 percent slab can be raised to 40 percent post abolition of compensation cess.
- Enabling provisions to ensure that Input Tax Credit is free flowing for a business and with minimal restrictions
- Rate restructuring in case of products including gold and gold jewelry, tobacco, coal.

Further, GST rate rationalization should also look at greening the GST by lowering the rates of GST on items like procurements for renewable energy, etc. which may help in reducing carbon emissions.

This takes us to another key element of policy measures for revenue buoyancy, viz. better GST compliance and verification process detailed in the next part.

18. Finance Commission in COVID Times - Report for 2021-26 - Volume I Main Report - October 2020 - Box 5.1
19. https://www.thehindu.com/business/gsts-performance-versus-promise/article28111816.ece
20. Finance Commission in COVID Times - Report for 2021-26 - Volume I Main Report - October 2020 - Box 5.1
21. XV Finance Commission Report for 2021-26
22. As per media reports
23. IMF Country Report No. 18/255

02 Better compliance framework and verification

Compliance framework

A report tabled by India's CAG before Parliament highlighted the procedural inefficiencies as well as delays in implementation of technology and simplified return filing process under GST while it said detecting evasion has improved.

To further increase revenue numbers, it is necessary to expand the tax base. Increase in number of registrations over the last few years is a clear indicator of the same.

Table 1.1 - Registration data as on 31 May 2022[24]

Category	No. of registrations
Normal Taxpayers	1,17,43,35
Composition Taxpayers	15,93,954
Input Service Distributor	6,974
Casual Taxpayers	766
Tax Collector at source	15,821
Tax Deductor at source	2,33,458
Non Resident Taxpayers	29
OIDAR	348
UIN Holders	2,271
Total	**1,35,96,974**

Compliance verification

There have been number of instances of tax evasions under GST in last five years. Anti-evasion cases under GST tracked by DGGI and GST Commissionerate after implementation of GST are given below:

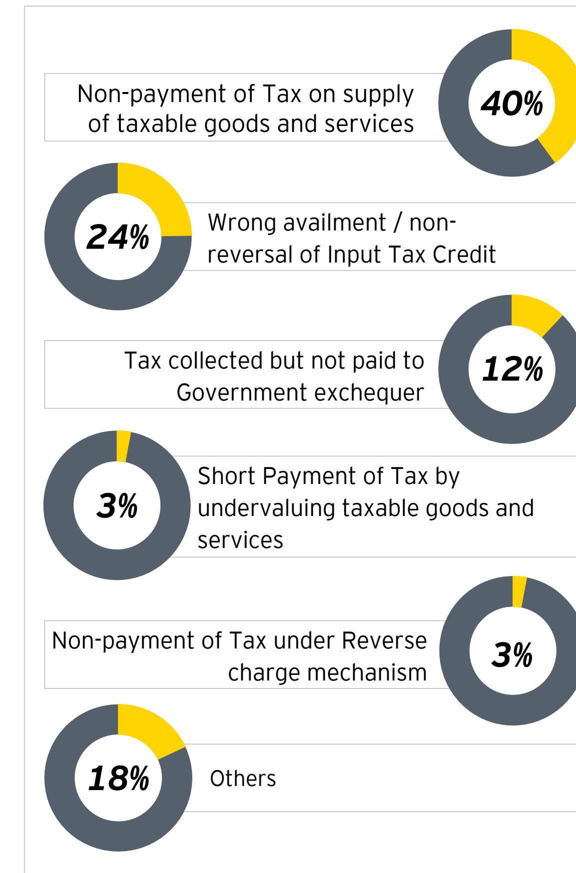
Table 1.2 - Anti-evasion cases[25]

Financial Year	No. of cases	Amount (INR in Crores)
2017-18	424	1,216.02
2018-19	7368	37,946.41
2019-20	10657	40,853.27
2020-21	12596	49,383.96
2021-22 (upto June 2021)	1580	7,421.27

The number of arrests made by officers of CBIC is one of the highest in recent times. Misuse of the beneficial provision of ITC became one of the most common modes of tax evasion under GST. Apart from cases of fake ITC, the DGGI and other field formations have also detected GST evasion involving non-payment of tax on supplies and tax collected but not paid to the Government.

Nature of anti-evasion cases during the period 2017-19, as published by Comptroller and Auditor General of India CAG in its report for the years ended March 2019 and 2020:

Nature of tax evasion



In November 2015, the CBIC and the CBDT had signed a formal Memorandum of Understanding to share specific information. Similar arrangement could be made with the State Commercial departments as well.

Key Takeaways

To conclude, an increase in the number of registrants under GST and return simplification with enhanced internal checks, particularly from an ITC standpoint, could be important for achieving compliance effectiveness. On the other hand, strengthening automation and information sharing in the verification process to detect and eliminate misuse of tax benefits will certainly help tax administration.

Apart from policy measures to increase revenue buoyancy discussed above, design measures by way of expansion of GST ambit are equally important.

03 Design measures - Expansion of GST ambit

The sectors to be included in the taxable base under GST was a matter of debate right from the beginning. While a decision on bringing petroleum within the ambit of GST was a welcome move, the five important products, namely, petrol, diesel, crude oil, natural gas, and aviation turbine fuel, were kept outside the purview of GST. Levy of Central Excise duty and State VAT continued on these products. Similarly, alcohol for human consumption was also kept outside GST. Both ringfenced the revenues of the Centre and states.

24. As per data available on GST portal-https://www.gst.gov.in/download/gststat_interactive
25. As per replies given by Minister of State for Finance in Rajya Sabha

After the Constitutional amendment, there was no legal bar for bringing petroleum under GST. On the other hand, there was an apprehension that the inclusion of electricity may result in increased tariff burden on consumers. Levy of electricity duty on power continued post GST, which also supported the State's revenues.

On real estate, again, there was a long-drawn debate to cover it within GST. Experts split in their view on the requirement of constitutional amendment in the definition of goods if real estate had to be made a part of the new indirect tax regime.

So, at the time of implementation of GST, the structure of GST approved by GST Council excluded the following sectors from the purview of taxability under GST, namely, real estate, alcohol, and electricity and temporarily, five petroleum products. GST provisions give a leeway to the Government to levy GST on petroleum products from a date that GST Council may recommend.

Though in some sense this was flawed, its structural design could be improved as system stabilizes and revenues improve. This calls for expanding the scope of GST now to include below sectors/ segments:

Petroleum products

The rise in fuel prices significantly impacts almost all major industries, including transportation, auto, paint, FMCG, capital goods industry and so on. There is a cascading effect in the logistic sector and other user industries. Natural gas is another petroleum product which is primarily an industrial intermediate for many industries. Exclusion of this natural gas from GST creates an overhang of cost for downstream user industries like fertilizer, chemical, and power generation.

Such exclusion creates a dual system of GST and non-GST inputs, thereby preventing seamless flow of tax credits. Further, the varied rates of petroleum products across the country on account of different VAT rates levied by different states, along with the problem of tax on tax for these products (as Excise and VAT is not creditable against GST and vice versa) have added fuel to the fire.

Electricity

In case of supply of electricity, embedded taxes are disproportionately high (approx. 8 percent), largely due to taxes on raw materials like coal, and on equipment like panels, batteries, boilers, turbine, generators and so on. At present, electricity is not subject to GST and power companies pay multiple taxes on capital goods and other inputs (procurement leg) apart from state electricity duty paid on the supply of power. This effectively increases the price of power to domestic and industrial consumers, thus calling for its integration in GST structure.

Option suggested by NITI Aayog[26]

NITI Aayog has also proposed a formula whereby the two motor fuels namely, petrol and diesel, and electricity could be brought under the GST in one go, without causing much Centre-states tussle.

Centre could favor keeping petrol and diesel at the highest slab of 28 percent, levy a cess at the rate of 50 percent for a period of six years to compensate states for inclusion of electricity duty in GST and also cover part of its losses due to transition of the fuels into GST. Compensation to states on account of losses on electricity duty might be brought down by 20 percent in each year.

Besides getting a 50 percent share in the GST on petrol and diesel, the states could also benefit from higher devolution, as the Centre's 50 percent revenue from the fuels will also be part of divisible pool, against under 6 percent now.

The NITI Aayog is of the view that given a seamless input tax credit mechanism to be facilitated under GST, the industry's post-tax profitability could increase and result in substantial incremental growth in the Government's direct tax receipts.

The average tax rate on electricity is about 7.5 percent (the duty varies from 0 to 25 percent among states) and the RNR for it works out to be 16.6 percent (FY19). Power can be put under 18 percent GST slab, by subsuming electricity duty into GST.

Real estate

As the supply of immovable property (land and completed buildings) has been kept outside the purview of GST, it distorts the GST framework. Without levying GST on supply of land and building, it would be very difficult to complete the input tax credit chain (ITC), particularly, ITC in respect of construction services and construction material used in creation of immovable property which is further used for carrying out taxable activities. Non-inclusion of land and building in GST results in cascading of taxes.

26. As per media reports

Key Takeaways

In order to facilitate seamless input tax credit availability across all sectors and make Indian manufacturing more competitive, (i) petroleum products, particularly, ATF and natural gas to begin with, (ii) electricity, and (iii) real estate should be covered within the ambit of GST at the earliest. Such a move will help the country immensely by incentivizing investment and enhancing demand for consumption. There are various options available for expanding the tax base and the Government can choose the one that suits both Centre and states from a revenue standpoint. While electricity can be taxed at 5 percent uniformly across supply chain, petroleum products at 28 percent and real estate (land and constructed building) at 12 percent with seamless credit eligibility, it can go a long way in eliminating distortion and making GST a transformational reform in its true sense.

World class dispute resolution

Research suggests that improvement in the ease of compliance and tax payments can help avoid disputes, especially for lower tax segments. While the experience of the ease of doing business in India has been satisfactory, with the ranking deservedly applauded, it has not gone far enough in the area of indirect tax dispute resolution. The overall structure of the dispute redressal system has not significantly changed over a period of years with the three-tiered appellate system and advance ruling mechanism. In terms of dispute resolution, the sheer number of cases faced by the Indian judiciary makes timely disposals a big challenge. Writ petitions are generally decided more quickly than appeals.

The total amount of funds that were locked up in the cases at various levels under service tax and Central Excise put together by the end of 2019 was more than INR4 lakh crore. This comprised nearly 1.4 lakh cases, according to the data provided by Anurag Singh Thakur, MoS, Ministry of Finance, in Lok Sabha. Even as the Sabka Vishwas scheme[27] resolved the disputes of over 70 per cent eligible taxpayers, the big-ticket disputes still seem to be out of its reach.

Broadly, any tax system must have the following five distinctive features:

1
Disputes must be clearly defined, and non-serious infringements be kept out of disputes domain

2
Uniformity of practice in assessment must be ensured

3
System must ensure speedy adjudication of cases within definite timelines

4
Taxpayers should be encouraged to settle disputes without resorting to litigations

5
Develop non-intrusive mechanisms of interaction between the taxpayer and the tax department

27. 2019 - https://cbic-gst.gov.in/pdf/sabka-vishwas/Sabka-Vishwas-legacy-dispute-resolution-Scheme-2019-Finance-Act-2019.pdf

A major pain point in the GST dispute resolution mechanism is the failure to make a conceptual distinction between cases involving 'offence' and 'adjudication'. Offence cases are generally occasional and do not have any recurring implications. On the other hand, adjudication cases relate to principles of classification, valuation and eligibility of input tax credit and, therefore, have recurring implications. The suggested course of action is that while field officers could be allowed to decide on offence cases on the basis of facts available, a centralized system of binding instructions should be put in place for field officers to follow in the adjudication matters. For this purpose, both the Centre and states can create a "technical secretariat" which could be empowered to issue such binding instruction on assessment matters to ensure uniformity of practice.

The other important change is to do away with the distinction between 'suppression' and 'non-suppression' cases in the GST law and prescribe one uniform period of three years to complete adjudications. The suppression aspect could be addressed in the adjudication order on the basis of facts, and a higher penalty could be imposed. Therefore, the penalty route may be a better way of dealing with this distinction rather than through a time period difference. This amendment will considerably reduce litigation as many taxpayers are incensed by wrong invocation of the suppression period and, therefore, opt to litigate rather than pay the tax.

As a measure to reduce clogging of appeals before the appellate forums like Tribunals, HCs and SC, Government should introduce appropriate provisions under GST to allow revenue to defer filing of further appeals, subject to consent obtained from taxpayer, in cases where similar matter is pending for disposal before jurisdictional High Court or before the Supreme Court. Even under Income Tax Act, the provisions have been suitably amended in this regard.

There is also a need to have another institutional mechanism where trade and industry can air their implementation grievances to senior state and central officials. This should be a registered body just like the Empowered committee of State Finance Ministers comprising senior Central and State GST officials who will hear about the problems of trade and industry. These grievances could feed into policymaking. This will address much of the discomfort presently experienced by the trade, as they had the opportunity in the pre-GST era to separately meet central and state officials.

Authority for Advance Ruling (AAR)

The mechanism of AAR in India, with several cases pending resolution, had limited success in reducing litigation. This is due to structural and administrative reasons. Absence of judicial member in the Advance Ruling Authority has not inspired highest level of confidence in the mechanism. Constitution of a NAAAR introduced vide Finance Act 2019, should help put to rest the uncertainty around issues that have been a subject of conflicting rulings by various state advance ruling authorities.

Expeditious constitution of Appellate Tribunals under GST

There is an urgency to address the issue of setting up Appellate Tribunals to resolve disputes faced by the taxpayer on various counts. Even some of the courts have asked the Government to urgently operationalize it. The Government faced a dilemma with Madras High Court quashing the legal provisions highlighting the lack of independence of its members owing to their restricted qualification. The GST Council in its 47th meeting has decided to constitute a Group of Ministers to address various concerns raised by the States in relation to constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in CGST Act.

Alternate Dispute Resolution (ADR) mechanism

Many countries, such as the US, Australia, the UK, have successfully implemented ADR mechanism to deal with tax disputes. It is important for a dispute-ridden country like India to leverage learnings of such countries and evolve a more robust dispute resolution machinery.

Private ruling and mediation

In line with private arbitration and mediation centers offering alternative dispute resolution options, such as mediation and arbitration, to enable parties to settle their domestic or cross-border commercial disputes, the Government should put in place a similar framework by setting up a body to address expeditious settlement of tax disputes between taxpayer and tax department.

Faceless adjudication and appeals

Faceless adjudication can be the future of world class tax administration under GST. Such facility is already introduced under Income tax and Customs law. It provides additional benefits to the taxpayers like virtual tax hearings, engaging with a dedicated team of officials and transparent environment.

However, unlike Income tax and Customs which is centralized, faceless assessment under GST is likely to be implemented at the state level (since GSTIN is state specific).

Uniformity in tax positions

Every registration of a legal entity is treated as a separate registered person. Each of them undergoes assessment and there can be circumstances that a position taken by department for one state may differ from the position taken by the department for another state. The Government should bring in a mechanism that once a particular point is finalized for one state, the same position should be applied for other registrations.

> The suggested course of action is that while field officers could be allowed to decide on offence cases based on facts available, a centralized system of binding instructions should be put in place for field officers to follow in the adjudication matters.

Decriminalization of offences

Provisions dealing with offences and related consequences are contained in section 132 to 138 (Chapter XIX) of CGST Act and SGST Act. The said provisions are mutatis mutandis applicable to IGST Act. It stipulates various actions that are to be treated as an offence, triggering punishment by way of prosecution, arrest, and imprisonment along with fine. The imprisonment term is based on the numerical value of tax evaded, amount of ITC wrongly availed or utilized or the amount of refund wrongly claimed. The said section further categorizes offences that are – cognizable and non-bailable and non-cognizable and bailable.

Commissioner who has reason to believe that a person has committed any offence can authorize any officer of central tax to arrest such a person. There is no appeal against the order sanctioning the prosecution. Law stipulates a presumption of culpable mental state in the case of a prosecution for an offence under the law and imposes the onus on the person to prove otherwise.

Where an offence has been committed by a company and it is proved that it has been done with the consent or connivance of or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of that offence. Then there is an extensive provision of publication of information relating to tax defaulters in certain cases.

Policy makers have recognized the merit of handling prosecution provisions sensitively, especially in the nascent stages of implementation of tax legislations. In the most recent example, under Service tax, the offence provisions relating to false documents and statements were implemented only after 2011, though the law had come into force from 1994. Offences like obstructing an officer, tampering with material evidence, etc. were never made punishable in the past. In fact, prosecution provisions were removed from the legislation in 1998 and inserted only in 2011 and made applicable in very specific cases of blatant fraud.

GST is entirely a new tax regime that incorporates several aspects that are globally unique and have no precedents. The law is at a nascent stage and still evolving. This makes the compliance and administration of the law uncertain and challenging. There are instances of rulings and court judgements that are conflicting. The Government continues to seek to provide clarifications. The compliance process with granular reporting under GST is materially more onerous compared to the pre-GST era.

It therefore needs to be appreciated that imposing prosecution provisions in this nebulous ecosystem materially increases uncertainty and risk perceptions for businesses, directly impacting 'ease of doing business'. Already, there are adequate penal provisions under the legislation which provide requisite deterrence against evasion of taxes. The fear of attracting criminal implications for small, minor, and petty matters may act as further unwarranted deterrence for the investors, before undertaking any business activity or making investments.

Need to recast prosecution provisions:

There is a need to recast section 132 in a manner that it applies to only blatant specific fraudulent practices, such as the issue of fake invoices alone and perhaps such other identified fraudulent activity with an intent to evade tax.

In order to provide clarity, it may be prudent to specify a negative list of areas where prosecution provisions shall not be made applicable. The provisions should also exclude the following elements:

- The relative quantum of tax allegedly short paid or not paid or credit allegedly incorrectly availed vis-à-vis the overall business conducted is relevant (for example for large taxpayer a tax of INR 1 crore amount will constitute a miniscule amount vis-à-vis the total tax paid and may arise out of actual clerical errors as against the same amount confined to small businesses). Any dispute that constitutes less than a prescribed percentage (say 10-15 percent) of taxes paid should not be considered for prosecution (the interest and other penal consequences are punitive enough).
- Classification or valuation or other technical disputes related to applicability of tax or availment of credit should not trigger prosecution.
- Conduct such as alleged documentation errors, errors or delay in furnishing of information or tampering of evidence, etc., or subjective areas of misconduct such as obstructing or preventing an officer from discharging duties should not be subjected to the threat of prosecution. These provisions are draconian and can be abused. If at all these are to be applied, they should be sought to be applied under very specific and well-defined events such as events of issues related to fake invoices, etc.

Not invoking punitive measures in the form of prosecution, arrest, and imprisonment at least till the GST law stabilizes, would certainly help genuine taxpayers from the anxiety of rigorous provisions.

Decriminalization of offences under Company Law

Following the recommendation of 'Report of the committee to Review Offences under the Companies Act, 2013', the 2019 Amendment decriminalized 16 sections of the Act to civil violations. It eliminates the criminality of these violations by levying monetary penalties instead of criminal consequences. Levying these penalties has also been shifted from courts to in-house adjudication mechanisms, whereby adjudicating officers appointed by the Central Government determine the offences and enable companies to promptly communicate, represent, and resolve defaults.

Criminal prosecutions are time-consuming, complex and at times, counter-productive, incentivizing non-compliance. Report moots the fact that decriminalization of minor non-compliance instils confidence in both domestic and global players and boosts foreign investments.

Replicating under GST

Taking a cue from the company law provisions on decriminalization, the framework under GST should be such that all disputes resulting from technical, procedural and minor non-compliance are decriminalized and shifted to in-house adjudication process, while retaining strict criminal enforcement for serious, fraudulent offences that jeopardize and prejudice public interest.

Initiation of the prosecution, arrest and imprisonment should be only with adequate checks and balances, in the rarest of rare cases of hard, habitual, and deliberate defaulters. Such rare cases may cover instances where the fraudulent activity or the collusion between the supplier and recipient with a clear motive of evasion of tax (like clandestine removal of goods), wrong claim of ITC or refund claims (basis fake invoices), is evident.

Protection where there is a reasonable cause

With a view to protect the bonafide and genuine cases, and to avoid indiscriminate use of prosecution powers by the tax authority, protection should be provided where there is a "reasonable cause" for default. Requirement of evaluating reasonable cause should be made statutorily applicable at the stage of sanction of competent authority.

Key takeaways

Unless pragmatic steps are taken to reduce disputes, the ensuing deluge of litigation will breed massive uncertainty for businesses and choke the already burdened judicial infrastructure for the foreseeable future. Dispute Resolution system should be characterized by the principles listed on the next page:

- Conceptually differentiating between cases involving 'offence' and 'adjudication'. Centre and states to create Technical Secretariat which can issue uniform binding instructions for adjudication whereas field formations can decide on offence cases basis facts of the matter.
- Minor procedural cases can be identified and subjected to administrative levies.
- To remove the distinction between suppression and non-suppression cases, prescribing one uniform period of three years for adjudication.
- Creation of GST Secretariat in every state comprising of senior Central and state officials to address the grievances of trade and industry.
- Technical and GST Secretariates in the states can collectively provide institutional support.
- Capacity building for AARs and creation of NAAAR, supplemented by new mechanisms like private ruling and mediation could be helpful to taxpayers.
- Expeditious constitution of appellate tribunals, alternate dispute resolution mechanism, faceless eco-system for adjudications and appeals are few other suggestions to help Indian GST create world class dispute resolution system.

A step towards decriminalizing offences will certainly facilitate ease of compliance and such move would be welcome by the trade and industry. Provisions relating to offences should be recast in such a manner that they apply to blatant fraudulent practices with a clear intent to evade tax. A negative list of areas for not invoking prosecution could be specified. Disputes resulting from technical, procedural, and minor non-compliances should be decriminalized and shifted to adjudication process.

Institutional strengthening

Role of institutions has been key in economic development. The seminal work "Role of Institution in Economic Development" by the Nobel Laureate Douglas North, an American economist, provided useful insights into the question of why some countries grow faster than others.

