

Basic Concept of Goods and Service Tax (GST)

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This presentation covers-

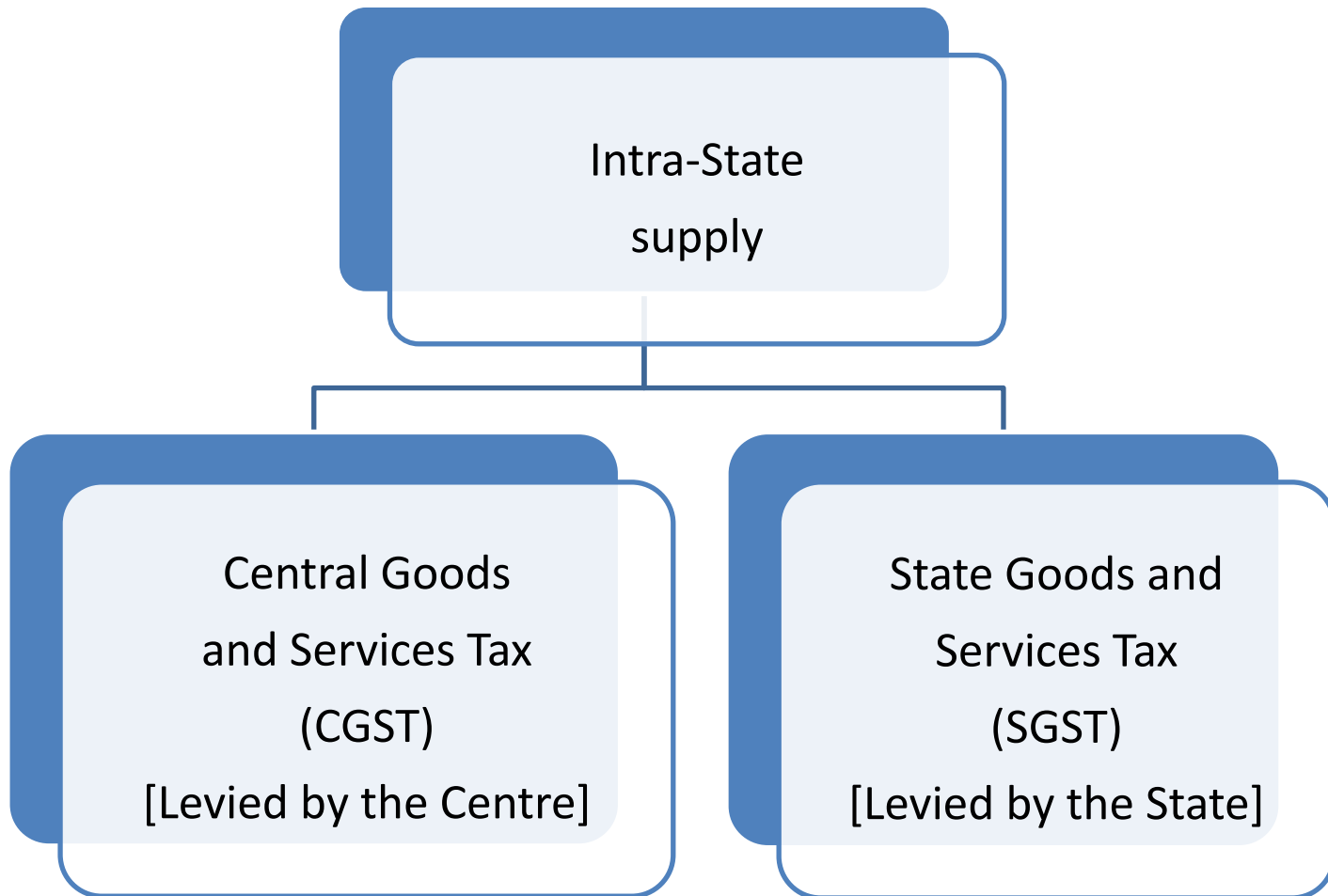
- ✓ *Overview of model GST Law including concept of CGST, SGST & IGST.*
- ✓ *Levy and Exemption*
- ✓ *Composition Levy*

OVERVIEW OF MODEL GST LAW

Overview

- Destination Based Consumption Tax
- Credit Mechanism
- Everything to be taxed
- Dual Levy

Dual GST



Administration of Dual GST

CGST

- Central Levy
- Administered by Centre
- Levied by Centre and Paid to Centre

SGST

- State levy
- Administered by State
- Levied by State and paid to State

Intra State (within state) transactions

- In case of Intra state transactions, seller collects both CGST & SGST from the buyer and CGST needs to be deposited with Central Govt. and SGST with the State Govt.

