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Impact of GST on online marketplaces



Introduction



Sandeep Ladda
Leader, Technology
and E-commerce

India is poised to become the world's second-largest Internet market after China. A huge proportion of the population, especially millennials, are leapfrogging the computer era and directly embracing smartphones. Digital is changing the rules of customer engagement in India as the availability of affordable smartphones and wireless Internet is fostering the growth of a new breed of digital-savvy consumers who demand personalised and seamless experiences. At the forefront of this digital revolution is e-commerce, especially the online marketplace sector, which has seen substantial growth in the past few years and is fundamentally changing the way business is done, particularly in the consumer services industry. Online marketplaces are on the rise and companies like Flipkart, Snapdeal and Amazon are the flag-bearers of e-commerce in India and are responsible for converting millions of Indians into online shoppers.

The complex and ever-evolving ecosystem of online marketplaces, involving multiple parties and transactions across nations, is giving rise to a plethora of international and India tax and regulatory issues. Issues around difficulties in determining the jurisdiction in which value creation takes place and, consequently, the right to tax; possible multiply levy of taxes at different stages of transactions and implications of the FDI policy have created serious areas of intervention for online marketplaces.

From an indirect tax perspective, the issues being faced include ambiguity on the taxation of digital supplies, lack of clarity among authorities regarding various online marketplace business models, resulting in conflicting claims on the jurisdiction entitled to tax a given transaction, requirement of the marketplace to pay tax, and multiple compliances.



Vivek Mishra
Leader, Indirect Tax

The proposed goods and services tax (GST) is perceived as the single biggest indirect tax reform in India and is expected to bring in a simpler tax structure with a seamless credit chain. The 'one tax, one market' concept on which GST is based should be a welcome step for online marketplaces. To create clarity in terms of the tax treatment of online marketplace sector transactions, sector-specific provisions need to be introduced in the GST regime. This is quite important but is only the first of the two steps. The next key step is for these provisions to be respected by the authorities. Moreover, enforcement action that is contrary to these provisions should not be undertaken. The companies will have to follow the 'whole of business' approach for GST impact assessment and implementation, where tax and business advisory teams work together to provide a seamless service to clients that covers all necessary business aspects. Only then will the sector be able to utilise its potential in this market.

PwC and IAMAI have put together a concept paper on GST explaining the current status and proposed changes after GST and the opportunities and issues that need to be addressed from the perspective of online marketplaces.

We are immensely grateful to the industry leaders who gave their inputs and helped us present a comprehensive perspective on the market.

We hope that this paper will be read by all the relevant stakeholders and that they will benefit from its extensive research.

Foreword



IAMAI and PwC have prepared this report as a ready reckoner for the online marketplace sector to understand the possible impact of the impending GST Act. Online marketplaces form the backbone of the burgeoning e-commerce sector in India. This sector is expected to grow in the near future and have a far-reaching socio-economic impact in the country.

This is a focussed report on the possible ways in which online marketplaces are likely to be impacted by GST. It covers (a) the present tax structure and how it applies to online marketplaces, (b) the changes the GST Act will bring and (c) possible asks of the online marketplaces in the wake of the impact envisaged.

The GST Bill has been in discussion for quite some time; and at the time of the publication of this report, it is yet to be sanctioned by the Parliament of India. Since the final draft of the proposal is yet to arrive, this report is based on the information available till date.

This report would not have been possible without the professional expertise of PwC. I would like to express my gratitude to **Sandeep Ladda** and **Vivek Mishra** for their efforts and congratulate them for their work on this paper.

I thank the IAMAI team that worked as the connector between the industry and researchers and kept a strict watch on quality and timelines.

I am most grateful to the industry representatives who have helped enrich this paper with their insights. I would like to thank them for taking time out of their busy schedules and helping us shape this paper.

Special care has been taken to check the facts and arguments made in this paper and we stand by them. This paper reflects our understanding of the issue and we leave it to the reader's discretion to draw their own conclusions.