01 Cooperative federalism

GST reform has been built on a unique institutional innovation giving rise to cooperative federalism. Earlier, the Empowered Committee of State Finance Ministers was created in 2001 for implementation of State VAT and was registered under the Societies Act in 2004 as an Institutional body. The said committee delivered the State VAT and the GST council, which is the premier decision-making body for indirect tax policy making, is an example of pooled sovereignty. In India, we have witnessed a trend towards cooperative federalism where the Centre and the states have voluntarily decided to give up their unilateral powers of levying indirect taxes and have agreed to jointly formulate policies through the meeting of the Council.

State GST Secretariat

While these are welcome developments, the implementation of GST has created an institutional void at the state level. GST Council formed at the national level deals with the policy making, however, there is a need for creating a GST Secretariat at the state level, which can deal with the non-policy matters. These could be registered under the Societies Act with a dedicated funding. Senior tax officials could engage in this institutional forum to discuss issues, including compliance verification and share risk assessment information. This will not only facilitate sharing and gaining experience in tax administration but at the same time also reduce the trust deficit between them and forge the bonds of fiscal federalism. A good overall alliance between Centre and the states in the GST Council can be an inspiration for State Secretariat to yield synergic benefits.

At times, it becomes difficult for the taxpayer individually to voice its concerns on tax policy and procedure related provisions. The only recourse then is to represent the issues of concern through industry chambers and trade bodies like CII, FICCI, IMC and others. These institutions forward the industry representations to the Ministry of Finance / GST Council once or twice in a year, mainly before Union Budget preparations. There is a need for such trade bodies / industry chambers to regularly interact, say, on monthly or bi-monthly intervals, with the senior tax officials of respective state secretariat for identifying and addressing all key policy and procedural issues. State Secretariat can then deliberate and forward policy-related issues to the DGGST (a body attached to CBIC, MoF and entrusted with the task of assisting the Policy Wing of GST). DGGST, in turn, can forward it to the Policy Wing of CBIC and also interact with GST Council on such issues. On the other hand, the tax procedure and administration related data can be given to the Central Business Re-engineering Group discussed below.

Central Business Re-engineering group

Drafting of standard operating manuals for key business processes, with simplicity and clarity, is critical. At the same time, periodically revisiting the ground rules for various processes, incorporating global best practices becomes equally important. The Centre and the states can take this up as a joint project by creating a Central Business Re-engineering group.

GST will yield fruitful results only if policy changes are underpinned by a modern tax administration. Only then can the rule of law prevail over the rule of thumb, and principles will become more important than principals.

National Taxpayer Advocate

Despite the Government's effort in automating and improvising several processes, taxpayers face several issues of unreasonable delay in process of valid refund claims, overstretched administrative resources, increasing demand for online services, lack of service wide strategy identifying effective and efficient means of delivering face-to-face taxpayer's service and so on.

Creation of an institution, namely, Office of the National Tax Payer Advocate, like the one in the US, can help identify key issues or concerns of the taxpayer and tax administration, and addressing them. The detailed study and research work could be done by the Tax Research Unit, a body created by the Ministry of Finance under CBIC.

Large Taxpayer Unit

The then Central Board of Excise Customs (CBEC), now Central Board of Indirect taxes and Customs (CBIC) had created a self-contained tax administration office under the Department of Revenue. The concept of the Large Taxpayer Unit (LTU) was introduced in 2006 in line with similar practice in more than 50 countries. It operated as a single window clearance point for all matters relating to direct tax (Income tax / Corporate tax) and indirect tax (Central Excise and Service Tax) for large business units. It was mainly to achieve a greater degree of integration between direct and indirect tax administration, build a common framework and single window for facilitating better taxpayer service and thereby adopt best international practices in tax administration.

Apprehensions were raised of its feasibility under GST mainly due to the absence of the concept of centralized registration. There were representations made during implementation of GST to continue the concept of centralized registrations under the new regime, particularly in case of industries having pan-India presence like banking, insurance, telecom and so on.

Scheme can work well and be made more effective if reorganized. Basis the parameters like turnover etc. larger businesses, say top 1,000 entities can be serviced in this vertical. Unlike earlier scheme, inclusion or exclusion should not be an option available with taxpayer.

Key takeaways

Institutions are very important in sustaining growth. GST gave rise to institutional innovation in the form of Empowered Committee and later the GST Council. To bridge the institutional void at State level, State GST Secretariat should be created to deal with non-policy matters. Centre and states can also form Central Business Re-engineering group to monitor Standard operating manuals for various business processes. Also, the creation of National Tax Payer Advocate can address critical issues faced by taxpayer and tax administration. Finally, the concept of LTU can be re-introduced under GST, which can service, say, large 1000 entities on a centralized basis.

02 Taxpayers' Charter

At the time when a vibrant democracy respects its voters, it should also dignify its compliant taxpayers. In last couple of years, the Government has been acknowledging the contribution of taxpayers in nation building by issuing a Certificate of Appreciation under different categories for filing income tax return for a particular assessment year and paying tax. While this by itself is a great honor for the taxpayer, Government went one step further when in August 2020, after the initial announcement in Budget 2020, the Taxpayers' Charter under Income tax was formally launched by our Hon'ble Prime Minister, Mr. Narendra Modi. The idea was originally mooted in the National Economic Survey in 2019. The charter lists out Income tax department's commitments to build trust and harassment free environment towards the taxpayer as also, what it expects from the taxpayer. Amongst other commitments, the charter promises to maintain privacy and confidentiality of taxpayers and reduce cost of compliance with tax laws. Taxpayers' Charter enshrines in law the rights and duties of taxpayer that can be enforced through Taxpayers' Charter Cell formed in each zone under the Principal Chief Commissioner of Income tax.

Some of the other key commitments in the Charter include:

- Income Tax department shall treat every taxpayer as honest and will provide prompt, courteous and professional assistance in dealing with taxpayer.
- Department shall hold its authorities accountable for their actions.
- It shall provide a fair and impartial system and resolve the tax issues in time-bound manner.
- Department shall take decision in every income-tax proceeding within the time prescribed under the law.

From taxpayer's side, the charter expects taxpayer to honestly disclose full information and fulfil his compliance obligations, keep accurate records as required by the law and make submissions in timely manner.

On 1st February 2020, the Union Finance Minister in the Union Budget 2020-2021 speech stated "With the objective of enhancing the efficiency of the delivery system of the Income Tax Department, I propose to amend the provisions of the Income Tax Act to mandate the Central Board of Direct Taxes (CBDT) to adopt a Taxpayers' Charter".

Canada has formulated Tax Payer Bill of Rights which separately cater to small businesses as well. Some of the important commitments include the right given to taxpayer to have the law applied consistently, right to have relief from penalties and interest under tax legislation because of extraordinary circumstances, right to not pay tax amounts in dispute before having an impartial review and so on.

Government should replicate Taxpayers' Charter even under Indirect Taxes, covering GST, with both Central and State level departments. Currently, the Director General of Taxpayer Services, functioning under overall supervision of CBIC, is supposed to educate taxpayer as regards their rights and obligations in the matter of tax compliance as a part of its public relations role. Drawing up the formal Bill and constituting a dedicated department for the same will certainly secure rights of the taxpayer.

> There is a need for creating a GST Secretariat at the state level, which can deal with the non-policy matters with trade bodies / industry chambers.
>
> Other industry friendly measures such as creating a National Taxpayers Advocate, Large Taxpayer Unit to address critical issues faced by taxpayers and tax administration.

Ease of doing business

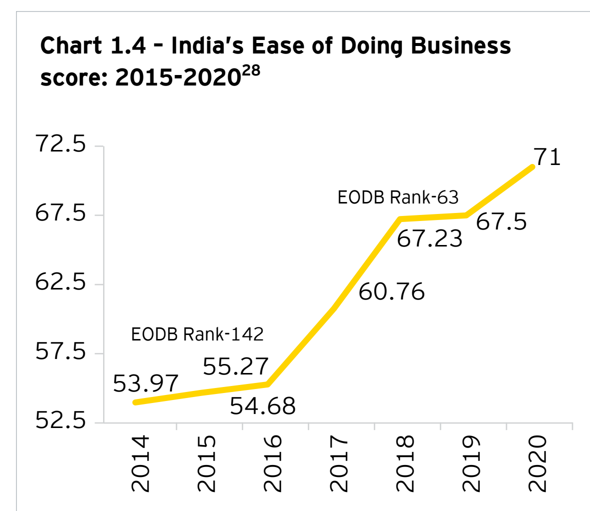
Prime Minister, Mr. Narendra Modi, in his speech during the GST launch ceremony in July 2017 stated that

> "GST will not only ease the process of doing business but will also improve the way of doing business."

The GST digital compliance and tax administration framework is unprecedented in its scale and ambit and forms the backbone for the reform. Effective tax administration and efficient dispute resolution are two elements at the core of ease of doing business in any jurisdiction. From GST standpoint, any measure undertaken to ease compliance burden shall directly contribute to ease of doing business. With simplification in return filing system, benefits of GST are truly evident when compared to the ones in pre-GST regime. Achievements on this front are exemplary and will be emulated globally.

GST facilitates ease of doing business by digitally aiding taxpayer to complete the formalities for paying tax. Basis the report from Expert committee, GST Council has recognized that there was a need to move from system-based matching of ITC to a system of uploading of supply invoices through pressure exerted by recipients of goods and services.

Chart 1.4 – India's Ease of Doing Business score: 2015-2020[28]



Finance Minister had earlier assured that efforts will be made to further simplify GST and hoped that it will help in improving India's ranking in the World Bank's Ease of Doing Business Index. Ease of tax compliance features prominently in the list of relevant parameters for determining global 'ease of doing business' rankings.

To achieve the vision of the Prime Minister of India of bringing India within the top 50 countries in the Ease of Doing Business rankings, the current Government has improved the existing business regulatory environment.

Future plans of digitalization

The objective of the Government should be to make digitalization part of business processes of taxpayer and thereby eliminate all manual reporting. Introduction of e-way bill and e-invoicing have been a great initiative in this direction. The next step on e-invoicing could be to introduce online invoice printing facility through Government portal. This will not only facilitate ease of doing business, but also serve as a check on tax evasion.

The few other areas where next level digitalization measures can be implemented are registration, returns, tax payments, refunds, tax credit availment, assessments, and audits. Government should tap more and more automation, making use of artificial intelligence, robotics, and virtual voice overs in various segments of GSTN portal.

While there has been a lot of digitalization for filing returns, obtaining registrations like auto-population of data in GSTR-1 basis e-invoice, SMS based NIL return filing, Aadhar authentication etc., the compliance procedures can still be made more simpler and taxpayer friendly.

Data exchange between the Government's database

A robust cross linking of Income tax, GST, Customs and RBI portal is required to cross verify the transactions and plug the revenue leakage. Currently also, notices are being issued under GST basis the data furnished under Income tax. However, it is relevant to note that there are some incomes which are taxable under income tax but not under GST. There are instances where for non-taxable income under GST, notices have been issued basis income tax data. Thus, there is a need to enable certain parameters while enabling data sharing between income tax and GST.

28. 2015-2018 figures from: https://www.statista.com/statistics/885337/india-ease-of-doing-business/
2019 and 2020 figures from: https://archive.doingbusiness.org/en/scores

Exports and refund

In case of exports of goods, if the sale proceeds are not received within the time limit specified under Foreign Exchange Management Act (FEMA), the refund claimed needs to be paid back. Similarly, where services are exported without payment of tax and if consideration is not received within one year from the date of invoice, the taxpayer needs to pay tax on such services. Currently, there is no online mechanism where receipt of export proceeds can be tracked. Thus, the taxpayer manually needs to determine whether proceeds have been received within the specified time period or not. Further, the department, unless calls for information from the taxpayer, is unable to raise the demand on the above counts. Thus, a separate window can be maintained on the GST portal where receipt of export proceeds can be updated (by mentioning FIRC/ BRC no.) by taxpayer on a periodic basis against the export invoice raised. It will help both the taxpayer and the department in determining whether any refund or tax is payable or not.

Reporting of defaulting suppliers

Currently, if the supplier does not file GSTR-1, the transaction details would not get auto-populated in GSTR-2B of the recipient and credit cannot be claimed. A mechanism should be developed by which the recipient can report such missed transaction to the Government if the details are not reported by the supplier over the period of 5-6 months. When such non-disclosure is reported against a specific GSTIN several times by different recipients, the field formation should be intimated, and the supplier can be tagged as risky taxpayer so that necessary actions can be timely initiated against such person.

Other measures

Increase in turnover threshold limits for small taxpayers and for Composition dealers may also help MSMEs to overcome the cumbersome process of GST filings. Quarterly filing of Return and Monthly Payment (QRMP) scheme implemented by the Government from January 2021, for taxpayers with turnover up to 5 crores is yet another step towards cutting down compliance cost of small taxpayers. Person opting for the scheme will need to pay tax monthly and will have the option to either discharge the actual liability via the cash ledger or through a pre-filled challan with specified percentage of the cash paid as taxes in the previous quarter. This scheme will cover around 89 percent[29] of GST-registrations. Going forward, in order to further facilitate small businesses, the turnover threshold can be further increased.

Since GST law is still evolving, while one can appreciate the Government's focus to constantly address the loopholes and ambiguities through issuance of Notifications, Circulars, Removal of Difficulty Orders and so on to make law simple and unambiguous, on the other hand, it throws further challenges for businesses to understand the nuances of the new provisions, many times, resulting in business disruptions, non-compliances, and unwarranted avoidable litigations. There are several instances where CBIC has issued circulars under GST and is later withdrawn. Some of them have been given to law committees for review. Stability and certainty in Law, therefore, becomes one of the most critical elements for smooth compliances and business operations.

Revival of centralized registration like under service tax regime, and formation of Large Taxpayers Unit (LTU), elaborately discussed in earlier chapter, can be few other initiatives for ease of tax compliance and business processes.

With the focus once again on initiatives for improving Ease of Doing Business in India, anti-profiteering related concerns of taxpayers may be addressed on priority. The trust deficit between the business and tax administration on this subject needs to be reduced to ensure that the key purpose of the consumer benefiting from GST implementation is served.

Taxpayers' Charter, as discussed in the subsequent paras titled "Institutional Strengthening", can also boost the confidence of businesses during their interaction with the tax administration.

Key Takeaways

Ease of tax compliance significantly contributes to ease of doing business. Making next level digitalization a part of business processes like registration, returns, payments, ITC, and refunds, and completely eliminating manual reporting could be key differentiator for tax administration. Other measures include a robust cross-linking of different statutes and effective data exchange, online export proceeds tracking system for refunds, reporting of defaulting suppliers, various measures to facilitate compliances of MSMEs and bringing stability and consistency in law. All these will go a long way in getting India in top 50 countries in Ease of Doing business ranking.

29. https://gstcouncil.gov.in/sites/default/files/Minutes/42nd-GSTC-Minutes-Signed.pdf - Para 14.2

Tax simplification measures

Legislative changes

While major reforms help in nation building, minor reforms resolve day to day issues of the taxpayer.

Simple law results in lesser disputes which ultimately benefits both the taxpayers as well as tax administration. In this part, tax simplification measures that can be introduced for the overall benefit of taxpayer as well as revenue have been discussed.

01 Supply

While the term "supply" is defined in the law, there are still various open issues regarding its construal. The Government, vide various circulars and clarifications, had tried to resolve some disputes but since GST coverage is vast (and includes transactions without considerations), the taxpayers are struggling while analyzing whether a transaction is a supply under GST or not.

Few of the common industry wide issues include:

- Taxability of various benefits and facilities extended to employees – contrary rulings on notice pay recovery, supplies without consideration or at subsidized rate.
- Scope of permanent transfer or disposal of business asset –what intends to be covered here, meaning of business asset, whether the entry covers CSR and donations made in kind.
- GST on liquidated damages – favorable rulings under service tax but adverse advance rulings under GST.
- Levy on long term lease of land – whether to be treated as sale of land.
- Supply of services by on office in India to its another office outside India is not treated as exports (since they are treated as establishment of distinct persons). Currently, while there is an exemption available, the input tax becomes cost. The Government may think of granting export benefit to such cases also since the remittance for such services are also aiding in increasing forex reserves of India.
- Non-applicability of credit note for bad debts is one of the cases which is harming the industry a lot. Generally, the supplier recognizes a receivable as bad debt only after a period of 2-3 years. By that time the time period to raise credit note expires. Further, non-receipt of money is not a scenario in which credit note can be raised. In such cases, the supplier needs to pay tax to the Government and since the same is not recovered from the recipient, it becomes a cost to the supplier in addition to the value of goods/ services provided to the customer.
- In cases where a company is under corporate insolvency resolution process and as per National Company Law Tribunal's (NCLT) order, the right to recover debt from the company extinguishes and thus, the supplier should be allowed to reverse the tax paid with respect to supplies made to such companies. In these cases, bad debts happen due to NCLT's order and not due to supplier's will.

The Government should engage with the trade bodies frequently, where such matters can be discussed, and necessary clarifications can be issued. This will help in building taxpayer's confidence and avoid unwarranted litigations in the future.

02 Valuation

Existence of two sets of rules with two different administrative bodies (one for Income tax and other for GST), has made cross border trade complicated, contrary to the objective of Government and international organizations. In the past, there have been attempts by Government to move towards convergence of transfer pricing and customs (for import of goods) and work towards reconciliation of approaches.

Convergence will happen only once the Government looks at implementing efforts to harmonize TP, Customs and GST and to resolve the issues faced under the legislations.

One such method could be introduction of joint advanced GST and TP agreement. This would result in GST authorities becoming part of the APA programme, thereby accepting the price under both the laws for a taxpayer.

Further, the concept of joint GST and transfer pricing audits can also be thought of, the objectives of which would be to reduce the time and efforts spent in audits by the taxpayer and the authorities and to arrive to the extent possible at a common determination of the valuation of related party transactions that would be acceptable by both GST and Income tax authorities.

03 Input tax Credit

A seamless flow of credit was the idea behind the introduction of GST. However, the reality is a bit different from the idea. There are many credits which are blocked under GST. On the one hand, where blockages are mainly carried forward from the earlier indirect tax regime, the conditions for eligibility of ITC have been made more stringent, resulting in further blocking of credit in the hands of recipient. All this defeats the purpose of free and smooth flow of ITC.

Such disallowance results in double taxation driving cascading taxation and potentially leads to long drawn unavoidable litigations.

Other issues relating to input tax credit are listed below.

Credit Matching

Credit availability in the recipient's hands is linked to the compliance done by the supplier and that too on several counts like:

- Such supply should be reported by the supplier in his GSTR-1
- Tax charged in respect of the supply has been actually paid by the supplier to the Government through appropriate utilization of credit
- Supplier should have claimed the credit properly

Thus, if the supplier has defaulted on any of the above, the recipient will not be able to take the credit in respect of such supplies. The basic premise of introduction of GST to allow seamless flow of credit is defeated when the recipient is being made to suffer for the default of the supplier. Denial of credit to the recipient should be confined only to the cases of fraud.

This will protect the interest of the buyer and should also encourage the customers to do business with small and medium enterprises.

Fungibility between CGST and SGST credit

At present, the taxpayers are not allowed to utilize CGST credit for discharging SGST liability and vice versa. Due to this, the taxpayers, even though having credit of one, needs to discharge liability in cash for the other. Allowing cross utilization between CGST and SGST is likely to help businesses in effective working capital management. At the backend, states and Centre can settle the amount cross utilized.

ITC on advance

As per provisions of time of supply for supply of services, the liability to pay GST is triggered on receipt of advances by the supplier. However, one of the pre-conditions for claiming ITC is that services should have been received by the recipient.

The said restriction along with time limit placed on availing credit causes operational difficulties where the actual supply takes place after a long period of time. Also, it impacts the working capital of the recipient.

Since the supplier has already paid the tax upfront, credit should be allowed to the recipient as soon as the tax is paid to the Government.

Reversals due to non-payment of consideration

In case the recipient fails to pay to the supplier the amount towards the value of supply and tax payable within 180 days from the date of issue of invoice, the ITC amount is added to output liability along with interest.

Some of the common prevailing and accepted trade practices regarding payment of the consideration and which are incorporated in the contract mutually agreed by the contracting parties are as follows:

- Part of the consideration retained towards performance guarantee (commonly known as retention money).
- Credit period in excess of 180 days.
- Payment is guaranteed by way of Sight or Usance Letter of Credit (LC) where the supplier receives the payment immediately from the recipient's bank, but the same is debited to the recipient's account at a much later date.

In all the above situations, even though the payment is not actually made by the recipient within 180 days, in factual terms, the recipient has not failed to make payment within the said period. The provisions requiring reversal of credit causes unnecessary hardship to the recipient who has withheld the payment because of valid commercial reasons. Therefore, the provisions need to be rationalized to allow credit under these circumstances.

ITC on construction of immovable property

Currently, the law restricts credit on goods or services (including works contract service) used for construction of an immovable property on his own account, including when such goods and services are used in the course or furtherance of business. Denial of ITC in such cases, even when the same is used in the course or furtherance of business, goes against the principles of GST law and results in tax cascading.

Allowing ITC where such immovable property is used in the course or furtherance of business (i.e., generating income liable to GST) such as renting, will keep the tax chain intact and serve the purposes of equity. Additionally, immovable properties such as factory sheds, office premises etc. are an integral part of business and have a direct nexus with the functioning of business.

However, credit can be restricted where the immovable property is intended to be used for personal or non-business purposes.

ITC on all business expenditure

There are several other expenses on which credit is denied to the taxpayers. For the free flow of credit, it should be ensured that credit on all the expenses, which ultimately form part of the outward value of goods or services, should be eligible. This should include sales promotion expenditure by way of distribution of gifts and free samples, employee related expenses, etc. Blocking of credit results in tax cascading, which leads to higher tax costs and in turn, higher prices of goods and services, affecting end consumer.