Constitutional Background

- Under the current system, power to levy taxes on goods & services shared between the Union & States
- **EXAMPLE:** Service Tax levied by Union, while sales tax (VAT) levied by States
- Under the proposed unified system, both Centre & States will (together) levy tax on the same
i.e. GST on supply of services as well as goods

ARTICLE 246A

- Gives power to the Parliament & State legislatures to make laws on GST *imposed by Union or by such States*
- Begins with a *non-obstante clause*
- Such GST to be imposed on *supply*
- Parliament reserves *exclusive right* to legislate when *supply* happens in course of *inter-state state trade or commerce*
- *Exception*: GST in respect of crude petroleum, HSD, MS, Natural gas & ATF, to take effect from a later date to be recommended by the GST Council

ARTICLE 246A

(our comments)

- Presupposes *imposition* of GST
- Peculiar feature: For the first time a power to make laws has been given other than by way of lists i.e. Article 246A
- Begins with *Notwithstanding anything contained in Art. 246 & 254*: Meant to override the division of power to make laws between the Union & the States
- *Inter-state trade & commerce* has not been defined
- GST paid on inputs for petroleum industry would not be available as credit
 - GST paid would become additional cost
 - Very cumbersome to apportion ITC of GST between the non GST and GST (naphtha, kerosene, carbon black, etc) products

Residuary Power of the Parliament

- Article 248 i.e. the residuary power of Parliament to legislate has been made subject to Article 246A

Our comments:

- Parliament therefore, may now make laws on all matters except those covered under the State List, Concurrent List or Art. 246A
- Entry 97 of List I has not been expressly stated to be subject to Art. 246A
 - Though stating so would only be clarificatory (Lists are anyways subject to the Art. 246)
 - Expressly defining the powers would remove ambiguity

For Inter State transactions

- On inter state transactions, Centre would impose IGST (equal to CGST+SGST)
- For paying IGST, use credit of IGST/ CGST/ SGST
- Buyer can avail credit of IGST and can set it off against IGST/CGST/SGST
- This ensures the tax to be **destination based** consumption tax
- A clearing house mechanism to ensure that
 - Destination state gets the tax equal to IGST used for paying SGST, and
 - The origin state pays the SGST used as credit for paying IGST

Interplay between intra-state GST and inter-state GST

- 101st Constitutional Amendment Act gave way for the introduction of GST. As per Article 286 (of Amendment Act), no law of a state shall impose a tax on supply of goods or of services or both where such supply takes place:
 - *outside the state, or*
 - *in the course of import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.*
- It has also been specified in Article 246A (of Amendment Act) that Parliament has exclusive power to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of interstate trade or commerce.

Contd...

- Accordingly, tax under the GST laws would be imposed in the following manner :
 - *Intra-state supplies: Centre shall impose CGST and the respective state shall impose SGST; and*
 - *Inter-state supplies: Centre shall impose IGST.*

Article 269A of The Constitution 101st Amendment Act

- Article 269A (5) provides that Parliament may, by law, formulate the principles for determining the place of supply of any goods or services.

Article 269A

(1)....

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..

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”

- Accordingly Section 5 and Section 6 are formulated in IGST Act

Contd...

- It thus becomes imperative to define “intra-state supply”; and “inter-state supply”.
- Accordingly, the Integrated Goods and Services Tax Act, 2016 (“IGST Act”) defines the principles for determining supply of goods and/or services in the course of inter-state trade or commerce, and also in the course of intra-state trade or commerce. The said provisions are contained in Section 3 and 3A of the IGST Act.

Section 3 & 3A of IGST Act

- Supply of goods and services in the course of *inter-State trade* or commerce means any supply where the
 - *location of the supplier and the place of supply*
 - *are in different States*
- Supply of goods and services in the course of *intra-State trade* or commerce means any supply where the
 - *location of the supplier and the place of supply*
 - *are in same State*
- Thus, for determining whether a supply is inter-state or intra-state, it is important to determine its “*place of supply*”.
- “Place of supply” is also required for determining whether any supply is “export of service” or not.