Despite our best efforts, it is possible that some errors exist in this paper. On behalf of IAMAI, I take full responsibility for them.

Dr Subho Ray

President, Internet and Mobile Association of India (IAMAI)






Executive summary






E-commerce is fast gaining traction in today's world. In simple terms, e-commerce can be described as the conduct of any commercial activity using the Internet as a medium. The scope of e-commerce is dynamic and consistently expanding. The online marketplace business model has been the most successful model in India, given the foreign direct investment (FDI) and regulatory norms currently in existence. Therefore, this study focusses more on online marketplaces while studying the e-commerce sector in India.

Multiple indirect taxes are currently levied on transactions in India. Some taxes are levied and collected by the central government, while others are collected by state governments. Furthermore, due to the dynamic and complex business models in which e-commerce players operate, the treatment of various e-commerce transactions under indirect taxes is fraught with ambiguity and disputes.

Considering the issues plaguing the current indirect tax regime, India is gearing up to introduce a comprehensive indirect tax regime under the goods and services tax (GST). Since the introduction of the GST regime will affect the very fundamentals of how business is carried out in India, it is essential to reflect upon the impact on online marketplaces.

This paper starts with a brief overview of the conditions under the existing indirect tax regime. It then goes on to discuss the contours of the GST proposal based on the available information. Next, the paper attempts to identify the key factors that might prove to be important for online marketplaces under the proposed GST regime. Finally, certain recommendations are offered on the basis of our detailed study. The key recommendations are summarised below.

Particulars	Recommendations
 <p>Specific provisions for e-commerce</p>	<ul style="list-style-type: none"> E-commerce transactions should be defined clearly. If the rules framed under GST put the onus on e-commerce players to disclose and provide information, the provisions should be assessee friendly and should not be so stringent as to lead to a severe penalty or prosecution exposure for e-commerce companies.
 <p>Place of supply</p>	<ul style="list-style-type: none"> The place of supply for e-commerce service providers should be based on the location of the service provider in the case of business-to-consumer (B2C) transactions and that of the service recipient in the case of business-to-business (B2B) transactions. The definition of the 'location of service provider' should be provided clearly to avoid any ambiguity.
 <p>Digital goods</p>	<ul style="list-style-type: none"> It should be clarified that the supply of digital content will be treated as services. The place of supply for digital supplies should be clearly defined so that it is easily determinable. For instance, the place of supply should be based on the billing address of the customer in the case of B2B transactions and the location of the service provider for B2C transactions. Clear provisions should be incorporated to determine scenarios where digital supplies are to be considered as interstate or intrastate supplies. These provisions should be based on the location of the service provider and service recipient as provided at the time of the transaction, instead of the IP address of the buyer.
 <p>Interstate services vs intrastate services</p>	<ul style="list-style-type: none"> Specific rules should be established on when a service will be deemed to be interstate or intrastate. This is imperative for e-commerce transactions as it is difficult to identify interstate transactions in the case of services provided over the Internet.
 <p>Liability to pay tax</p>	<ul style="list-style-type: none"> It should be clarified that the liability to deposit GST in the case of a transaction taking place through an online marketplace in respect of sale of goods will be the seller's and not that of the online marketplace company. Online marketplaces should only be liable to pay taxes on the service fees they earn.