CSR credit

Corporate Social Responsibility (CSR) is generally understood as being the way through which the entities achieve a balance of economic, environmental, and social imperatives (triple bottom line approach), at the same time it addresses the expectations of stakeholders and shareholders.

The Companies Act, 2013 has recognized the concept of Corporate Social Responsibility and mandates certain companies to perform specified CSR activities failing which there are penal consequences. Also, there are some companies and firms which undertake CSR activities even if they are not mandated to do so.

Since CSR activity is a business activity and mandated by Companies Act (in most of the cases), credit of GST paid on supplies procured in course of CSR activities should be allowed. In view of divergent advance rulings under GST, clarity on ITC availability will help the industry to mitigate the risk of litigation on this issue.

Transfer of IGST/ CGST/ cess credit balance between distinct persons

There are many instances where the taxpayer has enough credit balance in one state but needs to discharge tax liability in cash in other states. This negatively impacts the working capital of the business. Recently in the 45th meeting of GST Council, it was recommended that unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons. The enabling provision has also been introduced in Finance Bill, 2022.

The Government should also allow the taxpayers to transfer the credit balance of IGST, CGST and compensation cess from one registration to another (i.e., between distinct persons).

Credit where place of supply is in another state

Tax collected by the state where the goods or services are consumed, is retained by that state only and therefore, an entity registered in other state cannot claim the credit of the same. This applies for all those transactions where the place of supply is in a different state than the location of recipient.

Example: The employees of the companies travel across India and it is not possible to obtain GST registration in each state. Thus, the tax paid on hotel accommodation service becomes cost to the company.

Non-availability of credit in such cases negates the introduction of GST as 'One Nation, One Tax'.

04 Definitions

There is an urgent need to align definitions of various terms across the laws currently in force in India. For example, the term "related persons" (terminology may be different) is defined differently in GST, Customs, Income Tax and Companies law. Similarly, the term "interest" is defined differently under various Act. This leads to confusion amongst taxpayers which ultimately results in non-compliance of one or the other law.

There are certain terms which are critical for GST implications but are not defined under GST law. For example: going concern, merger, demerger, amalgamation, body corporate, subsidy, gift, land and so on. Defining such terms under the law or categorically aligning them with other law will help eliminate ambiguity and avoid unwarranted litigation.

05 Refund

Inverted tax structure

GST law allows refund of any unutilized ITC in case of inverted tax structure where the rate of tax on inputs is higher than the rate of tax on outward supplies. The rules provide that in case of refund on account of inverted tax structure, Net ITC in respect of which refund can be availed shall be restricted to inputs only. Non-availability of refund on input services results in huge credit accumulations.

However, the GST council in its 47th meeting has proposed to change the formulae in cases wherein the Inverted Duty structure exists to take into account utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This is a welcome move by the Government to ease the hardships of the taxpayers.

Exports

While exporters can claim refund of accumulated ITC of GST paid on inputs and input services, GST paid on capital goods is not allowed to be claimed as refund.

Further, the exporter who opts for payment of IGST on zero rated supply can utilize input tax credit of GST paid on capital goods. This brings disparity between the exporters opting for LUT scheme and the exporters opting to make payment of GST. Service exporters are not able to utilize the available ITC since majority of their output is zero-rated. This impacts the working capital requirements of the exporters.

Thus, GST paid on procurement of capital goods should also be allowed as refund for export of goods or services under LUT. Such refund of GST on capital goods can be granted over a period of two financial years, if not wholly, in the first year.

06 Dual control

At present, both the Central and State tax administrations have the power to take intelligence-based enforcement action in respect of the entire value chain, irrespective of the fact the taxpayer is covered under Central or State jurisdiction. Circulars are issued both by Central and State Governments to clarify that if an officer of the Central tax authority initiates intelligence-based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions. It leads to difficulty for business since they need to submit the relevant documents and resolve the queries from the department twice. A system should be developed where such intelligence-based information is passed to the jurisdictional officer of the taxpayer and such officer can act as a single point of contact for the taxpayer.

07 Customs and GST – double taxation

Double taxation is one of the situations which is not appreciated by the businesses as well as the Government. For valuing import of goods for the purpose of levying custom duties, few services also form part of such value. Further, the said services are treated as import of service for the purpose of GST and accordingly, IGST is levied under reverse charge. Thus, the business needs to pay IGST twice on value of such services, once as a part of custom duty and again under reverse charge as import of service. While in most of the cases, credit is eligible to the taxpayer, it still leads to working capital blockage.

In the past, the Government had exempted IGST payable under reverse charge mechanism (RCM) on royalty and license fees (as an import of services) to the extent the same is paid as a part of custom duty.

However, there are still some cases where an amount is taxed twice under Customs as well as GST. To name a few: inbound ocean freight (where the goods are imported on FOB basis and the shipping line is a foreign party), maintenance, repair, and overhaul (MRO) services for aircrafts and vessels.

Removal of double taxation is likely to help in gaining taxpayer's confidence and will align the customs and GST provisions.

08 Amnesty cum settlement scheme

"Ease of doing business" has been one of the biggest agenda of the present Government. The uncertainty in the legal processes and the time consumed by the courts and other appellate forums in resolving disputes has been a major challenge in the ease of doing business. To tackle this, the Central Government had announced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 for the erstwhile Service Tax and Excise matters which shows the intent of the Government in enabling the resolution of past litigations of the taxpayers in the best possible manner. On the similar lines, several states like Rajasthan, West Bengal, Uttar Pradesh, Maharashtra, and Gujarat had rolled out Amnesty schemes to close past period litigations under VAT. These schemes have helped the Government in collecting additional tax revenue and in reducing the cost of litigations by clearing backlog of cases which would otherwise have consumed administrative time and cost.

GST is a new tax regime and a completely new law which incorporates several aspects that do not have any precedents. The law is at a nascent stage and still evolving. The compliance process under GST is materially more onerous compared to pre-GST era. Hence, it is need of the hour that similar amnesty cum settlement scheme should be introduced under GST to regularize the past transactions on self-assessment basis with a complete waiver from interest and penalty. Consequently, the tax paid under the scheme should be allowed as credit in the hands of the recipient.

Key takeaways

The issues requiring Government intervention on the legislative front are largely confined to taxation of supplies, valuation, input tax credit eligibility and refunds, dual taxation, and control. GST Council should discuss these issues and recommend suitable changes in the GST legislation for removing ambiguity and achieving simplicity.

Tax Administration measures

Three factors play a very important role in enhancing tax compliance –certainty about the tax to be paid (it relates to the ability to determine the tax payable on any transaction without ambiguity), the convenience to pay (taxpayer can pay his share of tax to the Government using fair means and methods with minimum compliance cost), and the attitude of the tax administration which drives both of these (helpful, unobtrusive and non-adversarial).

Modern tax administrations have begun to recognize the importance of self-assessment and voluntary compliance and at the same time, a full-fledged risk-based verification system.

During 2016, TARC headed by Dr. Parthasarathi Shome had submitted its final report containing several recommendations for the reforms required in tax administration to enhance its effectiveness and efficiency.

Some of the important ones that were recommended include:

01 Continuous benchmarking of tax administration vis-à-vis taxpayer services with other tax administrations globally.

02 Fundamental approach should be collaborative and solution oriented.

03 Pre-filled data in tax returns.

04 Functional independence of dispute management.

05

Pre-dispute consultations.

06

Functions of data-warehousing and business intelligence should be integrated with Directorate of Risk Management.

07

Reviewing and improving the quality of orders from the perspective of fairness, legality, and propriety, irrespective of the revenue consequences.

08

Creating trust-based administration since lack of trust and mutual suspicion impedes promotion of voluntary compliance.

09

Raising standards of Tax governance by identifying and adopting international best practices.

10

Developing specialization for adjudicating officers.

11

Coordination between audits of CBIC and CBDT and data sharing.

12

Building compliance profile of taxpayers.

The TARC report also suggested a change in the tax collection approach and recommended that the present approach to tax collections of identifying debts should be changed to an approach based on identifying debtors and understanding their behavior. To do that, the TARC also recommended that there should be a separate vertical focusing only on tax collections.

Though many of these have been implemented by the law makers during earlier indirect tax regime and under GST, it is a continuous process requiring them in a newer avatar, embracing technological innovations and changing tax dynamics.

Future tax administration should be built around ownership and functional responsibilities relating to key business processes, rather than business entities.

In order to further capitalize on the gains of the GST reforms, both Centre and the states need to restructure their tax administration around key business processes, namely, 'registration', 'return filing', 'payment of duty', compliance verification, dispute resolution, and so on. The processes like registration, tax payment and returns are the assessment functions whereas, scrutiny, audit and investigation constitute compliance verification function.

The administrative arrangements for compliance verification must critically distinguish between the three prongs of compliance verification system, namely, return scrutiny, audit and intelligence-based investigations.

While the Government has created functional owners like Directorate General of GST, Directorate of Audit, Directorate of GST Intelligence, Legal Affairs, Training and Taxpayer's services, for compliance verification and facilitation functions, there is no functional owner for the key business processes like registrations, returns and payment functions. This necessitates creation of Directorate of GST Assessment, which can serve as an intermediate layer between the CBIC and the field formations. Even the scrutiny of returns can be made part of the functions of the Directorate of GST Assessment, as it involves evaluating correctness of returns. This Directorate can play a role in suggesting changes in business rules pertaining to the assessment function.

State tax departments could also create similar directorates which will own various business and facilitation functions.

There is also the need for the states and the Centre to collaborate in capacity building of officers, especially in the areas of taxation of services where the states require more hand-holding.

While the proactive manner in which the GST Council has addressed concerns has put industry at ease, there are still several procedural issues that need resolution. The fact that the council has expressed its willingness to make changes to rules and procedures has rendered the current GST quite different from what was originally envisioned. There have been significant changes in tax administration compared to what was originally intended and legislated. Two significant departure relates to provisions of law and rules dealing with GST return filing system and input tax credit matching mechanism.

Institutionalization of the Grievance Redressal system by creation of Technical Secretariats in every state and Union territory can go a long way in administering the indirect taxes. This can be done in a collaborative manner with the involvement of senior central and state officials continuously engaging with industry and trade bodies.

Recovery of taxes is one of the most important functions of tax administrations, to a large extent the sine qua non for efficiency and efficacy of the tax administration. An effective tax arrears management system would identify and report all tax dues, provide a consolidated picture of the taxpayer's total tax arrears, prioritize arrears cases based on risk criteria (e.g., size of arrears, age of arrears, amount of taxes involved, taxpayer's payment history), and apply taxpayer' profiling analytics which would predict the most effective action to achieve payment of the debt based on known circumstances and behavior.

Avoiding litigation through clarifications

Under GST, there are many disputed areas where an express clarification by the lawmakers will go a long way in settling the matters and eliminate unwarranted litigation. Some of the critical issues have been discussed herein which significantly impact tax compliance and hence, require much needed clarity.

01 Employee benefits

Services provided by employee to the employer in the course of or in relation to his employment is an activity which is neither treated as a supply of goods nor a supply of service. The ambiguity, however, arises with respect to various facilities made available by the employer to the employee or arranged from third party. Some of the common facilities include canteen, transportation, accommodation, and recreation. These generally form part of an employee's CTC or company's HR Policy. In some cases, the cost is either partially or fully recovered from the employee.

The dispute that arises under GST is on the issue whether the facilities provided by the employer to employees can be treated as 'supply' and accordingly, made liable to GST? Treatment of employer and employee as related persons under GST makes the issue even more complex.

There are special guidance notes on implication of GST on employee benefits issued in other tax jurisdictions, for instance, Malaysia and Singapore. It will help align the industry position and ensure proper tax compliance.

02 Liquidated damages

In any commercial transaction, the parties to the contract often agree to pay a stipulated sum as compensation to the other party for the loss suffered in the event of any breach of contractual terms. This is invariably made part of the original contract for supply of goods or services. Co-existence of 'activity' and

'consideration' and the reciprocal relationship between the two is necessary to treat an event as a supply. In case of breach of contract, the party claiming liquidated damages is merely exercising his own contractual right arising out of the original contract, without carrying out any activity per se at his end as any reciprocal gesture which would have entitled him to receive the said amount from the other party.

While under Service tax, there are many CESTAT rulings holding that liquidated damages cannot be said to be towards any service since no activity is performed to receive the compensation, nor can there be any intent of the party to breach the contract and suffer a loss, under GST, there are many AARs and AAARs holding that liquidated damages is a consideration towards service and thus, liable to GST. This has created a lot of confusion amongst the businesses. Since the provisions under Service tax and GST are the same, the tax treatment of liquidated damages should also align.

A clarificatory circular on taxability of liquidated damages, after analyzing all the relevant rulings on the subject, will provide much needed relief to the taxpayers.

03 Amnesty cum settlement scheme

It is important to note that indirect tax is one of the crucial elements of cost in any M&A transaction. Under GST, since services by way of business transfer of a going concern is exempt, ITC is not available in respect of goods and services procured for such business transfer like consultation and legal service, due diligence services, etc.

Further, there is an ambiguity whether the consideration received for business transfer should form part of exempt turnover for calculating ITC attributable to exempt supplies. Such inclusion results in an absurd situation where huge amount of input tax credit will become cost for the company. This may not be the intention of the legislature.

If one looks at global scenario, in the United Kingdom, Singapore and erstwhile Malaysia GST, transfer of going concern is treated as neither supply of goods nor services and ITC with respect to the transaction is specifically allowed. In Australia, transfer of going concern is included in the list of GST free supplies, which means no tax is leviable on outward supply, but transferor can avail ITC with respect to services received for business transfer.

Clarity on eligibility of ITC in cases of business transfer arrangement will help the industry undertaking such transactions.

04 Intermediary services

The levy of GST on intermediary service provided to foreign entity has been an issue of litigation before various High Courts. On one hand, the validity of PoS of Intermediary service itself is under question, whereas on the other hand there is an ambiguity in interpreting the scope of intermediary which is leading to disputes between Revenue and taxpayers. There are plethora of rulings from AAARs and Authority for Advance Rulings (AARs) on this issue, yet there is no clear answer to the question whether a transaction qualifies as intermediary service or not. The Government has time and again tried to clarify the scope of intermediary services, but given the complex and wide definition of intermediary, the dispute does not seem to end any time soon.

The levy of GST harms the cost competitiveness of Indian industry and may also lead to erosion of intermediary industry from India. Notwithstanding above, recent Circular issued by CBIC has addressed several issues concerning the taxability of intermediary services. However, there are few open matters which require more clarity. This includes treatment of (i) marketing support service —mere customers' lead generation with a fixed fee vs. involvement till the conclusion of supply; (ii) supervision and project management services — provided on principal-to-principal basis (on own account).

In order to ensure level playing field and considering the fact that the need of supplier based PoS lost its relevance with the introduction of GST, it may be the right time for the Government to reinstate the position as it stood prior to Negative list regime under service tax and treat such transactions as export of services when provided to a foreign entity. Necessary clarification will not only help the taxpayers but also boost their confidence in the tax administration.

05 Cross charge vs ISD

The concept of 'distinct person' was introduced under GST to tax the transactions between different offices (separately registered) of the same legal entity. Since the concept is new, there are a lot of deliberations on taxability of transactions between the head office (HO) and the branch offices (BO)and between different branches. In this regard, a draft Circular was discussed in 35th GST Council meeting to clarify various issues including distribution of ITC in respect of input services procured by the HO but attributable to various BOs, treatment of services provided by HO such as common administration or common IT maintenance.

The draft circular clarified that it is mandatory to follow the ISD procedure for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BO or exclusively to one or more BOs. However, the council members noted that CGST Act does not make ISD provisions mandatory. Though draft circular touched upon the issue of valuation of services provided to a distinct person, it does not specifically comment on whether employee cost should be excluded while computing taxable value.

During the discussion of this draft circular, it was pointed out that on issuance of this circular, almost 90 percent of taxpayers may become non-compliant for their past practices. In this backdrop, the Council agreed to send the matter to the Law committee for further examination. From 37th GST Council meeting agenda, it is understood that the circular is currently under consideration of GST Policy wing.

Since this matter impacts most of the taxpayers having GST registrations in more than one place, there is an urgent need to issue suitable circular clarifying – (i) whether ISD is mandatory and (ii) specifying the cases where transactions between HO and BO can be treated as supply—along with valuation mechanism.

06 Post-sale discount

Post-sale discount is a common norm, especially in the retail and automobile industry. To clarify the tax treatment on such discounts, CBIC had issued circular[30] in June 2019 wherein it was clarified that if the additional discount given by the supplier to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such activity would be treated as a separate transaction and the additional discount being the consideration for undertaking such activity, would therefore be liable to GST.

Further, any additional discount given to the dealer for selling goods at reduced price to the customer was required to be added to the consideration payable by the customer for the purpose of determining value in the hands of the dealer. Since the illustrations given in the circular were vague, leading to further ambiguity in the matter, Industry expressed apprehensions on the implication of the Circular and approached the Government.

In a sales scenario, enhanced discounts are issued to achieve higher sales turnover, which does benefit both the distributor and manufacturer. One can't be a service provider and also a beneficiary of service. The Law committee, in its meeting during September 2019, had deliberated on the issue. It was recommended that the issue required holistic examination and consequentially, GST Council agreed to withdraw the Circular.

Later, another draft circular was placed before the council but the same is still pending consideration. This has now become an industry vide issue and an early clarification, especially on non-inclusion of secondary discount provided by manufacturer in the value of supply in the hands of dealer, will surely help the businesses in properly complying with the provisions of law.

30. Circular No. 105/24/2019-GST dated 28 June 2019

07 Vouchers

Recent innovations and marketing strategy have led to the issuance of different kinds of vouchers. In addition to the traditional forms of vouchers with monetary face values (e.g., INR 500 shopping voucher), there are vouchers that can be used to redeem specific goods / services (e.g., prepaid phone cards with talk time and game cards with gaming credits).

There are also loyalty reward programs that involve the participation of third-party operators apart from the issuer of voucher and the merchant supplier of goods and services. These include rewards schemes operated by banks to reward credit card spending and schemes where loyalty points are awarded for the making of purchases at selected shops or outlets.

GST Law, which provides for the transaction value, the time and place of supply, and the entitlement to ITC with reference to supply of goods and services, is not clear on the tax treatment of transactions involving vouchers and coupons. This results in unwarranted tax litigation. There are already divergent advance rulings on this issue.

Some of the general issues are:

1

Vouchers are actionable claim/ money and thus, outside GST purview.

2

Taxability of discount coupons.

3

Time of supply in case of vouchers redeemable against goods and cases where the place of redemption of voucher is not known.

4

Taxability of amount retained due to expiry of vouchers.

European Union, Malaysia and Singapore have issued detailed guidelines on taxability of vouchers (single purpose and multi-purpose[31]). Similar note or circular under GST taking into considerations all typical arrangements relating to vouchers (including loyalty points) will help the entire industry and result in curtailing tax disputes.

08 Related party transactions – Transfer pricing adjustments

For the purpose of valuing related party transactions under GST, businesses, in many cases, adopt the valuation as per transfer pricing provisions under the Income Tax Act. In case there is a primary adjustment under TP and the sale value increases, the value for the purpose of GST also increases. However, the taxpayer in India receives the commercially agreed value and not the increased value as per TP adjustment.

There is a provision under GST that in case the value of supply is not received within the specified timelines, the service provider needs to pay the tax on such unrealized value. There is a confusion prevailing in the industry whether the taxpayer needs to pay tax / pay back refund where the incremental value due to TP adjustment is not received.

It can be interpreted that the law merely requires that whatever payment the supplier has to receive for that service should be received in foreign currency. It is nowhere specified that foreign currency has to be received to the extent of the entire taxable value as per GST. Further, there is a legal maxim *"Lex Non Cogit Ad Impossiblia"* which means that the law does not compel a person to do that which he or she cannot possibly perform. Ordinarily, a person will receive consideration only to the extent it has been agreed contractually. To expect that a person will receive foreign currency more than the amount contractually agreed on is unreasonable.

Thus, a circular clarifying the above will benefit the entire export community.

09 Shares of private company

Shares and securities have never been taxed under indirect tax regimes. For the purpose of VAT, they were specifically excluded from the definition of goods, and for the purpose of service tax, they were excluded from the definition of services. Even under GST, the Council decided to continue with the similar practice and accordingly, kept securities out of the scope of goods as well as services. The term 'securities' has been given the same meaning as assigned to it under Securities Contracts (Regulation) Act, 1956.

The definition of securities as per the Securities Contracts (Regulation) Act (SCRA) suggest that the shares have to be 'marketable', basis the principle of ejusdem generis if applied to the words "or other marketable securities of like nature". As per the definition of private company under the Companies Act, 2013, right to transfer shares is restricted. Thus, shares of private company may not be freely transferable and hence not get covered under the definition of securities under SCRA and accordingly, under GST.

If a view is taken that the shares of private company are not securities, there is a risk that transfer of such shares may become taxable under GST as supply of goods. Income Tax Act was specifically amended, and the word "shares" has been inserted along with the term "securities" for the purpose of capital gain taxation.

While the issue of taxability did not arise under earlier Service tax and VAT regime, it may become an issue of debate, considering the provisions under GST. Thus, till the time the law is amended to exclude shares of private company from the purview of GST, an express circular, in line with the intention of GST Council, will surely help in eliminating risk of litigation on this count.

10 Export and import of IPs

Intellectual Property is a general term used for a set of intangible assets owned by any person. In the modern world, intellectual property rights have a significant influence on international trade and the indigenous trade of every nation.

Under GST, IPs are treated as goods. Intangibles are not covered in any of the Chapter or tariff under Customs Tariff Act. Since the rate of tax in respect of IPs is not prescribed, in absence of applicable tax rate, levy of duty / tax on IPs has been disputed. Similarly, in case of export of IPs, for online downloads, since no shipping bill is filed, it is difficult to prove that goods are sent outside India. Department could therefore dispute the export position.

Suitable clarification regarding taxability of import and export of IPs (particularly online transfers) can reduce unnecessary disputes. Alternatively, in line with law of various other countries, transfer of IPs (both permanent and temporary) can be deemed as supply of services, thereby eliminating the need to prove the physical movement.