Contd...

- Supplies in course of *inter-state trade or commerce & in course of import into the territory of India*
 - levy & collection by Union
 - to be apportioned between Union & States
- Method of apportionment between States to provided by Parliament by law based on recommendations of the GST Council
- Parliament has been given the power to formulate principles for determining
 - when a supply takes place in course of inter-state trade or commerce
 - place of supply

LEVY AND EXEMPTION

Levy and Collection Under GST

- GST would be charged on *Supply of Goods and services [Section 7]*
- Rate as per schedule [yet to be announced]
- It shall be paid by the taxable person in the manner prescribed.
- The Central Govt. by notification may specify the supplies to be taxed on reverse charge basis.
 - Taxable persons may be required to pay tax in respect of supplies received from registered or non-taxable persons.
 - As a result, purchase of goods and services from non-taxable persons may require a relook.

Exemptions contemplated

Exemption contemplated

- Like state VAT Acts - some items to be exempted
- Nothing specified regarding services

Task Force

- Public services of Govt. – police, govt. schools, defence, civil administration, health (excluding services Railways/ P&T/ other commercial entities/ PSUs etc)
- Employer employee
- Unprocessed food through PDS
- Education and health by non government.

Power to grant exemption

- Under section 10(1) of Model GST Law, the Central or a State Government has been empowered to exempt any goods and services from the whole or any part of the tax leviable thereon. Such exemption has to be made on the recommendation the Council and it is to be brought through notifications issued by the Central or a State Government.

COMPOSITION LEVY

COMPOSITION LEVY

- Composition levy is a scheme introduced by the Government for registered taxable persons.
- The benefit of the composition scheme will only be available to those taxable persons who are registered under GST and their aggregate turnover is less than 50 Lakh in one financial year.
- It is also to be noted that the provision for composition levy starts with a non-obstante clause, and hence the same would override other provisions.

Eligibility

- A person would be eligible to pay a Composition levy as per section 8(1), if:
 - He is a registered taxable person (as per section 9 of the act).
 - His aggregate turnover in a financial year does not exceed Rs 50 Lakh.
 - **Aggregate turnover** has been defined in section 2(6) as *“aggregate value of all taxable and non taxable supplies exempt supplies and export of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes, if any charged under the CGST Act and the IGST Act, as he case may be.*
 - The Provision states that such taxable person should not affect any inter-state supplies of goods and/or services. Please note that there is no restriction on him purchasing / procuring goods / services on inter state basis.
 - All taxable persons having the same PAN as held by him, must opt to pay tax under this section.

Permission from Government:

- To avail the scheme of composition levy, the eligible registered taxable person is required to make an application to Central or State government as the case may be. Thereupon, the proper officer of Central or a State government may permit a registered taxable person, subject to such conditions and restrictions as may be prescribed by the government.
- For the purpose of permission, proper officer has been defined under section 2(79) as the officer who performs functions in relation to such grant of permission and who is assigned the function by the Board (for CGST) /Commissioner (for SGST).
- It must be clarified here that availing of the composition scheme is an option available to a taxable person who is eligible for it.

Restriction on the persons availing the scheme

- Like the restriction in the State VAT Acts, the GST Act has also imposed certain restrictions on the person opting for composition scheme.
- As per section 8(2) of the Act, a person opting for Composition levy shall not collect any tax on supplies made by him.
- Further, he is also not allowed to avail any credit of input tax.

Penalty

- A taxable person, who is not eligible to opt the scheme of composition levy but still opts, is liable to pay:
 - Tax that may be payable by him under other provisions of the act (i.e. under normal provisions)
 - penalty equal to the amount of tax levied under this section
 - However, section 8(3) states that proper officer must have reasons to believe that such person was not eligible to opt for the scheme of composition levy. Furthermore, the provision requires that the proper office must serve a show cause notice and provide a reasonable opportunity of being heard to such person before imposing any penalty.

Special feature as regards reverse charge

- However, the composition levy has been made subject to subsection (3) of section 7 which provides for payment of tax on reverse charge basis. Therefore, provisions of reverse charge would continue to apply to a composition dealer also.

Questions??

THANK YOU

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