31. Malaysia - http://gst.customs.gov.my/en/rg/SiteAssets/industry_guides_pdf/RETAILING_11032016.pdf
Singapore - https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide_gst_gst-treatment-of-vouchers_2020-07-02.pdf?sfvrsn=d263f579_0
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Addressing the challenges faced by industry

Automobiles

Today, India is the fourth largest auto market[32], with ~ 3.75 million units combined sold in the passenger vehicle and commercial cars categories in 2021.[33] India is also a prominent auto exporter and has strong export growth expectations for the near future[34].

Indian automotive industry (including component manufacturing) is expected to reach US$ 300 billion by 2026. The industry attracted FDI worth US$ 30.78 billion between April 2000 and September 2021 accounting for ~5.5 percent of the total equity FDI during the period according to the data released by Department for Promotion of Industry and Internal Trade (DPIIT).[35]

Two wheelers and passenger vehicles dominate the domestic Indian auto market and accounted for 81.2 percent and 14.6 percent market share, respectively, with a combined sale of over 17.8 million vehicles in FY21. The EV market is estimated to be a INR50,000 crore (US$ 7.09 billion) opportunity in India by 2025[36].

GST implication

The introduction of GST has led to various affirmative influences on the automobile sector. In the erstwhile taxation regime, dealers could not claim the credit of Excise duty, CST, and various cesses on the procurement side, thus inflating the purchase price of the vehicle. In the GST regime, CGST, SGST, and IGST paid are fully available as credit to the dealers, making further supply of such vehicles. GST has eliminated the cascading effect of taxes, thereby reducing the prices of automobiles.

Earlier, automobile parts, accessories, components manufacturers were charging Excise duty on MRP value less abatement wherein the duty portion would be paid on the value higher than the transaction value. This led to higher excise cost on the spare parts, accessories procured by such dealers. Since this concept is not continued in GST, such additional costs have come down.

Apart from the manufacturing and dealership industry, a major benefit is also provided to the second-hand automobile industry as tax is allowed to be paid only on the margin, provided ITC had not been availed on the purchase. This provision has rationalized the tax rate in the case of the secondary market, which has, till now, remained as an unorganized sector due to taxation. With this lower taxation benefit, car dealers in the secondary market are slowly moving towards the organized sector. This sub-sector of the automobile industry has a great potential to unlock the value of old and used cars in the market.

Challenges faced under GST and plausible solutions to contentious issues

Rate of GST on lithium-ion battery

High GST rate of 18 percent on batteries results in huge capex and operational cost for both EV manufacturers as well as users. Battery constitutes approximately 40 percent of the cost of EVs. Further, it results in the accumulation of credit due to inverted tax structure.

Globally, various incentives/ best practices have been deployed in order to become hub for EV sector in countries such as Norway, China, the United States etc. GST rate on batteries could be rationalized (with lower rate of 5 percent instead of 18 percent) to make usage of EVs more affordable and commercially viable, thereby boosting its demand as well as supply.

ITC eligibility and tax implication on demo cars

As per the GST law, a person is entitled to input tax credit on a motor vehicle if the same is manufactured or procured for further supply. The demo cars are displayed for a specified period (say 6 months) and then, they are supplied at a lower price. Thus, the issue arises whether the demo car supplied after specified period can fall under the ambit of clause "further supply of such motor vehicles" to enable the company to claim input tax credit. It is to be noted that divergent advance rulings are pronounced on the said issue.

The demo cars may or may not be registered under the Motor Vehicles Act. Under GST, the taxpayer needs to pay tax only on margin on sale of old and used motor vehicle. However, this is subject to the condition that the benefit of input tax credit is not taken. Thus, the issue is whether demo cars can be treated as old and used and only the margin amount is taxable where ITC is not claimed. Under the VAT regime, it was expressly provided that motor vehicle should be registered for treating them as old and used.

Necessary clarity on the above matters will surely help the auto industry.

32. https://economictimes.indiatimes.com/industry/auto/cars-uvs/automotive-sales-in-india-to-be-the-strongest-in-asia-pacific-moodys/articleshow/90657688.cms
33. https://www.ibef.org/industry/automobiles-presentation
34. https://aiaiindia.com/automobile/
35. https://www.ibef.org/industry/automobiles-presentation
36. IBEF - Automobile Industry - Electric vehicle market likely to be Rs 50,000 crore opportunity in India by 2025: Report (ibef.org)

Banking and Financial services

01 Banking Industry

The Indian banking system comprises 12 public sector banks, 22 private sector banks, 46 foreign banks, 56 regional rural banks, 1485 urban cooperative banks and 96,000 rural cooperative banks in addition to cooperative credit institutions[37]. According to the RBI, India's foreign exchange reserves reached US$601.36 billion, as of 27 May 2022[38]. According to the RBI, bank credit and deposits stood at INR 118.9 trillion (US$ 1.50 trillion) and INR 164.7 trillion (US$ 2.08trillion), respectively, as of 25 March 2022[39].[40] Total assets across the banking sector (including public, private sector and foreign banks) increased to US$ 2.48 trillion in FY21.[41]

Indian banks are increasingly focusing on adopting an integrated approach to risk management. The digital payments revolution will trigger massive changes in the way credit is disbursed in India. Debit cards have radically replaced credit cards as the preferred payment mode in India after demonetization. In FY22, UPI processed more than 46 billion transactions, amounting to over Rs 84.17 trillion, thus breaching the $1-trillion mark.[42]

02 Financial service Industry

India has a diversified financial sector undergoing rapid expansion, both in terms of strong growth of existing financial services firms and new entities entering the market. The sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds, and other smaller financial entities. The banking regulator has allowed new entities such as payment banks to be created recently, thereby adding to the type of entities operating in the sector.

The Government of India has introduced several reforms to liberalize, regulate and enhance this industry. The Government and RBI have taken various measures to facilitate easy access to finance for MSMEs.

As on 31 May 2022, AUM (Asset Under Management) managed by the mutual funds industry, stood at INR 37.22 trillion (US$ 470.7billion)[43]. Inflow in India's mutual fund schemes via systematic investment plan (SIP) was INR 1.24 lakh crore in financial year 2021-22.[44]

Another crucial component of India's financial industry is the insurance industry. Insurance industry has been expanding at a fast pace. The total first-year premium of life insurance companies rose to more that INR 3.14 lakh crores for the fiscal ended 31 March 2022.[45]

India is expected to be the fourth largest private wealth market globally by 2028. India is today one of the most vibrant global economies on the back of robust banking and insurance sectors. The Association of Mutual Funds in India (AMFI) is targeting nearly five-fold growth in AUM to INR95 lakh crore (US$ 1.47 trillion) and more than three times growth in investor accounts to 130 million by 2025.[46]

India's mobile wallet industry is estimated to grow at a CAGR of 148 percent to reach US$ 4.4 billion by 2022, while mobile wallet transactions will touch INR32 trillion (USD$ 492.6 billion) during the same period[47].

37. https://www.ibef.org/industry/banking-india
38. https://dbie.rbi.org.in/DBIE/dbie.rbi?site=statistics
39. https://economictimes.indiatimes.com/industry/banking/finance/banking/banks-credit-growth-nearly-doubles-in-fy22/articleshow/90771419.cms
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43. https://www.amfiindia.com/indian-mutual
44. https://www.financialexpress.com/money/mutual-funds/investors-bet-big-on-sip-inflows-climb-30-to-rs-1-24-lakh-cr-in-fy22-amfi/2529669/
45. https://www.thehindu.com/business/life-insurers-clock-13-increase-in-first-year-premium-for-fy22/article65332850.ece
46. Financial Service Sector, Indian Financial System - IBEF
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GST implication

Earlier, banks with pan-India operations were able to undertake their Service tax compliances through a single `centralized' registration. However, under GST, such Banks need to obtain separate registration for each state where they operate. In addition to registration, compliance burden of filing of returns has also increased substantially – in terms of the periodicity of returns, number of return formats and level of details required in these returns. Moreover, the GST has increased the tax from 15 percent to 18 percent on services provided by banks and NBFCs. On the credit front, VAT ITC was not available to banks, whereas under GST, due to uniform taxes, banks can claim credit up to 50 percent.

Challenges faced under GST and plausible solutions to contentious issues

GST on maintaining minimum account balance

Bank offers various bank account products to its customers. Each bank account product has a defined set of services, benefits and conditions, such as number of ATM withdrawals, number of cheque books, etc.

Bank enters into a contract with the customers through Account Opening Forms ('AOF') which includes General Terms and Conditions. The AOFs clearly set out the services which will be provided for an incremental fee/ charge as well as benefits that the customer of a particular variant may be entitled to which are free of charge such as unlimited number of ATM withdrawals, discount on online bookings, free lounge access, etc. The incremental entitlements/ benefits may or may not be availed by the customer.

Basis the RBI regulations, banks are required to provide basic banking services to customers through the Basic Savings Bank Deposit Account ('BSBD Account') (this is in line with the financial inclusion objective of the Government). As mandated by the RBI, the BSBD Account does not require the account holder to maintain any minimum balance in the account. However, other account variants have a condition under the contract that a minimum balance is required to be maintained. In the event the customer fails to maintain the requisite minimum balance, the customer is required to pay a penal charge for non-maintenance of minimum account balance ('MAB'). Banks are discharging GST on such charges.

In the past, SCNs have been issued to banks alleging that free services are provided to the customer in lieu of the customer's commitment to maintain MAB. This was done by invoking declared a service provision of agreeing to the obligation to do an act.

Industry should collectively engage with the Government to discuss various models in which banks operate to decide if any service actually exists and have the suitable clarification in place.

GST on foreclosure charges levied by banks and financial institutions

Divergent views were expressed on chargeability of Service Tax on foreclosure charges by different benches of CESTAT, resulting in a reference to the larger bench. The larger bench of Chennai Tribunal has answered the reference in favor of the assesses and held that payment of foreclosure charges is not an alternative mode of performance as they are merely intended to compensate the banks for breach by the borrower. It cannot be understood to mean that the borrower has been given an option to breach the contract in return for payment of foreclosure charges[48].

An express circular by the Government confirming the position taken by the larger bench that foreclosure charges should not be subjected to levy of GST will help the industry mitigate the risk of litigation.

Taxability of services provided by investment funds

Recently, the Bangalore tribunal, examined a Venture Capital Fund structure to determine whether it involves the Fund or the Trust providing any services to the contributors. The tribunal has ruled that the trust acts as a service provider, thereby suggesting that arrangement between the contributor and the trust is that of a receiver and supplier of services. The ruling is expected to have a significant impact on established industry practices, which are not aligned to this judgement.

48. [2020-VIL-309-CESTAT-CHE-ST]COMMISSIONER OF SERVICE TAX, CHENNAI Vs M/s REPCO HOME FINANCE LTD

While this ruling has been issued in relation to the pre-GST regime, it is likely to have a bearing under GST regime as well. It can also have a knock-on effect on income tax and transfer pricing matters.

The passing of this judgement is only a tip of the iceberg as this is likely to trigger issuance of numerous notices to funds and consequent rise in litigation. The ruling is expected to impact tax assessments and reviews of all similarly placed entities (PE/ VC/ MF/ ARC/ etc.), especially where the funds are in India. Further, in the absence of a single authority dealing with this issue, different state-wise authorities are likely to take different views and add to the complexities. It is the need of the hour that CBIC issues suitable clarification or grants an explicit exemption with retrospective effect.

Relaxation in ITC reversal for transactions in securities for life and general insurance companies

Life Insurance Companies invest in securities as a statutory obligation towards the provision of life insurance service. Earlier, Hyderabad CESTAT held that no reversal of CENVAT credit is required for statutory investments mandated under IRDA. Under GST law, reversal of credit is required where the taxpayer engages in transaction in securities.

Thus, the obligation of proportionate reversal of ITC of GST on input services to the extent they pertain to transaction in securities in case of life insurance, general insurance and health insurance business can be done away with.

Input Tax Credit on Deposit Insurance Premium

Vide provisions of Deposit Insurance and Credit Guarantee Corporation ('DICGC') Act, all Commercial Banks, including the branches of Foreign Banks functioning in India, Local Area Banks and Regional Rural Banks are mandatorily required to insure their customer's savings, fixed, current, recurring, any other deposit accounts. DICGC is engaged into provision of deposit insurance service to all such banks.

DICGC collects insurance premium from insured banks for administration of the deposit insurance. The insured banks are mandatorily required to pay the DICGC premium and failure to pay consecutive insurance premiums may result in cancellation of registration of such bank. The insured banks are required to bear such insurance cost on its own and are not permitted to recover such premium cost from its customers.

Under Service tax, the authorities have denied CENVAT Credit of deposit insurance premium on the basis that the deposit insurance service has no nexus with any taxable output service provided by banks.

The activity of acceptance of deposits is a 'transaction in money', which is specifically excluded from the definition of service. However, in addition to acceptance of deposits, banks provide various services to its deposit account holders such as issuance of cheque, transfer of funds, issuance of drafts, withdrawal from ATM's etc., which entail a fee and the same are liable to service tax; Hence, there is a direct nexus between deposit insurance premium paid and revenues earned.

The preliminary condition for availment of Input Tax Credit that goods or services must be used or intended to be used in the course or furtherance of business is duly satisfied by the insured bank. Further, such credit is not blocked by section 17(5) of CGST Act. Here, the clarity should emerge on eligibility of Input Tax Credit on insurance premium paid to DICGC.

ITC eligibility on life insurance premium paid by Mutual Fund / banks for its investors / customers

Mutual Fund offers life insurance cover to its investors and selling agents as an add-on to the investments in mutual fund units, and the payment of the premium is done by the Asset Management Company [('AMC') that manages the mutual fund business] as a part of the promotional strategy. Likewise, banks too offer life insurance cover while selling credit cards to its customers as a part of its promotional scheme.

Under section 17(5)(b) of the CGST Act, ITC is inter alia not available in case of life insurance except where it is made obligatory by law for an employer to provide the same to its employees or it is used for making outward taxable supply of the same category of services or an element of mixed or composite supply. There is a blanket restriction on availment of ITC irrespective of whether the ITC pertains to GST paid on life insurance premium with respect to policies taken with the objective of promoting mutual fund business, i.e., for its investors and selling agents.

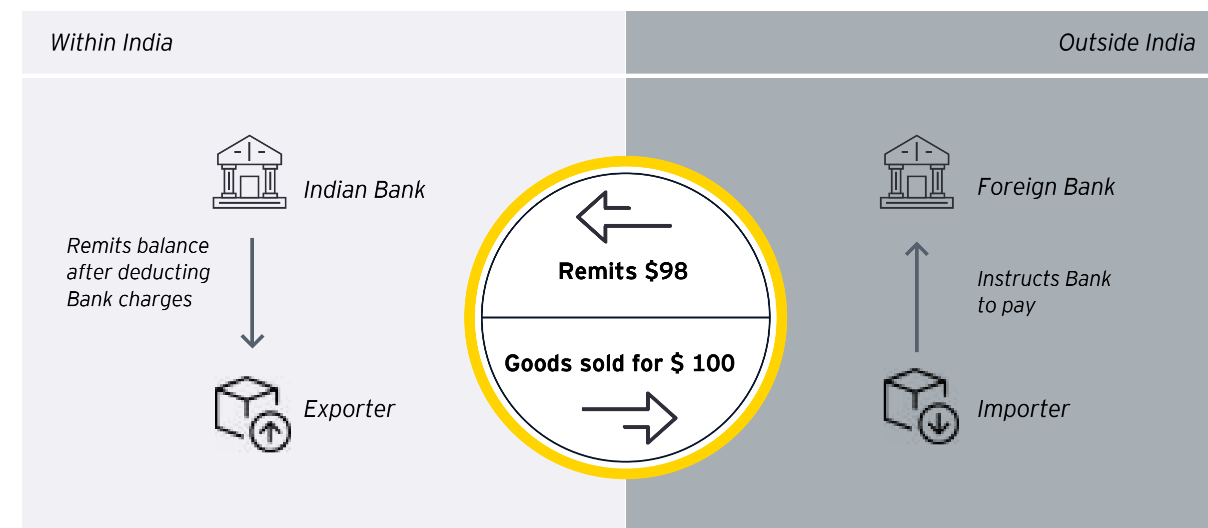
Government can amend section 17(5) of the CGST Act or even internal clarification can be issued by CBIC to field formations for allowing Banks, MFs to avail ITC of GST on premium paid for life insurance policies as such policies offered to customers can be said to be used in the course or furtherance of their business.

Taxability of correspondent bank charges

Banks while providing regular banking services are inter alia engaged in facilitating collection of export proceeds for exports made by Indian exporters and making remittance in convertible foreign exchange in relation to imports made by Indian importers.

Typically, as a business routine and to facilitate the provision of such services to customers and to complete the transaction of realization of export proceeds or foreign outward remittance of money, a foreign bank, which may either be the bank of the foreign counterparty of the Indian customer or a bank where the Indian bank holds a Nostro account, is involved. This is explained in the illustration below.

These foreign banks (acting as correspondent banks) charge certain amounts as their fees for facilitation provided and based on the commercial agreement between the foreign counterparty and the Indian exporter/ importer, these charges are recovered by them either from the foreign counterparty of the Indian importer/ exporter or by deducting these charges from the total amount to be remitted/ received to the exporter / importer.



Department had earlier issued Trade notice no. 20/13-14-ST-I dated 10 February 2014, directing banks to pay Service tax under reverse charge mechanism on the foreign bank charges on the premise that the Indian banks are the recipients of these services.

The banking industry is of the view that service recipient in a transaction of the provision of service, has to be treated as the person on whose instructions the service has been provided and who is obliged to make payment for the provision of the service.

In these cases, the transaction commences at the behest of the customer, who instructs Indian bank to collect the amount in its favor from the overseas correspondent bank.

The banking industry is involved in a dispute with the authorities on the service tax payable on the correspondent charges levied by the foreign banks. Even under GST, this dispute is likely to continue with no specific clarification from the Government in this regard.

Clarification from the Ministry of Finance suggesting no taxability of Correspondent Bank charges in the hands of Indian banks and hence no RCM liability will go a long way in resolving the litigation in the matter.

Construction and Real estate

In India, the real estate sector is the second-highest employment generator, after the agriculture sector. Real estate sector in India is expected to reach US$ 1 trillion by 2030[49]. By 2025, it will contribute 13 percent to the country's GDP. Emergence of nuclear families, rapid urbanization and rising household income are likely to remain the key drivers for growth in all spheres of real estate, including residential, commercial, and retail.

The Government of India has been supportive towards the real estate sector. In August 2015, the Union Cabinet approved 100 Smart City Projects in India. The Government has also raised FDI limits for townships and settlements development projects to 100 percent. Real estate projects within SEZ are also permitted for 100 percent FDI.

Construction is the third-largest sector in terms of FDI inflow. FDI in the sector (including construction development and construction activities) stood at US$ 52.7 billion between April 2000 and December 2021[50].

Government of India's 'Housing for All' initiative is expected to bring US$ 1.3 trillion investments in the housing sector by 2025. The Ministry of Housing and Urban Affairs has recommended all the states to consider reducing stamp duty of property transactions in a bid to push real estate activity, generate more revenue and aid economic growth[51].

GST implication

Under erstwhile indirect tax regime, while sale of immovable property (land and building) was not taxed, sale of "under-construction" property attracted VAT and service tax. Under GST also, the said transaction is liable to tax. Other activities involving indirect tax implication include construction service, transfer of development rights, leasing and renting of commercial property.

Initially under GST, builders / developers could claim credit on procurements. However, with effect from 1 April 2019, the Government has introduced a new scheme of indirect taxation for real estate projects, levying a reduced rate of GST without allowing any benefit of input tax credit. While the new scheme appears to be a departure from the policy of taxation based on value-addition, a lower rate regime of 1 percent / 5 percent could suggest a much larger incentive towards tax compliance.

Challenges faced under GST and plausible solutions to contentious issues

Bias between constructed property and under-construction property

Construction activity/works contracts and the sale of residential units before completion have been deemed to be "supply of service". Unless land is brought within the ambit of GST, the whole chain of bringing real-estate doesn't start. Thus, to cover the entire value chain, GST needs to cover land, construction of buildings and the sale of completed constructions. There is now a broad consensus that including land and real estate does not require a constitutional amendment and that the supply of 'right to use' land and the constructed property can all be treated as 'deemed supply of services'.

49. https://www.ibef.org/industry/real-estate-india
50. https://www.ibef.org/industry/infrastructure-presentation
51. IBEF - Real Estate Industry https://www.ibef.org/industry/real-estate-india

Transfer of Development Rights (TDR) related issues

There are several contentious issues relating to TDR. The same are listed below.

01

Taxability of development rights has been a litigative issue under GST as well as Service tax regime. While activities which constitute merely a transfer of title in immovable property were excluded from the scope of Service tax, under GST, it is restricted to land and completed buildings. There are rulings under service tax in favor of taxpayers.

02

While GST law provided one third deduction on account of land provided for valuing construction service, similar deduction is absent for valuation of TDR. Since TDR is supplied against construction service, the value of TDR supply should not be different from the value of construction service.

03

Supply of TDR is covered under reverse charge only in cases where the recipient is a promoter. In a scenario where TDR is supplied to a person who is not Promoter, but that person further supplies the TDR to the Promoter, there may be credit blockage. For instance, A owning development rights for a particular land, sells the rights to B. B himself does not develop the land. It further supplies the rights to C, who develops the land. In this case, only C is the promoter and not A or B. Since B is not a Promoter, the tax liability should be discharged by A under forward charge. Further, as B's outward supply of TDR is covered under reverse charge, B will not be allowed to take ITC with respect to TDR procured from A and hence it will become cost.

04

Tax on TDR is deferred only in cases of real estate projects as per RERA (i.e., projects where some apartments are intended for sale). Thus, where apartments are not intended for sale, deferred time of supply is not applicable. In such case, time of supply might have to be determined based on general provisions, i.e., invoice or receipt of consideration, whichever is earlier. This may lead to time of supply triggering at the time of entering into agreement which will put a heavy working capital burden on the land-owner.

In order to resolve these challenges, following solutions can be considered:

1

TDR can be included in Schedule III of CGST Act or excluded from the definition of service.

2

Prescribe a mechanism for valuing TDR and in doing so, allow a deduction on account of land.

3

Taxpayers may be given an option to pay tax on TDR under forward charge.

4

Time of supply of TDR, where apartments are not intended for sale, can be deferred until the completion of the project.

Deduction on account of land restricted to 1/3rd of total consideration

Construction of immovable property services is generally provided along with the transfer of undivided share of land. Deduction of one-third of the value of land from total consideration is provided for the purpose of valuation of construction services.

It is pertinent to note that the value of land is not limited to 1/3rd of the total consideration, in all parts of India. In certain cases, the value of land comprises up to 60 percent of the total consideration specifically for commercial complex. Payment of GST with only one-third deduction for land results in payment of excess taxes.

Therefore, deduction should be allowed towards the actual value of land, if available. If agreement shows a split consideration, specifying the amount charged towards value of land, such amount should be allowed to be deducted while determining value of construction services.

Joint Development Arrangements

There are various types of joint development models prevailing in the real estate industry. The most common models are area sharing, revenue sharing, slum rehabilitation, and society redevelopment. There is a lack of clarity in the industry on the taxability of various legs involved in these kinds of arrangements. An express circular covering all the possible implications in case of joint development agreement will help the taxpayers as well as the department in taking a uniform position.

Taxability of developed plots

The industry had taken a position of not paying tax on sale of developed plots (before or after completion certificate) treating it as sale of land. However, recently the advance ruling authorities have held that there is also an element of service in sale of developed plots.

There is no clarity regarding the taxability of sale of developed plots. If the transaction is treated as a supply of service, the valuation is a gray area since a major amount of consideration would be towards the value of land, which is outside the purview of GST. The agreements may not provide a split into consideration and specify what value is charged towards the value of land. Thus, there is a need for clarification on the taxability and valuation in case of sale of developed plots along with time of supply of TDR, if any.

Taxability of BOOT vs. BOT HAM projects

Public Private Partnerships (PPPs) in the road sector in India have been witnessed in road construction, management of roads and tolling operations, giving rise to considerable activity over the past 10 years in this sector. The common models are HAM (Toll/ Toll Annuity), HAM (Construction Annuity) and BOOT.

As per the industry understanding, there is no construction service provided in the case of BOOT projects since the taxpayer constructs the immovable property for itself. While toll as well as toll annuity income are exempt, BOT (Construction Annuity) is made taxable. In essence, both toll and construction annuity model are same and therefore, the construction annuity should also be exempted from GST.

Denial of refund of inverted tax structure

Inputs used for construction of buildings are taxable at GST rates ranging from 5 percent to 28 percent. GST rate on construction of commercial apartments is 18 percent and after considering the deduction on account of the value of land, the effective rate is 12 percent. Given that the rate of inputs like steel and cement is higher than the rate of output, a situation may arise wherein the developer is having accumulated credits, which will remain unutilized.

Refund of accumulated ITC is denied with respect to construction of immovable property, thereby resulting in blockage of funds for the taxpayer. Thus, there is a need to ease the restriction for refund of accumulated ITC in such cases. Further, refund should also be allowed of ITC on account of input services.

Extending GST rate of 18 percent for all services in relation to services to Government / railways / metro etc.

For works contract services pertaining to Government / railways / metro etc., concessional GST rate of 12 percent is applicable. However, pure services availed by contractor rendering the aforementioned works contract services are typically taxable at GST rate of 18 percent. Simultaneously, refund is not available for input services on an inverted tax structure resulting in substantial working capital blockage and cost inefficiencies for the contractors.

The GST council in the 47th council meeting has proposed to increase the rate on the following services:

- The rate on works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc has been increased from 12 per cent to 18 per cent;
- Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & subcontractor thereof has been increased from 12 per cent to 18 per cent; and
- Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof has been increased from 5 per cent to 12 per cent

Separate contract / split consideration

Clarity is needed whether a separate contract for goods and services or a single contract for goods and services with split consideration would qualify as works contract or separate supply of goods and services. Currently, there are divergent rulings on this matter and because of this, there is no uniformity in industry practice. A detailed guideline/ clarification can be issued covering various contracting scenarios for EPC contractor.

E-commerce

E-commerce revolution is being spurred by the BASE factor — expansion of Bandwidth, AADHAR for identification of recipients, Smart phones (a young population - 2/3rd Indians below the age group of 35) who own smart phones and easy availability of credit (measures for financial inclusion such as innovative financing methods for small and medium companies), along with decrepit infrastructure spurring convenience shopping methods. Now confined to Tier 1 and partly Tier 2 cities, e-commerce is expected to increase and encompass Tier 3 and Tier 4 cities as well. The Indian e-commerce industry has been on an upward growth trajectory and is expected to surpass the US to become the second largest E-commerce market in the world by 2034. Through the Digital India campaign, the Government of India is aiming to create a trillion-dollar online economy by 2025 from US$46.2 billion in 2020.[52]

Another feature of the e-commerce scenario in India is the increasing FDI in domestic e-commerce companies, reflecting a global interest in this sector. The Government of India's policies and regulatory framework such as 100 percent FDI in B2B e-commerce and 100 percent FDI under automatic route under the marketplace model of B2C e-commerce are expected to further propel growth in the sector[53].

GST implication

GST law provides clarity for taxation of the e-commerce sector. The law provides an electronic commerce operator ("ECO") to mean any person who owns, operates or manages a digital or electronic facility or platform for e-commerce. Electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network. The law makes a conceptual distinction between two categories of e-commerce, one carried out by an ECO falling under Section 9(5) of CGST Rules ("Aggregator"), who owns and manages an electronic platform under his own brand name and supplies certain notified Services under that brand name and an electronic commerce operator, who manages a digitally supported market platform, which can bring together the buyer and the seller. For an electronic commerce operator, the first point of transaction will be the point of taxation.

For e-commerce marketplace model, concept of tax collection at source has been introduced under GST. This has led to additional compliances on such entities with a responsibility to collect tax from each supplier, including updating of IT systems to capture the required information to ensure compliance. In the case of the aggregator, tax is paid by the aggregator like any other supplier, while other ECOs are treated as an intermediary, who pay a portion of the tax to the government on behalf of the supplier and adjusts this tax against the gross payment due to the supplier. Also, the suppliers making supplies through ECO's platform (who are required to collect tax at source) are mandatorily required to get registered.

Challenges faced under GST and plausible solutions to contentious issues

Specific place of supply provisions

The tax treatment of e-commerce and the provisions for Place of Supply under GST are important since it can either help or hinder the industry's growth. There may be some virtue in treating all segments in the e-commerce space equally and to let intrinsic merit determine which segment grows and which falters.

52. E-commerce in India: Industry Overview, Market Size & Growth| IBEF
53. IBEF - E-commerce Industry https://www.ibef.org/industry/ecommerce

There is a need for special provisions for place of supply relating to e-commerce to bring in more clarity in identifying the service recipient. This is also important to determine which state will get the SGST revenues based on the destination principle. The nature of transactions in the e-commerce space can be broadly divided into the following two categories, and this categorization could be useful in framing the place of supply provisions:

Online ordering and online delivery

The Aadhar number of the recipient should be required to determine whether the supply is intra-state or inter-state. The current Place of Supply provision does not mandate furnishing the address of the recipient and therefore, leaves the option for all SGST to go to the supplier state. This option should be removed so that the SGST revenues flow to destination states. However, upon furnishing of Aadhar also, there might be cases where the person has shifted to another state but the address in Aadhar is not updated. In those cases, revenue will flow to the wrong state.

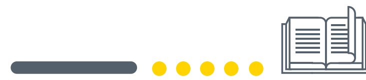
Online ordering and offline delivery

In respect of such supplies, the Aadhar number is not mandatory as the place of delivery is already known, but its indication will be helpful.

Tax Collection at Source

As the GST visualizes strong technology support from the GSTN, all transactions will be tracked. In view of this, there may be a case for doing away with TCS for the e-commerce operator currently provided in the GST Law. This would also facilitate ease of doing business.

Registered suppliers exporting through eCommerce platforms suffer TCS of 1 percent, since GST law does not exclude zero rated export supply from TCS levy affecting their working capital, which adversely impacts the competitiveness. The Government should incentivize exports from India by providing necessary clarifications to exclude levy of TCS on zero rated supplies.



Education

India holds an important place in the global education industry and has one of the largest networks of higher education institutions in the world. With ~27% of India's population in the age group of 0-14 years, India's education sector provides numerous opportunities for growth[54].

India has over 250 million school going students, more than any other country[55]. It also has one of the largest networks of higher education institutions in the world. India has also become the second largest market for e-learning after the US[56]. The sector is expected to reach US$1.96 billion by 2021[57], with about 9.6 million users from US$247 million and around 1.6 users in 2016[58]. The Indian Ed-tech market size is expected to reach US$ 30 billion by 2031, from US$ 700-800 million in 2021. Indian Ed-tech startups have received total investment of US$ 4.7 billion in 2021, up from US$ 2.2 billion in 2020.[59] The government has allowed 100% FDI in the education sector through the automatic route since 2002.

The government of India has recognized the exigency of implementing large scale and effective skill development solutions with a number of initiatives having been taken over the years. The creation of a new ministry for skill development i.e., Ministry of Skill Development and Entrepreneurship (MSDE) marked a paradigm shift in skilling and the same cemented importance of skill development in the agenda of the government[60].

54. https://www.ibef.org/industry/education-presentation
55. https://www.ibef.org/industry/education-presentation
56. https://www.livemint.com/Politics/ZFIUNCpCcCPGL0rqsKPQsO/Indias-elearning-market-second-largest-after-US-says-repo.html
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58. https://assets.kpmg/content/dam/kpmg/in/pdf/2017/05/Online-Education-in-India-2021.pdf
59. https://www.ibef.org/industry/education-presentation#:~:text=The%20Indian%20edtech%20market%20size,a%20CAGR%20of%20almost%2020%25.
60. IBEF - Education and Training Industry https://www.ibef.org/industry/education-sector-india

SECTOR COMPOSITION

Pre School Market

Expected to grow by US$ 735 million at

8%

CAGR between 2021-25

Higher Education

State public universities with

38.1%

share in FY20

Private Education

Private coaching sector annual revenue was

US$ 3.35 *billion in 2020*

Source - PowerPoint Presentation (ibef.org)

GST implication

Most of the exemptions given to education sector under service tax were carried forward under GST regime. However, the tax rate on taxable services has been increased from 15 percent to 18 percent.

Some of the key challenges faced by the education sector under GST and possible solutions are as under:

1. **Limited exemptions on the procurement by educational institutions resulting in increased cost of education**

Issue

Initially under Service tax, exemptions were provided in relation to services provided to an educational institution, by way of auxiliary educational services and renting of immovable property. The term "auxiliary educational services" included any services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person.

Later, w.e.f. 11 July 2014, the scope of exemption was reduced to certain specified services provided to an educational institution and the same continued under GST. Such services are transportation, catering, security, housekeeping, admission related services and the supply of online educational journals or periodicals. This has resulted in a scenario where educational institutions are required to pay GST on certain procurements that are directly related to the education services. The GST so paid becomes a cost since output services provided by educational institutions are exempt from GST. Some of such input services are IT and infrastructure cost, repair and maintenance of building, rental cost, accreditation services, purchase of stationary, furniture, computers, etc.

Suggestion

The exemption entry in the GST regime relating to services provided to educational institutions should be widened to include supplies made to educational institutions directly related to provision of education services by them. At the least, the exemption list should be expanded to include some of the key procurements like IT and infrastructure cost, accreditation services, rental services, and management fee. Alternatively, the supplies made by Educational Institutions may be zero-rated. This will ensure that the input tax cost can be recovered by the educational institutions.

2. Procurement of any specified service taxable under reverse charge entails Educational Institutes to obtain GST registration

Issue

Under GST, certain domestic services like 'legal services' are taxable in the hands of recipient (business entity) under reverse charge. Accordingly, an entity that receives such specified services on which GST is payable under reverse charge is compulsorily required to obtain registration. List of specified service also include import of services. While a specific exemption is granted to charitable entities registered under section 12AA of the Income-tax Act, 1961 from payment of GST on import of services, no such exemption has been extended to educational institutions.

In view of the above provisions, educational institutions would be required to obtain GST registration even when their output is wholly exempt from GST and leads to increase in GST compliances for educational institutes which are otherwise exempt from GST.

Suggestion

Educational institutions should be provided specific exemption from GST payable under reverse charge, similar to charitable institutions registered under 12AA of Income-tax Act, 1961.

3. Clarity on scope of exemption on services relating to admission to, or conduct of examination by, such institution

Issue

Entry 66 of Notification No.12/2017-Central Tax (Rate) dated 28 June 2017 provides exemption to any service provided to an educational institution by way of services relating to admission, or conduct of examination by, such institution. The scope of this exemption is not defined and since, the phrase 'relating to' provides a broad ambit to the associated word with which it is used, it leads to different interpretations by the taxpayers and tax authorities. For example, there are different views on services like counselling services for prospective students, conduct of student fairs, etc., which are provided by private entities to the educational institutions for a charge. These services and other such services are associated with the admission of students in the educational institution, although may not be directly related to the admission process.

Suggestion

The scope of the exemption entry should be elaborated and services leading to admission, even if not directly related to admission process provided to educational institutions, should be included in the exemption entry.

4. Clarity on exemption to online schools

Issue

Given that online schooling has been made a reality by the pandemic and the same has been tested sufficiently, several schools are looking to open schools online with no physical infrastructure. While this is an untested area till now in India, clarity should be provided on the exemptions that should be available to such schools on same lines as that of traditional schools.

Suggestion

GST law does not provide any condition for a school to have a physical set-up. However, due to different views on the exemptions available, clarity should be provided on this aspect.

5. Different GST treatment on sale of e-books and physical books should we move this up?

Issue

Sale of physical books is exempt under GST. However, sale of e-books has been accorded different treatment, i.e., e-books where physical version is available is taxable at 5%, else at 18%. This differential GST treatment causes tax disputes. Also, with the increase in scope of online education, supply of e-books should also be exempt from GST.

Suggestion

GST rates on supply of e-books should be kept at par with the supply of physical books and the same should be exempt.

6. Scope of exemption limited to only courses recognized by law

Issue

The existing exemption provided to educational institutes providing higher education is limited to institutions providing courses recognized by law. The exemption is, however, not extended to some institutes of repute providing internationally recognized courses.

Suggestion

Globally recognized courses or educational institutions providing uniquely designed programs which have been internationally recognized and accredited by global accrediting institutions should be specifically included in the output exemption entry.

7. Clarification on scope of exemption given on services in connection with NSDC

Issue

Entry 69 of Notification No.12/2017-Central Tax (Rate) dated 28 June 2017 provides exemption to any service provided by a training partner approved by the National Skill Development Corporation (NSDC) or the Sector Skill Council, in relation to-

- the National Skill Development Program (NSDP) implemented by NSDC; or
- any other Scheme implemented by NSDC.

The key issue in the above entry is the absence of definition of NSDP. The absence of any clarification on NSDP and resultant ambiguity in the said exemption entries leads to a denial of benefits to approved training partners.

Suggestion

Necessary clarification should be provided on the scope of NSDP, or an amendment be made by clearly recognizing the programs being offered by NSDC approved training partners within the ambit of NSDP. Further, clarification should also be issued to clarify that scope of Entry No.69 of Notification No.12/2017-Central Tax (Rate) dated 28 June 2017 would cover all services provided by approved training partner of NSDC to other approved training partners of NSDC in relation to skill development training/ courses.

8. Clarification on exemption to the private educational institutes providing approved education courses in partnership with 'Educational Institutions'

Issue

A number of private educational institutions are partnering with colleges/universities providing recognized degree courses under an MOU to provide services in relation to designing of the courses, delivering training, providing faculty, administering admission process, etc. Typically, such models work on revenue sharing basis where fee is collected by the college but shared with such institutions based on a fixed percentage. At present, such private institutions, although involved in providing degree courses in partnership with colleges and universities do not seem to get included in the exemption and are required to pay GST on such revenue.

Suggestion

The scope of educational institutions should be enlarged to include such institutes, or such services may be exempted as a separate entry. Alternatively, such services provided by private educational institutions to the approved educational institutions may be included in the procurement side exemptions for Educational Institutions.

9. Aggregate turnover for the purpose of registration threshold includes exempted supplies

Issue

Every supplier having *'aggregate turnover'* of more than INR 20 lakhs is liable to be registered under GST; where, *"aggregate turnover includes all the supplies made by taxable person including exempted turnover"*. Therefore, while educational institutions being a provider of exempted services are not required to obtain GST registration for regular output supplies by virtue of the exemption, practically these institutes may have some taxable supplies like sale of used assets (furniture, computers, buses etc.) which are ancillary to the main services. As per the GST provisions, educational institutions are required to take GST registration in case the total turnover including the taxable and exempt portion, exceeds registration threshold. This increases the compliance burden for otherwise exempt institutions.

Suggestion

While the law intends to keep the suppliers of exempted goods/ services free from GST registration and compliances, the liability for educational institutions to register under GST and undertake all the compliances is clearly against the intention of the lawmakers. To mitigate the above impact, exempted supplies may be excluded for calculating the registration threshold.

Media & Entertainment

The Indian Media and Entertainment (M&E) industry is a sunrise sector for the economy and is making significant strides. Proving its resilience to the world, Indian M&E industry is on the cusp of a strong phase of growth, backed by the rising consumer demand and improved advertising revenue.

Indian media industry has tremendous scope for growth in all the segments due to rising income and evolving lifestyle. According to an EY-FICCI M&E report, the Indian M&E sector stood at INR1.38 trillion in 2020 and is projected to grow to INR2.32 trillion by 2024, due to acceleration of digital adoption among users across geographies.

Government of India has supported this sector's growth by taking various initiatives such as digitizing the cable distribution sector to attract greater institutional funding, increasing FDI limit from 74 percent to 100 percent in cable and direct-to-home (DTH) satellite platforms and granting industry status to the film industry for easy access to institutional finance.[61]

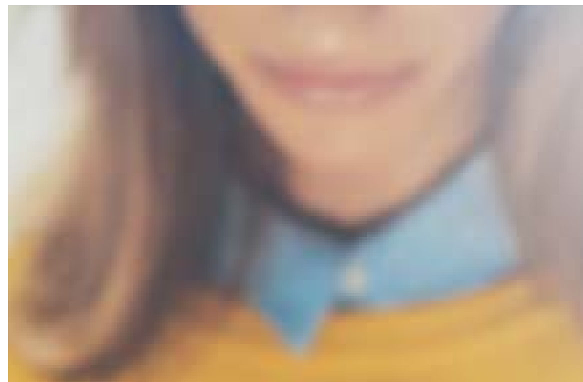


Table 3.1 - Industry wise revenue data

Indian M&E sector grew 16.4% in 2021 to reach INR1.61 trillion

	2019	2020	2021	2022E	2024E	CAGR 2021-2024
Television	787	685	720	759	826	5%
Digital media	221	235	303	385	537	21%
Print	296	190	227	241	251	3%
Online gaming	65	79	101	120	153	15%
Filmed entertainment	191	72	93	150	212	32%
Animation and VFX	95	53	83	120	180	29%
Live events	83	27	32	49	74	32%
Out of Home media	39	16	20	26	38	25%
Music	15	15	19	21	28	15%
Radio	31	14	16	18	21	9%
Total	**1,822**	**1,386**	**1,614**	**1,889**	**2,320**	**13%**

All figures are gross of taxes (INR billion) for calendar years | EY estimates

61. https://www.livemint.com/Politics/d1a33qhYRYvvSORk6i9nTO/FDI-limit-raised-for-TV-channels.html

GST implication

In the erstwhile indirect tax regime, film tickets attracted State level Entertainment Tax ('ET') and no set off was provided for Service Tax or VAT paid by the exhibitors on procurements against the ET payable leading to cascading. With GST, ET levied by the states is subsumed, and cascading has been removed. Similarly, multiplicity of taxes on the same transaction (2 levies of VAT / Service Tax / ET) levied on IP transfers, admission to events etc., have been removed with introduction of GST.

However, an authority is given to local bodies to levy and collect taxes on entertainment and amusement, which could be a backdoor entry of ET and, if levied by local bodies, would increase the cost to consumers.

Challenges faced under GST and plausible solutions to contentious issues

Attribution of value of advertisement services provided to the Government

In case of advertisement services provided to the Government (including Government departments/ agencies) in multiple states, value of supply needs to be divided amongst such states since the place of supply ('POS') falls in all states where such advertisement is displayed. For advertisement on television channels, the amount attributable to a state shall be calculated on the basis of channel viewership in the state. Similar mechanism for attribution has been prescribed for advertisements on other mediums. Accordingly, multiple invoices are needed to be raised by mentioning multiple POS.

There is a significant challenge for advertising service providers to issue separate invoices for the same ad spot aired. Problem further aggravates when the proportion of the split between the states could differ from channel to channel (of the same broadcaster) and also from campaign to campaign. This also leads to operational challenges with the Government which may not be equipped to account for different invoices for a single campaign. This causes delay in releasing payments by them result into undue disadvantage to the Broadcasters.

As a solution to this, advertising service providers may be allowed to raise a single invoice to the concerned Government with POS as the location of recipient. Then, the Government department/ agency can split the value (and the GST) among states for which the service provider can provide the relevant information that may be required by the Government agencies.

RCM on sponsorship services leading to credit blockage

Sponsorship services provided by any person to body corporate or partnership firm are taxable under RCM. However, the supplier cannot claim credit attributable to such sponsorship services provided, even if such services are liable to GST. This results in loss of legitimately available input tax credit. Merely changing the person responsible to deposit GST should not break the otherwise seamless GST input tax credit chain.

To counter this issue, sponsorship services can be taxed under forward charge and as a result, supplier can claim the credit. If it is not possible to consider all sponsorship services under forward charge, the applicability of RCM should be restricted to services provided only by service providers other than corporates.

POS for intermediary

For both domestic as well as cross- border transactions, the POS for advertisement services is the location of the service recipient. However, for intermediary services in relation to advertising, POS is the location of the service provider. Therefore, there is a need to align POS for intermediary services with the main service of advertising and hence, the POS for intermediary services in relation to advertising should be changed to the location of service recipient.

MSME

MSME sector across the globe has played a crucial role in contributing towards economic development and socio-economic advancement. Despite being the major economic force of the country, MSMEs have been facing several challenges in the area of technology, market opportunities, regulatory hurdles, financial incompetence, logistics and innovation.

On the tax front, the Government has been providing liberal tax regime to MSMEs to facilitate ease of doing business. While there is no doubt on the benefits that GST achieved in terms of fostering a common market, eliminate tax cascading, reduce cost of tax compliance and provide simple and transparent tax structure, the new tax regime has resulted in increased compliance and financial burden for small businesses. This could adversely impact their business sustainability and render them in-competitive vis-à-vis large businesses.

Amongst the 176 countries, World Bank's MSME Economic Indicator database for 2019 records the maximum number of MSMEs from India, as high as 63.38 million enterprises across urban and rural geography[62].

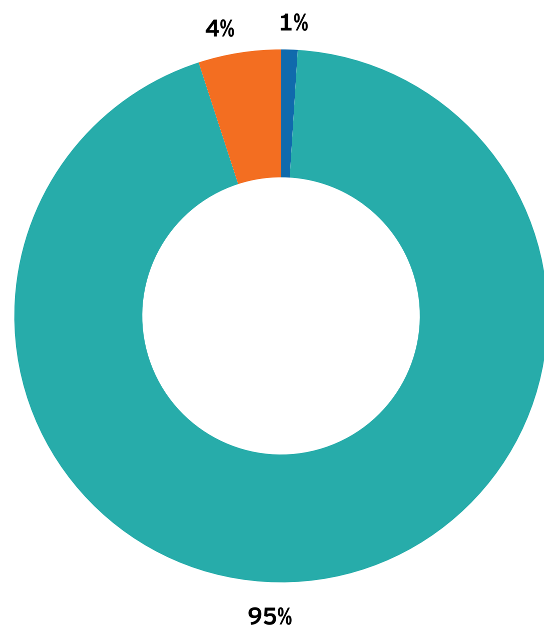
The Indian MSME sector contributes 24 per cent to the country's GDP, 45 per cent to exports, and generates around 120 million skilled and semi-skilled jobs across various industries and segments.[63]

Though the government has been extremely receptive in addressing the concerns of small businesses which is evident from various measures taken by the GST Council in its various meetings, there are few issues highlighted below which may be considered in order to further ease the burden on small businesses[65].

Chart 3.1 – Data of Registered MSMEs[64]

Registered MSMEs in India in FY22 (Lakh units)

MARKET SIZE



- Medium enterprise, 0.35
- Micro-enterprise, 76.27
- Small-enterprise, 3.53

Trend point: As on March 31, 2022, the Udyam Registration portal registered 80,16,457 MSMEs.

62. https://www.smefinanceforum.org/data-sites/msme-country-indicators
63. https://www.cii.in/Sectors.aspx?enc=prvePUj2bdMtgTmvPwvisYH+5EnGjyGXO9hLECvTuNuXK6QP3tp4gPGuPr/xpT2f#:~:text=With%20around%2063.4%20million%20units,33.4%25%20of%20India's%20manufacturing%20output.
64. https://www.ibef.org/industry/msme/infographic
65. IBEF - MSME Industry https://www.ibef.org/industry/msme

GST implication

With GST in place, the small and medium Enterprises have been accorded with a lot of benefits in terms of compliance reliefs given in the form of threshold exemptions, composition levy schemes, the quarterly filing of the GST returns, to mention a few. While doing so, it has also been kept in mind that they do not become uncompetitive and are also given all the benefits of GST like seamless ITC in the supply chain, etc.

Various decisions have been taken by the GST Council in its various meetings for the benefit of the MSME sector. For instance, (i) Goods predominantly manufactured and/or used in the MSME sector have been kept at lower rates or are exempted; (ii) Upper limit of turnover for opting for composition scheme has been raised to INR 1.5 Crore. (iii) Composition dealers have been allowed to supply services; (iv) Filing of Nil returns have been simplified with one step process; (v) Service providers making inter-State supplies, including supplies made through e-commerce operators, whose aggregate annual turnover does not exceed INR 20 Lakh have been exempted from the requirement of registration under GST.

In the 47th GST council meet, decision has been taken to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions, such as

- the aggregate turnover on all India basis does not exceed the prescribed turnover limit;
- the person is not making any inter-State taxable supply

Further, composition taxpayers would be allowed to make intra-State supply through e-commerce operators subject to certain conditions. The said decision of the Council has been a welcome move for the said sector.

Challenges faced under GST and Plausible solutions to contentious issues

Invoice matching provisions for claiming Input tax credit

GST law allows the credit where the supplier has furnished the return in its GSTR-1, paid the taxes, and fulfilled other conditions introduced vide Budget 2022. The provisions are creating hardship in the hands of recipient of supply of goods or services, more particularly in view of mismatches arising in the invoice numbers and date related discrepancies. Such reconciliation of outward and inward supplies by the prescribed due dates is also creating tremendous inconvenience to the small taxpayers who must spend considerable time to match the invoices without having suitable resources at their disposal. This also hampers the day-to-day business.

In line with the ease of doing business agenda, the small businesses with turnover of up to INR 5 crore should not be required to claim credit basis auto-generated GSTR-2B and instead be allowed to avail credit basis the invoices received. Alternatively, such restrictions should be withdrawn for intra-state supply of goods and services and should be confined only to the inter-state supplies.

Making Composition scheme for small businesses more attractive

Under composition scheme, there are various conditions which are required to be fulfilled by a supplier in order to be eligible to opt for such composition scheme. One such requirement of the scheme is that the person cannot make any inter-state supply. The person also cannot claim any input tax credit in respect of his procurements or charge GST from the recipient of supply.

The threshold of annual turnover to avail composition scheme is currently INR 1.5 crores. The rates prescribed in respect of supplies made by composition dealers are – 1 percent for traders, 2 percent for manufacturers and 5 percent for restaurant operators.

Based on the statistics available in public domain, not many small dealers have been able to take advantage of the composition scheme in view of the conditions

imposed. For the success of the scheme, the Government should consider relaxing the conditions to enable small businesses to take benefit of the scheme and register under GST. This will not only help the Government in broadening the taxpayer base but also help SMEs in ease of doing business.

In order to ease compliance by MSMEs, the provisions of the scheme should be appropriately amended as follows:

- Eligibility of the scheme should be extended to small dealers who may also have inter-state supplies apart from intra-state supplies. This will enable exporters to opt composition scheme.
- Input tax credit to the extent of output tax payable should be allowed to composition dealer. It will make the composition scheme more liberal, facilitate streamlining of tax credits and eliminate tax cascading.
- The rates of composition scheme should be rationalized. As against three different GST rates, it is suggested that there should be one single common rate of 1 percent which should apply to small trader, manufacturer and the restaurant service provider.

  Having a lower common rate for all kinds of composition dealers will simplify the scheme and reduce the tax burden on the final consumer.
- The threshold turnover for opting composition scheme should be increased to INR 5 crore from the current threshold of INR 1.5 crore. It will benefit a large number of small businesses.

Time limit of claiming Input tax credit

GST law mandates a taxpayer to claim the credit in respect of invoice for supply of goods or service before the due date of furnishing the monthly return for the month of September following the end of financial year to which such invoice pertains or before furnishing of relevant annual return, whichever is earlier. Further, Budget 2022 has proposed to extend this time limit till 30th November of next financial year or furnishing of annual return, whichever is earlier imposing such time limit may hamper claim of credit in some genuine cases.

Therefore, it is suggested that the restriction of time limit for claiming input tax credit should be relaxed to allow the claim of such credit up to the period of three years from the date of filing annual return for the given financial year. This will be in line with the similar period prescribed for completion of assessment under CGST Act.

RCM on supplies by unregistered dealer

There is a perception that GST has not benefitted MSMEs and there is not much incentive for the large units for buying from small taxpayers. Buyers cannot claim credit if the supplier is not registered (turnover below threshold limit). To counter this, supplies from unregistered dealers can be taxed under RCM. In cases where the ITC is substantial, MSMEs would voluntarily register under GST and pass on the taxes to the buyer. Earlier, provision for levying tax under RCM on unregistered dealers was omitted for trade facilitation. In view of IT advancement, it might be right time for bringing back this provision. Such transaction can be routed through Trade Receivable Discounting System (TreDS) platform which will ease the working capital problem of MSMEs. Further, higher rating can be given to MSMEs to boost the reporting of transaction on the platform.

E-way bill procedure

GST aimed at removal of check posts barriers and entry restrictions which will result in speedy transportation of goods and reduce the lead time.

As per CGST Rules, every registered taxpayer who causes movement of goods of consignment value exceeding INR 50,000 shall, before commencement of such movement, generate e-waybill. The Finance Ministry has notified the rules for e-waybill under the GST regime, which requires online pre-registration of goods before they are transported. The e-way bill rules are applicable to composition dealers as well. It puts immense compliance burden and pose challenges for small businesses who are required to transport goods.

It is recommended that e-waybill procedure for small taxpayers with the turnover of up to INR 1.5 crore should be dispensed with. Alternatively, the e-waybill procedure should be restricted to inter-state supply of goods and services only.

Monthly refund claim for small taxpayers

The law allows small taxpayers to file quarterly returns. If such taxpayers, as exporters or suppliers to SEZ, are making zero-rated supply of goods or services under Bond or Letter or Undertaking, they may not be able to claim refund of ITC by filing Form RFD-01 as the GST returns in Form GSTR-1 and 3B will be filed quarterly and they need to wait till the end of quarter to claim refund of ITC accumulated due to zero rated supplies.

On the one hand, where return filing provisions have been relaxed for small businesses, on the other hand, it would mean deferment in filing of refund claims, resulting in blockage of working capital for such small taxpayers. Therefore, small suppliers filing quarterly returns should be allowed to claim provisional refund on a monthly basis.

Deferment of time of supply for payment of GST

Generally, the time of supply of services is the date of issuance of invoice or receipt of payment, whichever is earlier. While tax is not payable on advance in respect of goods, for supply of services, tax is payable on advances.

It is suggested that the time of supply provisions for supply of service for small service providers should be suitably amended so that GST in respect of advance money received by the service provider towards supply of services is taxed only at the time of invoice raised or service received, whichever is earlier. This will benefit the small service providers and improve their working capital.

Pharma and Healthcare

01 Pharma

The pharmaceutical industry is one of the fastest growing industries in India and its growth is inextricably linked to the growth of public and private healthcare. Currently, Indian drugs are exported to more than 200 countries in the world. Indian pharmaceutical sector supplies over 50 percent of the global demand for various vaccines, 40 percent of the generic demand for US and 25 percent of all medicines for UK. India contributes the second-largest share of pharmaceutical and biotech workforce in the world. India is the largest provider of generic medicines globally. Generic drugs account for 20 percent of the global export in terms of volume, making the country the largest provider of generic medicines globally. The industry has benefited from the flexibility accorded to processes for making generic medicines.[66]

According to the Indian Economic Survey 2021, the domestic market is expected to grow 3x in the next decade. India's domestic pharmaceutical market is at US$ 42 billion in 2021 and likely to reach US$ 65 billion by 2024 and further expand to reach ~US$ 120-130 billion by 2030. Globally, India ranks 3rd in terms of pharmaceutical production by volume and 14th by value. The domestic pharmaceutical industry includes a network of 3,000 drug companies and ~10,500 manufacturing units.[67]

The Indian pharmaceutical exports, including bulk drugs, intermediates, drug formulations, biologicals, Ayush and herbal products and surgical, reached US$ 24.44 billion in FY21. India's medical devices market stood at US$ 10.36 billion in FY20.[68] The market is expected to increase at a CAGR of 37 percent from 2020 to 2025 to reach US$ 50 billion. To achieve self-reliance and minimize import dependency in the country's essential bulk drugs, the Department of Pharmaceuticals initiated a PLI scheme to promote domestic manufacturing by setting up greenfield plants with minimum domestic value addition in four separate 'Target Segments' with a cumulative outlay of INR6,940 crore (US$ 951.27 million) from FY21 to FY30. Similar scheme has been initiated for domestic manufacturing of medical devices, with a total outlay of funds worth Rs.3,420 crore (US$ 468.78 million) for the period FY21-FY28.[69]

Under Union Budget 2022-23, Ministry of Health and Family Welfare has been allocated INR 86,200.65 crore out of which the Department of Health Research has been allocated INR 3,200.65 crore.[70] 'Pharma Vision 2020' by the Government's Department of Pharmaceuticals aims to make India a major hub for end-to-end drug discovery. The Indian drugs and pharmaceuticals sector has received cumulative FDI inflows worth US$ 19.19 billion between April 2000 and December 2021[71].

66. https://www.ibef.org/exports/pharmaceutical-exports-from-india
67. https://www.ibef.org/industry/pharmaceutical-india
68. https://www.ibef.org/industry/medical-devices#:~:text=Market%20Size,and%20small%20and%20midsized%20companies.
69. https://www.ibef.org/industry/indian-pharmaceuticals-industry-analysis-presentation
70. sumsbe.pdf (indiabudget.gov.in)
71. Indian Pharmaceuticals Industry Analysis Presentation | IBEF

02 Healthcare

Indian healthcare sector is expected to reach US$ 372 billion by 2022[72]. Rising income level, greater health awareness, increased precedent of lifestyle diseases and improved access to insurance would be the key contributors to growth. Health insurance is gaining momentum in India.

India's public expenditure on healthcare stood at 1.8 percent as (Centre and states) a percentage of the GDP in 2020-21[73].

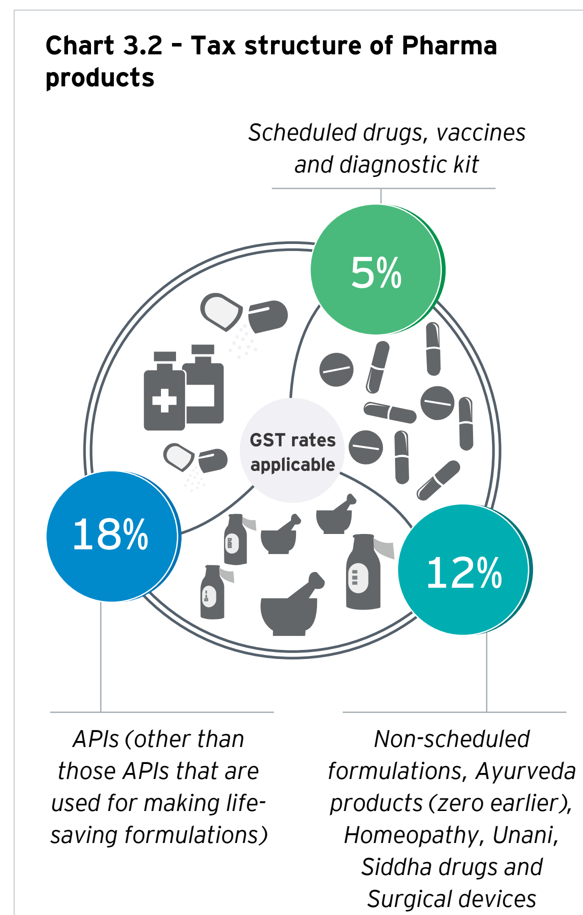
In the Union Budget 2021, investment in health infrastructure expanded 2.37x, or 137 percent YoY; the total health sector allocation for FY22 stood at INR223,846 crore (US$ 30.70 billion) [74].

The Government announced INR64,180 crore (US$ 8.80 billion) outlay for the healthcare sector over six years in the Union Budget 2021-22 to strengthen the existing 'National Health Mission' by developing capacities of primary, secondary, and tertiary care, healthcare systems and institutions for detection and cure of new and emerging diseases[75].

GST implication

The following figure shows the GST rates applicable for different categories of pharma products:

Chart 3.2 - Tax structure of Pharma products



GST will simplify the duty regime for the pharmaceutical industry considering on which eight different taxes were levied earlier. It might eliminate the cascading effect of multiple taxes applied on one product.

One of the biggest advantages for the industry is that the traditional cost and distribution model is replaced by supply chain efficiencies due to discontinuance of CST and interstate transactions between two dealers become tax neutral. This led to a decrease in costs, which added to margins and even customers benefitted from it. This provides complete freedom to the companies to explore strategic supply chain and distribution channel.

72. https://www.ibef.org/uploads/industry/Infrographics/large/healthcare-infographic-feb-22.pdf
73. https://prsindia.org/files/budget/budget_parliament/2022/DfG%202022%20Health%20and%20Family%20Welfare.pdf
74. https://www.ibef.org/archives/industry/healthcare-reports/healthcare-presentation-sep-2021
75. IBEF - Healthcare Industry https://www.ibef.org/industry/healthcare-india

Pharmaceutical companies also experienced improved operational efficiency, reduced manufacturing and transaction costs as well as improved compliance. It also helped them devise a new warehousing strategy. Earlier, companies maintained warehouses in different states to avoid payment of CST in the originating state. Under GST, they consolidated warehouses at strategic locations as they only have to pay IGST, which is an off-settable tax, on inter-state supplies of goods and services.

Challenges faced under GST and plausible solutions to contentious issues

Credit blockage: Inverted tax structure

Under the erstwhile tax regime, the pharmaceutical industry bore the brunt of accumulation of credit due to a higher excise duty rate on APIs (input) and lower excise duty rate on the manufacture of formulations (output). The GST rate structure maintains the higher GST rate on APIs (18 percent) and the lower rate on formulations (12 percent / 5 percent), leading to the continuance of the inverted tax structure. One of the concerns for the pharma industry in the GST regime is the accumulation of ITC due to the inverted tax structure, which would impact domestic manufacturers. Significant expenses on capital goods also add to the accumulation of credit. While the GST law provides for a refund of the accumulated ITC for addressing this issue, possibilities of inordinate delay cannot be ruled out. One of the areas of policy advocacy is to have the GST rate for APIs aligned with the lower rate of GST for pharma formulations. In other words, the GST rate across the supply chain for the pharma industry should be at the lower rate of 12 percent to effectively address the issue of credit accumulation and requirement of refund.

ITC reversal on physician samples and expired goods

GST law provides that ITC on goods lost, stolen, destroyed, written off or disposed of by way of gifts or free samples is required to be reversed. The intent of this provision is to block ITC in cases where the finished goods are not further supplied on account of reasons mentioned therein. However, a literal interpretation of this provision in the pharma industry leads to adverse consequences. A case in point is the physician samples. Making samples available to Physicians is a time tested and established industry practice prevailing and therefore such transactions should not fall within the ambit of the restriction. Similar is the issue with mandatory destruction of expired drugs/medicines. Since this is a statutory requirement, this should not entail any adverse GST consequences in the form reversal of ITC.

Board has issued Circular No. 72/46/2018-GST, dated 26-10-2018 which needs to be revisited in its entirety. In any case, the following reference in the said Circular is not aligned to provisions of GST law and should be deleted / suitably amended:

"d) Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of subsection (5) of section 17 of the CGST Act"

Where there is no offset of GST paid on output supply (say in case of issuance of Financial Credit Note), the above inference in the Circular should be corrected to avoid unwarranted litigation.

Power

India's power sector is one of the most diversified in the world. Sources of power generation range from conventional sources such as coal, lignite, natural gas, oil, hydro and nuclear power to viable non-conventional sources such as wind, solar, and agricultural and domestic waste. Electricity demand in the country has increased rapidly and is expected to rise further in the years to come.

India is the third largest producer and second largest consumer of electricity in the world and had an installed power capacity of 402.8 GW as of May 2022.[76] Electricity generation reached 1491.85 billion units (BU) in FY21-22[77]. India was ranked fifth in solar power and fourth in wind and renewable power installed capacity, as of 2020[78]. India's rank jumped to 22 in 2019 from 137 in 2014 on World Bank's Ease of Doing Business - "Getting Electricity" rankings[79].

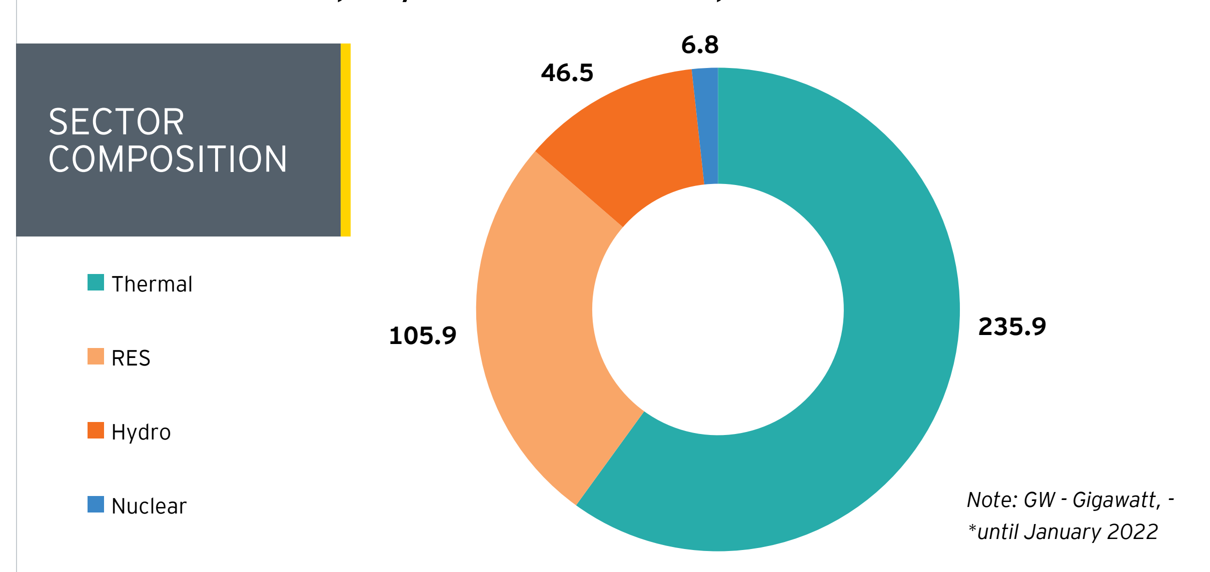
In view of the 175 GW installed RE capacity by 2022 announced in 2015 by the Hon'ble Prime Minister Narendra Modi, India surpassed the 100 GW milestone (excluding large hydro) in 2021. As of now India has only tapped a fraction of the vast potential for renewable energy and, therefore, India has raised the target to 450 GW RE installed capacity by 2030.[80]

As of May 2022, the total thermal installed capacity in the country stood at 236.088 GW Installed capacity of renewable, hydro, and nuclear energy totaled 113.26 GW, 46.723 GW and 6.78 GW respectively[81]. Government of India has set targets to reduce India's total projected carbon emission by 1 billion tonnes by 2030, reduce the carbon intensity of the nation's economy by less than 45% by the end of the decade, achieve net-zero carbon emissions by 2070 and expand India's renewable energy installed capacity to 500 GW by 2030[82].

Under the Union Budget 2022-23, the government has allocated INR 16,074.74 crore for Ministry of Power and INR 6900.68 crore for the Ministry of New and Renewable Energy.[83] In the current decade (2020-2029), the Indian electricity sector is likely to witness a major transformation with respect to demand growth, energy mix and market operations.

Total FDI inflow in the power sector reached US$ 15.84 billion between April 2000 to December 2021, accounting for 3 percent of the total FDI inflow in India[84].

Chart 3.3 – Installed capacity for different sources of power - FY22* (GW)[85]



*Note: GW - Gigawatt, - *until January 2022*

76. https://powermin.gov.in/en/content/power-sector-glance-all-india
77. https://powermin.gov.in/en/content/power-sector-glance-all-india
78. https://www.ibef.org/industry/renewable-energy#:~:text=The%20Indian%20renewable%20energy%20sector,installed%20capacity%2C%20as%20of%202020.
79. https://archive.doingbusiness.org/en/scores?topic=getting-electricity
80. https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1762960&RegID=3&LID=1
81. https://powermin.gov.in/en/content/power-sector-glance-all-India
82 Renewable Energy in India - Indian Power Industry Investment (investindia.gov.in)
83. https://www.indiabudget.gov.in/doc/eb/sumsbe.pdf
84. https://www.ibef.org/industry/power-sector-india
85. https://www.ibef.org/uploads/industry/Infrographics/large/power-infographic-feb-22.pdf

GST implication

There are some segments of the power sector which have undoubtedly benefited but the others have not, after implementation of GST. The thermal power has benefited due to decrease in taxes on coal whereas the costs of turbines, boiler and generator equipment have increased the cost of establishing thermal power projects. Further, GST has negatively impacted the wind energy due to the increase in capital cost, higher tax rates on wind turbine generator.

Challenges faced under GST and plausible solutions to contentious issues

Rationalize GST on EPC for renewable energy

EPC businesses had to pay only 5 percent under the erstwhile VAT regime for construction and installation of solar power plants. In GST, a deemed value is prescribed in which 70 percent value of the total contract is prescribed for GST at 12 percent (goods) and the remaining 30 percent value is prescribed for GST at 18 percent (services). This effectively makes the total tax at 13.8 percent, which is far higher than 5 percent. In order to promote green energy, the Government should consider bringing back the lower rate of 5 percent for the goods. While the rate was increased with the purpose correcting the inverted tax structure, such correction can still be done using other measures. Further, the logical bifurcation between goods and services should be 90-10, where 90 percent of the plant's cost would be towards goods. This has been a long-standing demand for the solar industry. This would result in average GST at 6.3 percent, still higher than erstwhile 5 percent VAT. Alternatively, an option to value such contract based on actuals should be provided and not entirely based on presumptive/ad hoc valuation.

Higher rate of Tax on inputs

While the renewable energy devices and parts for their manufacture falling under chapter 84, 85 or 94 would attract 12%, other inputs which do not fall under the above-mentioned heading would attract prescribed rate (normally 18%). This could result in inverted duty structure. Extending the concessional rate for all devices and parts required for the renewable energy industry would help in reduction of net tax impact as well as ease of doing business.

Deemed export benefit for mega power projects

Under the foreign trade policy, supplies to mega power projects were entitled to deemed export benefits. However, under the GST regime, the supplies for execution of power projects are liable to GST. Since the power companies are outside the ambit of GST, they are not in a position to claim credit of tax paid on procurement. To overcome this, the option could be to extend deemed export benefits to the supplies made to power project companies, especially to the existing projects notified.

Inclusion of Electricity in GST

Presently, electricity is not covered under GST and states levy electricity tax/duty. The components involved in setting up a project attract GST, however, the electricity supplied through it does not come under the ambit of GST, and thus the tax outlay is not reimbursed/set off. Inclusion of electricity under GST is likely to reduce the per unit cost of electricity for consumers.

Shipping and Logistics

According to the Ministry of Shipping[86], around 95 percent of India's trading by volume and 70 percent by value is done through maritime transport. India has 12 major ports and around 205 non-major ports[87]. In FY 2021-22, major ports in India handled 719.38 million tonnes (MT) of cargo traffic, 6.94% higher than FY 2020-21. [88] India's key ports had a capacity of 1,561 million tonnes per annum (MTPA) in FY21. In FY22 (until February) 2022, all key ports in India handled 650.52 million tonnes (MT) of cargo traffic.[89] Non-major ports traffic comprised 46 percent of the total cargo in FY21, due to a significant shift of traffic from the major ports to the non-major ports[90].

Merchandise exports reached US$ 417.8 billion in FY 22.[91] Government of India has allowed FDI of up to 100 percent under the automatic route for projects related to the construction and maintenance of ports and harbors. Ports received a cumulative FDI of US$ 1.63 billion between April 2000 and June 2021. A 10-year tax holiday is extended to enterprises engaged in the business of developing, maintaining, and operating ports, inland waterways, and inland ports. The Government has also initiated National Maritime Development Program (NMDP), an initiative to develop the maritime sector with a planned outlay of US$ 11.8 billion[92]. In Union Budget 2022-23, the total allocation for the Ministry of Shipping was INR 17,09.50 crore.[93] In Union Budget 2021, the government announced subsidy funding worth INR1,624 crore (US$ 222.74 million) to Indian shipping companies to encourage merchant ship flagging in the country[94].

The key ports are expected to deliver seven projects worth more than INR2,000 crores (US$ 274.31 million) on a public-private partnership basis in FY22. The Union Finance Minister proposed to double the ship recycling capacity of ~4.5 million light displacement tonnes (LDT) by 2024; this is expected to generate an additional ~1.5 lakh employment opportunities in India[95].

A roadmap has been prepared for increasing the Indian port capacity to 3,300+ MMTPA by 2025 to cater to the growing traffic. This includes port operational efficiency improvement, capacity expansion of existing ports and new port development[96]. In October 2020, the Ministry of Shipping announced plans to develop a National Logistics Portal (Marine) with end-to-end logistics solutions to help exporters, importers and service providers[97].

GST implication

There have been number of changes in terms of tax treatment of various supplies under GST as compared to pre-GST regime. In respect of Port services and Ship breaking services, the GST rate has increased from 15 percent to 18 percent. Similarly, domestic transportation service is also being taxed at 18 percent with an option for the transporter to pay tax at 5 percent without ITC on goods other than ships, vessels, tankers, etc. On the other hand, the supply of transportation services by Indian shipping company to Indian exporter (i.e., outbound freight), which was hitherto kept outside the ambit of service tax, has been now brought within the purview of GST. However, the same has been exempt from GST through notifications issued from time to time.

At a policy level there are some major issues which need to be resolved and these are vital for the financial fortunes of the shipping industry in India.

86. https://www.ibef.org/industry/ports-india-shipping
87. https://www.ibef.org/industry/ports-india-shipping#:~:text=According%20to%20the%20Ministry%20of,of%20Ports%2C%20Shipping%20and%20Waterways.
88. https://economictimes.indiatimes.com/industry/transportation/shipping-/-transport/major-indian-ports-report-719-38-million-tonnes-traffic-movement-in-2021-22/articleshow/90595830.cms?from=mdr
89. https://www.ibef.org/industry/ports-india-shipping
90. https://www.ibef.org/archives/industry/indian-ports-analysis-reports/indian-ports-analysis-presentation
91. https://www.ibef.org/industry/ports-india-shipping
92. https://www.ibef.org/archives/industry/indian-ports-analysis-reports/indian-ports-analysis-presentation
93. https://www.indiabudget.gov.in/doc/eb/sumsbe.pdf
94. https://www.ibef.org/archives/industry/indian-ports-analysis-reports/indian-ports-analysis-presentation
95. https://www.ibef.org/archives/industry/indian-ports-analysis-reports/indian-ports-analysis-presentation
96. https://www.business-standard.com/article/pti-stories/prepared-roadmap-to-ramp-up-port-capacity-to-over-3300-mtpa-by-2025-mandaviya-119112801318_1.html
97. IBEF – Shipping Industry and Ports in India https://www.ibef.org/industry/ports-india-shipping

Challenges faced under GST and plausible solutions to contentious issues

Place of supply and ITC in case of bunker fuel and other goods

According to Maritime Economics by Stopford (1997), bunker fuel cost accounts for 50 percent to 60 percent of the total cost, base of the running expenses of a vessel sometimes going up to even 85 percent of voyage costs as seen in the case of very large crude carriers (VLCC) of Maersk Tankers. Thus, bunker fuel is a major input for shipping companies. If the shipping company opts to discharge GST @ 5 percent, it cannot claim input tax credit on goods (other than those specified).

Even if the shipping company, basis a possible view, opts for 18 percent GST with full eligibility of ITC, it may still not be able to claim ITC on bunker fuel (assuming it attracts GST) for coastal shipping due to place of supply provisions. Consider a vessel sailing from Mumbai Port to Chennai Port. On the way, it purchases bunker fuel at Kochi in Kerala. CGST and SGST will apply since the place of supply will be Kerala as per place of supply provisions. If the shipping company is registered in Maharashtra, then it will not be able to claim the CGST and SGST paid on bunker fuel purchased at Kerala. While the effective consumption of the bunker fuel is happening in the state of Maharashtra for the shipping companies registered in Maharashtra, the present place of supply provisions specifies that the place of consumption is happening in the state in which the bunker fuel is delivered. Due to this, shipping companies are not able to avail input tax credits on procurement made in other states. The same will be expensed out and thus, will lead to an increase in the operating costs of the company. Further, there are certain bunker fuel like HSD, which are outside the purview of GST and hence attracts State VAT. In such cases, the VAT charged becomes the cost since it is not available as credit under GST.

Considering the 'principle of duty equivalence' laid down by the GST council, the duty in post-GST scenario should closely mimic the pre-GST scenario. In the pre-GST situation, bunker oil was exempt, and therefore, bunker oil falling under HSN code 89.01 may be exempt both from the CGST and SGST. This would lower the cost of providing coastal shipping services and would help the Shipping Ministry reach its goal of achieving a 10 percent share in the multi modal traffic in the country.

Import of vessels suffer IGST

The second important issue for the shipping industry which requires resolution is the IGST exemption on specialized bulk vessels used for carrying cargo. The GST council decision to levy 5 percent IGST on these vessels and allowing input tax credit does not solve the problem. The 5 percent IGST rate on ships will still result in considerable accumulation of input tax credit as it cannot be offset against 5 percent tax payable on coastal services. While one can understand that all countervailing duty exemption needs to be phased away in order to encourage 'Make in India', exceptions have to be made to this general principle where there is no domestic manufacturing. It is very well known that in India most of the Indian ship owners import second-hand ships which are available at low cost because of the worldwide recession in the ship building industry.

From India's point of view, the shipbuilding industry is highly capital intensive and due to widespread automation and robotization, the jobs generated per unit of investment in the ship building industry are not very significant. For a capital scarce country like India, many more jobs would be created in the coastal services sector rather than in building these ships in India. Therefore, there is a strong case for restoration of the exemption which was available earlier for the import of bulk vessels in India. This exemption could be restricted to specialized bulk vessels used in coastal shipping and not to other categories of defense related ships in which India is seeking to build a presence for legitimate security reasons.

IGST exemption may also be extended to imported spares used in such vessel, which was available earlier in the pre-GST tax regime.

This policy decision will give a fillip to job creation because in the shipping sector the employment potential is far more on the services side, i.e., coastal shipping services (trade and cruise tourism) as compared to the goods segment. It will also improve the cargo movement through waterways, which is the most cost-effective way of transportation.

Inbound ocean freight in case of import of goods

In case of import of goods by sea, GST is applicable to the transportation services at 5 percent (whether the service is provided by an Indian shipping line or by a foreign shipping line).

Further, in case where the value of taxable service provided by the shipping company is not available with the importer, the same shall be deemed to be 10 percent of the CIF value of imported goods.

In addition to the above, the valuation for calculating customs duty and IGST payable on import of goods would also include the charges for ocean freight. Payment of IGST separately for ocean freight would result in the same getting taxed twice - under Customs Tariff Act and under IGST Act. The double levy of IGST may only impact the working capital assuming the importer has taxable supplies and is able to avail and utilize the credit of IGST paid. However, such IGST paid on import of goods and services shall become the cost if the importer's supplies are exempt or not taxable under GST.

In this regard, the Hon'ble Supreme Court in a recent decision in the case of M/s Mohit Minerals Pvt Ltd has pronounced that no IGST is applicable on ocean freight in case of CIF imports.

Import cargo transportation services provided to overseas consignors / charterers

If the overseas consignor appoints an Indian shipping company for providing import cargo transportation services, GST would be applicable at 5 percent since the place of supply of services is destination of goods which is in India. In such a scenario, the Indian shipping company would typically charge 5 percent GST over and above the freight charges and since the overseas consignor is not registered for GST purposes in India, the overseas consignor would not be eligible for input tax credit of the GST charged. In view of this, the effective cost of transportation services for the overseas consignor would be INR105 (assuming INR100 as freight and 5 percent GST on the same). On the other hand, if the overseas consignor appoints a foreign shipping line for providing the same services as above, since the shipping company is not registered in India for GST purposes, it would not charge GST on its invoice to the overseas consignor. In view of this, the effective cost of transportation services for the overseas consignor would be INR100 (assuming INR100 as freight and no GST).

Based on the above stated scenarios, it is evident, that the cost of transportation for the overseas consignor could be higher by 5 percent on account of GST, if he appoints an Indian shipping line vs. appointing a foreign shipping line (not having any GST registration in India). This could result in Indian shipping lines losing business to foreign shipping lines for the import cargo transportation business. On account of this, there appears to be a disadvantage for Indian shipping lines vis-à-vis foreign shipping lines.

It would be pertinent to note that even under the second scenario stated above (i.e., overseas shipping company providing services to overseas consignor), the importer of goods would be required to pay GST at 5 percent under reverse charge mechanism (this has been quashed by Gujarat HC and now pending before SC). However, as far as the overseas consignor is concerned, there would be still be a cost disadvantage in appointing an Indian shipping line vs a foreign shipping. Further, it would also be relevant to note that where the Indian shipping company charges 5 percent GST to the overseas consignor, since the cost of freight would be higher, the custom duty costs for the importer of goods would also be higher since he would need to pay custom duties on the assessable value which includes cost, insurance, and freight.

In order to address the anomaly as stated above and to provide a level playing field to Indian shipping lines, the Government should consider amending the GST law to zero rate import cargo transportation services provided by Indian shipping lines to overseas consignors by treating the services as export of services since consideration for services would also be received in convertible foreign exchange. Alternatively, this supply can be notified as an exempt supply with a proviso that the supply will not be treated as exempt supply for the purpose of reversal of input tax credits.

No refund of ITC for GST on outbound freight services provided to Indian customers

Services by way of transportation of goods through a vessel provided by an Indian shipping company to an Indian exporter in case of exports is treated as an exempt supply with a sunset clause. Even though it is treated as an exempt supply, ITC reversal is not required. In case shipping companies do not have sufficient taxable supplies, the above will result in accumulation of ITC, thereby leading to blockage of working capital for shipping lines. Further, refund of unutilized ITC in the hands of Indian shipping company will not be available as it is not a zero-rated supply.

The Government may consider suitable amendments in the law to cover such transactions for refund.

Telecom

Telecommunication sector is one of the key pillars of our day-to-day lives. It provides a platform which has been instrumental in giving stimulus to the economy by making communication easy and highly impactful. India, currently, is the world's second-largest telecommunications market, with a subscriber base of over 1.16 billion. The deregulation of FDI norms have made the sector one of the fastest growing and the top five employment opportunities generator in the country.[98]

The Government of India, through its National Digital Communications Policy, foresees investment worth US$ 100 billion in the telecommunications sector by 2022. Government is encouraging global telecom network manufacturers to manufacture all their equipment in India with 100 percent local products.[99] The Union Cabinet approved INR 12,195 crore (US$ 1.65 billion) production-linked incentive (PLI) scheme for telecom and networking products under the Department of Telecom[100].

The introduction of 5G would steer the next big evolution of the telecom industry. Adding to it, the COVID-19 pandemic has resulted in a substantive change in the work and lifestyle choices for people around the world. It has resulted into a new way of living, thereby promoting an increased usage of mobile devices[101].

GST implication

The GST impact on the telecom industry has been much talked about. The telecom industry is a capital-intensive industry and therefore transition to GST has been a welcome move as, at a principle- level, it intends to completely resolve cascading of taxes. However, the industry, due to lack of clarity on certain key legal provisions has been burdened with cascading of taxes. Also, due to its business dynamics, the telecom operators have been facing challenges on account of accumulation of input tax credit. There has also been a need to rationalize GST rates on the services and products provided to the end users to reduce the final price.

Key challenges faced under GST and plausible solutions

Accumulation of input tax credit with telecom operators

Telecom operators have a huge accumulation of input tax credit due to capital intensive investments and levy of GST on procurement of services from the Government. Further, considering that the telecom sector is also undergoing financial hardship, there is an urgent need to address working capital woes of the telecom operators and incentivize the capital-intensive investment.

The possible solutions to address the situation could be:

Reduction of GST rates applicable on procurement of telecom infrastructure, both domestic and imports.

Specific clarification providing that no GST is required to be paid under reverse charge mechanism on regulatory levies, such as license fee, spectrum usage charges etc., which are presently taxed at 18%.

Tax cascading due to blockage of credit on telecom towers and petroleum products not covered under the ambit of GST

There has been a debate on the eligibility of taking input tax credit of the GST paid on inputs used for setting-up of telecom towers. Consequently, the industry players are considering to not avail such input tax credit. This has resulted in tax cascading, as GST component is adding up to the overall cost instead of being a pass through to set-off the output GST liability.

There is a need to conclude this debate by clarifying that input tax credit on telecom towers, including telecom equipment installed on such towers is available.

Additionally, the telecommunication industry is heavily reliant on petroleum products to ensure a steady and continued supply of services. GST on petroleum products has been deferred and at present, sale of petroleum products attracts levy of Central Excise duty and VAT which results in huge cascading effect on the telecom sector.

98. https://www.ibef.org/industry/telecommunications#:~:text=Introduction,growth%20in%20the%20last%20decade.
99. https://vikaspedia.in/e-governance/digital-india/national-digital-communications-policy-2018
100. IBEF – Telecommunications Industry https://www.ibef.org/industry/telecommunications
101. EY Report "A consequential GST step: Boon or Bane for Mobile Handset Industry?"

The Government should consider inclusion of petroleum products under the purview of GST in order to provide relief to the sector.

Rationalization of GST rates

The telecommunication services are essential in nature and extensively used in day-to-day life. To further stimulate the usage of telecommunication facilities and rationalize pricing for the subscribers, lowering of the current GST rate of 18% needs consideration.

The rate on mobile handsets and its parts under GST should be aligned with policy impetus to incentivize the of mobile handsets in India with an ideal rate of 5% or at best 12%. It is relevant to note that the tax rate in pre-GST era for mobile handsets was always 8.2% approx. [1% Excise Duty and 7.2% VAT[102]].

Entertainment tax

GST has subsumed indirect taxes, including entertainment tax levied under the erstwhile regime. However, in few jurisdictions local authorities are intending to levy entertainment tax on entertainment through online media/ internet, which implies multi-fold compliance burden on the telecom service providers. The Government should consider coming out with requisite clarifications to resolve this matter.

Varied nature of discounts to be allowed for GST adjustment

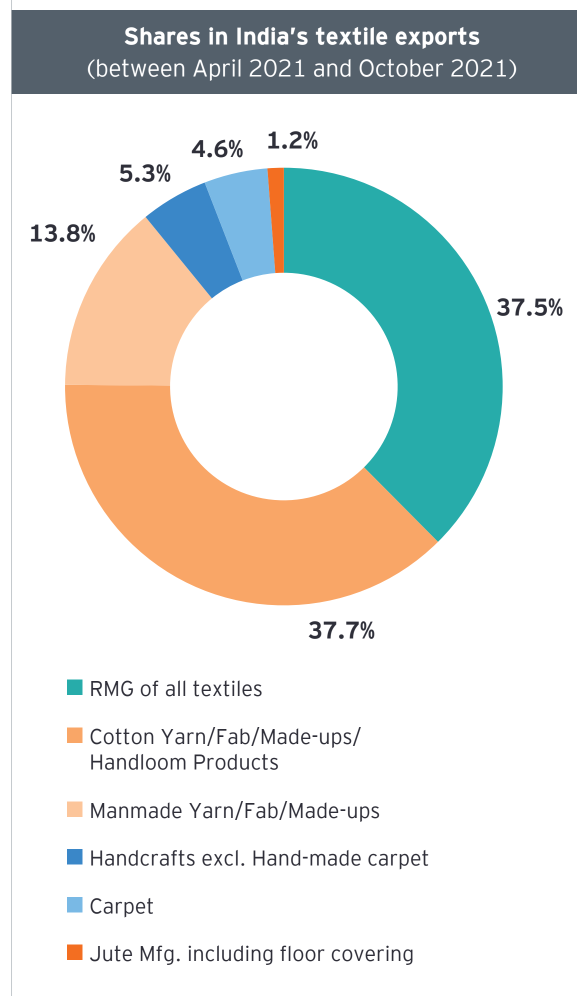
Telecom Operators, mobile phone suppliers and OEMs typically enters into varied discount structures where discounts are computed on the basis of volume or value of sales achieved over a period of time.

There is a need for specific clarification that all trade discounts in the form of quantity discount, discount in the form of free of cost supply, one-time upfront discount, etc., are allowed for GST adjustment. The discount should be fungible amongst different states for a contract which involves PAN-India supplies.

Textiles

Textile and Apparel (T&A) sector is very important for the Indian economy. It is estimated to have a size of USD 164 billion per year – around 81 percent (USD 134 billion) is consumed domestically, and balance 19 percent is exports[103]. The Indian textiles and apparel industry contributed 2 percent to the GDP in FY 2020[104]. The market is expected to recover and grow at 10% CAGR from 2019-20 to reach US$ 190 billion by 2025-26[105].

Chart 3.4 - Textile product-wise export percentage[106]



The textiles sector has witnessed a spurt in investment during the last five years. The industry attracted FDI greater than US$ 3.93 billion from April 2000 to December 2021[107]. This industry is estimated to cater to over 100 million employment directly and indirectly in India.

On the flip side, a crippling credit squeeze, accompanied by rising cost pressures have hurt the competitiveness of textiles, apparel and made-ups segments, particularly in the past five years. Further, imports have risen rapidly from around US$ 5.85 billion to over US$ 9.86 billion during this five-year period, largely driven by doubling of imports of apparel[108].

GST implication

The textile sector rejoiced in the introduction of GST. With benefits like a break in the supply of input credit chain, reduced manufacturing costs, and input tax credit on capital goods, GST's impact on the textile industry has so far been positive.

A significant portion of the textile industry in India was operating under the unorganized sector or composition scheme, thus creating a gap in the flow of input tax credit. Input tax credit is not allowed if the registered taxpayers procure the inputs from the composition scheme taxpayers or the unorganized sector. GST enabled a smoother input tax credit system, which shifted the balance towards the organized sector.

Challenges faced under GST and plausible solutions to contentious issues

Volatility in the policy environment and some reversals in policy positions have affected the sector. Presently, the issue of stuck GST refunds is a key challenge.

Fiber Neutrality and GST rate reduction

The Government's recent announcement[109], changing the GST rate of textiles and apparel across value chain (except for cotton and cotton yarn taxed at 5%) to 12% appears primarily with a view to achieve neutrality and fix the issue of inverted tax structure that affects the competitiveness of the MMF sector. The decision to increase the rate from 5% to 12%, making cheap clothing more expensive, may tend to adversely impact low-income segment and in turn may significantly impact production and supply made by small and medium enterprises, resultantly adversely affecting the job opportunities in the sector. This increase in rate has been kept on hold basis the representation from the industry.

In order to ensure that the overall consumption and production do not get impacted due to increased tax burden on the end consumer, the Government should reconsider bringing the GST rate down to 5% across the value chain and still achieve its objective.

102. Weighted average VAT rate - ICEA estimates
103. Data for 2018-19, National Accounts Statistics, Ministry of Statistics and Programme Implementation and Ministry of Commerce
104. https://www.ibef.org/uploads/industry/Infrographics/large/textiles-and-apparel-infographic-feb-22.pdf
105. https://aepcindia.com/system/files/Annual%20T%20and%20A%20Industry%20Report-2021.pdf
106. https://www.ibef.org/uploads/industry/Infrographics/large/textiles-and-apparel-infographic-feb-22.pdf
107. https://www.ibef.org/industry/indian-textiles-and-apparel-industry-analysis-presentation
108. IBEF - Textiles Industry https://www.ibef.org/industry/textiles
109. https://pib.gov.in/PressReleasePage.aspx?PRID=1773973

The present PLI scheme incentivizes manmade fibers and technical textiles and a reduction in GST rate to 5% would complement the incentives by providing additional support to the scheme and in turn, to the AatmaNirbhar Bharat vision. At 5% GST rate, India would also compare well with the alternative production destinations by foreign entities which are planning to relocate factories to India due to geopolitical factors.

Refund of input services and capital goods

As part of the above, refunds for input services and capital goods are also important. In the T&A sector, many industry players rely on job work for getting their textile products manufactured which leads to huge accumulation of ITC. Apart from the job work, there are numerous services that are utilized across the entire value chain. Input services play a key role and constitute a major part of the total expenditure. While, for players who do not resort to job-workers, end up making high capital investment in plant and machinery to carry out the end-to-end T&A process. GST rate on most of the services and capital goods is 18 percent and hence, if refund of the same is not allowed, it will result in blockage of huge working capital. Therefore, the Government should consider GST on input services and capital goods *(possibly spelling out the period of let us say 5 years or so over which such refund amount can be spread across)* for refund. This will help unblock significant amount of working capital.

Refund for exporters

For exporters, the IGST refund amount must be given immediately, similar to duty drawback pending GSTN validation. Expeditious refund of accumulated credit is a more pressing requirement for this industry with wafer thin margins. This measure can help in improving the working capital situation. For export under LUT (Letter of Undertaking), the formula for calculation of refund amount should include capital goods.

Virtual Digital Assets (Cryptocurrency and Non-Fungible Tokens)

Virtual Digital Assets (VDA) means any information or code, or number or token generated through cryptographic means or otherwise, which can be transferred, stored, or traded electronically. VDA includes Cryptocurrency and Non-fungible Tokens (NFTs).

01 Cryptocurrency

A cryptocurrency is a tradable digital asset built on blockchain technology that only exists online (with no physical or tangible presence).

With a current day estimate of 15-20 million cryptocurrencies with total holdings of above $5 billion, India is witnessing the emergence of several cryptocurrency unicorns and the country's VDA base is expected to grow to $1.1 trillion by 2032. At a policy level, India neither prohibits nor allows investment in the cryptocurrency. While the Supreme Court of India, in the year 2020, lifted the ban imposed by the Reserve Bank of India (earlier in 2016) on cryptocurrencies, there is a significant ambiguity in the tax treatment of cryptocurrency.[110]

Some key terms that are relevant from a tax determination standpoint in the context of cryptocurrencies include:

Blockchain
Cryptocurrencies work using a technology called blockchain which is a decentralized technology spread across many computers that manages and records transactions.

Mining
Mining is a validation of transactions in the cryptocurrency network and the successful miners obtain new cryptocurrency as a reward. It is also the means through which new virtual currency is released.

Exchange
A cryptocurrency exchange allows customers to trade in cryptocurrencies.

110. https://www.financialexpress.com/budget/cryptocurrency-experts-expectations-from-finance-minister-nirmala-sitharamans-budget-2022-speech/2418446/

Treatment under GST

The first ambiguity that requires to be cleared is the characterization of cryptocurrencies from a tax treatment standpoint. While some countries have accorded cryptocurrencies the status of money, as per media reports, the Government of India is reviewing the matter.

In India, GST applies on all forms of goods (tangible as well as intangible) as well as on services supplied digitally. GST, however, is not applicable to securities, actionable claims, and money. Unless defined to be a form of actionable claim or security or money, cryptocurrencies could potentially be taxed as goods/ services under GST. Further, unless a specific lower rate of GST is prescribed, the standard rate of 18% is set to apply. Cryptocurrencies have essentially joined the list of intangibles whose tax treatment as goods vs. services, remains ambiguous under the Indian GST laws.

Levy of GST on cryptocurrencies is likely to negatively impact the industry and its growth, considering its outreach globally. Therefore, the need of the hour is a clear clarification as regards the tax treatment of cryptocurrency akin to "money" following the footsteps of various countries such as Spain, Belgium, Finland, the UK, Switzerland, etc. Another option is that the Government could consider including cryptocurrency under Schedule III of the CGST Act as a result of which such transaction will neither be considered as a supply of goods nor as supply of services.

Alternatively, a clear clarification on its treatment as goods/services may be specified under a specific HSN/ SAC code with a nominal GST rate being prescribed, as has been done in the case of all precious metals and gems. This clarity shall enable appropriate determination of place of supply, including taxability of transactions in India. The option for levying a lower GST rate on the margin (difference in sale price and purchase price) may also be considered under a specific deeming provision.

Services of exchange/platform enabling buy and sell of Cryptocurrency
In case of exchanges, where the buyer and seller transact through the exchange's platform, it may be possible for GST to be levied on the portion of value earned (in any form) for facilitation of such trade by the exchange (such as commission or fee as the case may be).

In the context of overseas exchanges/ platforms, a clarification is the need of the hour on potential tax collection at source (TCS) obligations (for enabling supply of goods/ services) and/or an OIDAR registration should these supplies be deemed to be an electronically supplied digital services; none of which should, of course, apply where money status is accorded to cryptocurrency.

GST on activity of Mining
Consideration (in any form) earned in relation to the activity of cryptocurrency mining could potentially be treated as a supply of service under GST. However, in general, there is no nexus between the miner and the persons whose transactions are verified and therefore, the miners may neither have visibility on the identity of the recipient nor place of supply nor the ability to collect GST on the mining activity undertaken. In this backdrop, the levy of GST on mining of cryptocurrency will result in the miner bearing the tax liability and will act as a deterrent to the release of new cryptocurrencies in the blockchain.

Hence, the Government could consider clarifying the non-applicability of GST on mining or alternatively include the activity under schedule III of the CGST Act to be a transaction that will neither be considered as a supply of goods nor as supply of services.

02 Non- Fungible Tokens

Non-Fungible Token (NFT) is a digital asset that it is not inter-changeable with another such digital asset. These assets represent both digital as well as real-world objects, including but not limited to music, drawings, art and videos. NFTs can be bought and sold online using cryptocurrencies or fiat currency. It could be perceived as a virtual commodity that exists on the blockchain.

As per media reports[111], the global sales of NFTs ranged between $25 billion to $41 billion in 2021 as this crypto asset exploded in popularity, fueled by the rising interest of celebrities in NFTs.

Treatment under GST

Similar to cryptocurrencies, the characterization of NFTs from a tax treatment standpoint requires a clarification. This being an emerging technology which has recently gained popularity, the tax treatment of the same is not clear across countries.

111. https://economictimes.indiatimes.com/markets/cryptocurrency/nft-sales-hit-25-billion-in-2021-but-growth-shows-signs-of-slowing/articleshow/88822419.cms?from=mdr

Since NFTs represent a digital token for any underlying asset such as artwork, music etc., one possibility of classification, including tax treatment of NFTs, may be basis the nature of the underlying asset it represents. This will ensure parity in treatment of the asset irrespective of whether it is tangible or intangible (i.e., NFT). Alternatively, the same may be taxed as *"online information and database access or retrieval services"* for which clear rules are provided in the Indian GST legislation.

Key Takeaways

VDAs specifically cryptocurrency have gained a lot of popularity in countries like the US, the UK, France, Germany, Mexico, Australia, New Zealand, Singapore, etc. Globally, various countries follow different approaches to tax cryptocurrencies. While EU member countries treat this as money and no VAT/GST is leviable on the same, other countries such as Australia and Japan have specifically exempted the cryptocurrencies from tax. However, lack of clarity in their taxation persists in a few countries, notable amongst them being the USA and India.

India's Finance Minister in the Budget Speech of 2022-23 also announced that the Reserve Bank of India will announce its own digital currency and further announced the taxation of VDAs under income tax. While no such taxation has been announced under GST, clarity on nontaxability under the current GST law, including futuristic framing of clear laws that are aligned to emerging international best practices, is the need of the hour.

Online gaming

Taxable value and rate for online skill-based games

In the case of online skill-based games, users enter the contest by paying the contest entry amount. The contest entry amount comprises the two components: (1) users' contribution towards the prize pool and (2) Operator's platform fees. Further, online skill-based games do not qualify as *"betting"* or *"gambling"*

Consideration towards the supply of services by the operator is clearly identifiable and prize pool collection is held in separate escrow account or non-interest bearing separate current account and completely distributed to winners. Prize pool is a returnable amount and hence, should not form part of consideration of service provided by the operators. Operator, who is the supplier of the service, has no right, title, or interest either in the present or the future on prize pool collected.

To remove ambiguity, the Government can insert a separate service entry titled *"Online Skill-Based Games"* with a rate of 18 percent applicable only on the platform fees / fees collected for the services provided by the platform operators and not on the prize pool contribution made by the respective users.

Conclusion

The Prime Minister in his Independence Day speech on 15th August 2021[52], talked about the 25 years remaining before India's 100 years of Independence (2047). He described this period as the 'Amrit Kaal' for taking the country to new heights by the hundredth anniversary of independence. Similarly, for the GST, the next 5 years are really the 'Amrit Kaal' which can be used to transform what is a good tax reform into a great one. This requires a number of policy reform measures which have been described in detail in this book.

To pick up a few on rate rationalization, phasing out of a majority of exemptions and bringing them under 5 percent tax bracket, shifting to three-tier rate structure and raising the slab for demerit goods post abolition of compensation cess can help restore revenue neutrality rate of GST. The opportunity for a rate rationalization should be used to support the Product Linked Incentive (PLI) scheme by lowering the taxes in a large number of sectors which have been identified by the Government as sectors where the country should strive for self-sufficiency. Similarly, the GST rate rationalization should also look at greening the GST by lowering the rates of GST on a number of items which can help to reduce our carbon emissions. This would be fitting in the light of the global climate conference held in Glasgow, Scotland, in November 2021.

The other important agenda going forward could be to fix the deficiency in the GST regime relating to the textile sector. For long, the tax structure from the Central Excise days to the GST has shunted the growth of certain segments like the synthetics. This can considerably attract foreign investment in those segments and create the "Maruti moment" which built such a solid small car base in India.

The GST reform also needs to be used to complete the reforms in the factor market, which has still eluded us. The reforms of the early nineties were focused on product reforms. This can be done by bringing petroleum products (particularly, ATF and natural gas to begin with), electricity and real estate within the GST net.

Inclusion of petroleum under GST would favorably impact the transportation industry across the country, which in turn would give a breather to other industries for lowering the prices of essential commodities. Similarly, inclusion of electricity would help to make our manufacturing industry more competitive by helping to pass through the embedded taxes and also help in the export of products, especially in the metal sector which are energy intensive. In the real estate sector, the common consensus is that this can be brought within the ambit of GST without a constitutional amendment by declaring transfer of land and building, including construction of both residential and commercial buildings as a 'Deemed service'. This will help to clean up the land market and bring transparency into transactions while also helping the Government to raise more revenues on the Income tax side.

On dispute resolution front, unless pragmatic steps are taken to reduce disputes, the ensuing deluge of litigation will breed massive uncertainty for businesses and choke the already burdened judicial infrastructure for the foreseeable future. Disputes can be avoided through legislative changes and clarifications, some of which have been highlighted earlier. Creation of Technical Secretariat to issue uniform binding instructions for adjudication, capacity building through new mechanisms like private ruling and mediation, deferral of revenue appeals,

111. https://pib.gov.in/PressReleasePage.aspx?PRID=1746070

expeditious constitution of appellate tribunals, alternate dispute resolution mechanism, faceless eco-system for adjudications and appeals are few suggestions to help Indian GST create a world-class dispute resolution system. Decriminalizing offences by recasting the offence related provisions will facilitate smooth business operations.

One achievement of GST is the creation of a GST technology platform in the form of GSTN. Enormous amount of data has been generated in the GSTN, which requires utilization for policy formulation. A decision had been taken to open up this data to researchers all over the country. This is a national imperative and we have to get more players in to mine this information. The economic survey of the past has demonstrated how data can be effectively used to generate important policy reforms.

The GST reform was made possible by institutional reform like the creation of the GST Council. It first began with the creation of the Empowered committee of the State Finance Ministers by Mr. Yashwant Sinha in 2001, which really delivered both the State VAT reform and the GST. We need to build on this by creating a GST Secretariat in the states which can bring senior state and Central officers together with representatives of trade and industry in a meaningful way to discuss and deliberate on non-policy issues. This will not only enrich the fiscal policy debate but strengthen the levers of cooperative federalism — one of the directive principals of state policy enshrined in our constitution.

From taxpayers' rights perspective, formally introducing Taxpayers' Charter, as has been done under Income tax, will go a long way in enhancing fair and impartial tax system. Making next level digitalization a part of business processes like registration, returns, payments, ITC, and refunds, and completely eliminating manual reporting could become a key factor in improving ease of doing business ranking.

The Prime Minister, while addressing the joint session of parliament on the midnight of 30th June / 1st July 2017, described the GST as a good and simple tax. The reforms suggested in this book would help to enhance both the good and the simple feature of this transformational tax.

List of Tables

Number	Description	Page No.
Section A		
1.1	List of goods attracting Compensation Cess and rate	14
2.1	Tax structure under earlier Indirect Tax regime	19
2.2	Determination of GST rates basis rates under earlier regime	20
Section B		
1.1	Registration data as on 31 May 2022	28
1.2	Anti-evasion cases	28
3.1	Industry wise revenue data	66

List of Charts

Number	Description	Page No.
Section A		
1.1	Tax as a percentage to GDP	24
1.2	MoM collection of CGST, SGST and IGST in INR crores	25
1.3	YoY collection of CGST, SGST and IGST in INR crores	25
1.4	Index India's Ease of Doing Business score: 2015-2020	38
Section B		
3.1	Data of Registered MSMEs	68
3.2	Tax structure of Pharma products	72
3.3	Installed capacity for different sources of Power in GW	74
3.4	Textile product-wise export percentage	80

Glossary

AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADR	Alternate Dispute Resolution
AIDC	Agriculture Infrastructure and Development Cess
AMC	Asset Management Company
APA	Advance Pricing Agreement
API	Active Pharmaceutical Ingredient
ATF	Aviation Turbine Fuel
B2B	Business to Business
B2C	Business to Consumer
BARC	Broadcast Audience Research Council
BO	Branch Office
BOOT	Build-Own-Operate-Transfer
BOT	Build-Operate-Transfer
BRC	Bank Realisation Certificate
BTG	Boiler, Turbine, Generator
CAG	Comptroller and Auditor General
CAGR	Compound annual growth rate
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CBIC	Central Board of Indirect Taxes and Customs
CEA	Chief Economic Advisor
CENVAT	Central Value Added Tax
Cess	GST Compensation Cess
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST	Central Goods and Services Tax
CIF	Cost, Insurance and Freight
CII	Confederation of Indian Industry
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
CST	Central Sales Tax
DGARM	Directorate General of Analytics and Risk Management
DGGI	Directorate General of GST Intelligence
DGGST	Directorate General of GST
DICGC Act	Deposit Insurance and Credit Guarantee Corporation Act
DIN	Document Identification Number
DPIIT	Department for Promotion of Industry and Internal Trade
DTA	Domestic Tariff Area
E-commerce	Electronic commerce
E-invoice	Electronic Invoice
EOU	Export Oriented Unit
EPC	Engineering, Procurement and Construction
ERP	Enterprise Resource Planning
EV	Electric vehicle
Eway Bill	Electronic Way Bill
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FICCI	Federation of Indian Chambers of Commerce and Industry
FIRC	Foreign Inward Remittance Certificate
FOB	Free on Board
FRBM Act	Fiscal Responsibility and Budget Management Act
GDP	Gross Domestic Product
GSDP	Gross State Domestic Product
GSP	GST Suvidha Provider
GST	Goods and Services Tax
GSTIN	GST Identification Number
GSTN	GST Network
GTA	Goods Transport Agency
GVA	Gross Value Added
HC	High Court
HO	Head Office
HSN	Harmonized System of Nomenclature

ICEGATE	Indian Customs Electronic Gateway
IDT	Indirect Taxes
IGST	Integrated Goods and Services Tax
IMC	Indian Merchants' Chamber
IMF	International Monetary Fund
IP	Intellectual Property
IRDA	Insurance Regulatory and Development Authority
IRP	Invoice Registration Portal
IRS	Internal Revenue Service
ITC	Input Tax Credit
JDA	Joint Development Arrangement
LTU	Large Taxpayers Unit
LUT	Letter of Undertaking
M&A	Merger and Acquisitions
M&E	Media and Entertainment
MF	Mutual Fund
MoF	Ministry of Finance
MoM	Month-on-Month
MOSPI	Ministry of Statistics and Programme Implementation
MSME	Micro, Small and Medium Enterprises
NAA	National Anti-profiteering Authority
NAAAR	National Appellate Authority for Advance Ruling
NBFC	Non-Banking Financial Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NDRF	National Disaster Relief Fund
NIPFP	National Institute of Public Finance and Policy
QRMP	Quarterly Return Filing and Monthly Payment of Tax
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
RNR	Revenue Neutral Rate
RoDTEP	Remission of Duties and Taxes on Exported Products
RSP	Retail selling price

SC	Supreme Court
SCN	Show cause notice
SCRA	Securities Contracts (Regulation) Act
SEZ	Special Economic Zone
SGST	State Goods and Services Tax
SLP	Special Leave Petition
STP	Software Technology Parks of India
TARC	Tax Administration Reforms Commission
TCS	Tax collection at Source
TDR	Transferable Development Right
TP	Transfer Pricing
TRU	Tax Research Unit
URD	Unregistered Dealers
UT	Union Territory
UTGST	Union Territory Goods and Services Tax
VAT	Value Added Tax
YoY	Year-on-Year

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