Particulars	Recommendations
 Rate of tax	<ul style="list-style-type: none"> A lower rate should be prescribed specially for services (including e-commerce services) to avoid an increase in costs. The rate should not be more than 18% (the Chief Economic Advisor [CEA] has recommended a revenue neutral rate [RNR] of 15-15.5% and a general rate of 17%-18% for goods as well as services). The rate should be kept uniform throughout the country in light of the 'one tax, one market' concept. The rate to be applied in the case of combo offers should be explicitly clarified (offers containing products having different tax rates).
 Registration	<ul style="list-style-type: none"> The concept of centralised registration should preferably be continued for service providers, including e-commerce service providers and marketplaces.
 Transfer of credits	<ul style="list-style-type: none"> Transfer of credits between offices of the same company (having separate registration) should be allowed to avoid credit accumulation.
 Waybills and documentation	<ul style="list-style-type: none"> Waybills should be abolished in line with the one-market concept (this will resolve the problem currently being faced in various states). In case a form is prescribed for monitoring the movement of goods, it should be standardised across India and should be automated and user friendly. Since these forms are intended only for monitoring the inward movement of goods, they should be limited to B2B transactions only and not for B2C transactions. The standardised documentation and record keeping required should be provided for all states. Records should be required to be kept for a uniform period across states. Records should be allowed to be maintained electronically. Verification through electronic/digital signature should suffice.
 Treatment of stock transfers, sales returns/cancellations/replacements	<ul style="list-style-type: none"> Stock transfers should be tax free to avoid any undue financial burden on micro, small and medium enterprises (MSMEs) and other assesses. Specific provisions should be introduced keeping in mind the peculiar transaction structure of e-commerce companies to account for sales returns/cancellations/replacements and adjustment of excess tax already paid (if any).



Issues in the current regime

Given that online marketplaces are a relatively new phenomenon, the conventional indirect tax regime in India is unsuccessful in providing complete clarity on the appropriate tax treatment of e-commerce transactions. To ensure that the GST regime takes into account the existing anomalies and suitably addresses them, an overview of the current indirect tax regime and some of the key issues being faced by e-commerce players is provided below.



VAT, CST and entry tax

Person liable to pay tax

Issue

1

Background and relevant provisions

In a conventional sale transaction, the seller of the goods is the 'dealer' liable to deposit value added tax (VAT) with the authorities. A dealer, as broadly defined under the VAT legislation in various states, is liable to register under VAT and undertake all compliances such as payment of VAT/central sales tax (CST) and filing of returns.

In online marketplace transactions, given that each transaction involves multiple parties, tax authorities are often confused about the identity of the actual seller who is liable to pay taxes.

Key concerns



The activities of online marketplaces have often been misconstrued as the activities of a 'seller' by local tax agencies.

Even if the online marketplace's involvement in the transaction is limited to packing, repacking and forwarding the consignment to the buyer, the authorities often insist that the e-commerce player is the 'dealer' that is liable to pay taxes and undertake all related compliance.

Thus, the intermediary role played by online marketplaces needs to be acknowledged.

Requirements



It is imperative to have consistent guidelines under different VAT legislation, affixing the liability to deposit VAT/CST, obtain registration and undertake related compliance.

These guidelines will put online marketplaces and conventional businesses on an even footing.

Waybill compliances

Issue

2

Background and relevant provisions

VAT legislation under various states prescribes the manner in which inward and outward movement of goods is to be undertaken. Generally, a dealer in the state is required to obtain waybills from VAT authorities (either manually or by online generation).

The Gujarat authorities issued a clarification allowing e-commerce consignments to carry manual waybills in case it is practically challenging to generate online waybills for each consignment (especially in the case of low-value goods).

In Uttar Pradesh, the customer is required to obtain, fill and send Form 39 to the shipper to authorise the movement of goods into the state. Similar issues are being faced in Uttarakhand.

Key concerns



The person liable to undertake waybill compliance, i.e. whether the online marketplace or the vendor is liable to undertake waybill compliances

Even though the online marketplace player is not the dealer, given that there are a number of interstate movements (procurement from vendors, supply to customers), the compliance requirements need to be tracked properly and movement should be facilitated with appropriate documentation.

E-tail transactions are generally of low value. Accordingly, it is not practical to undertake protracted compliance for each consignment of low-value items. Recognising this predicament of e-commerce players, Gujarat VAT authorities have issued a specific clarification. However, other states have not yet addressed this issue and it continues to remain a compliance nightmare for online marketplaces.

Requirements



While under a federal structure, each state has the authority to track inward and outward movement, this setup goes against the essence of 'free

movement' of goods within India. Waybill compliance can be simplified in e-commerce transactions to reduce the compliance burden on online marketplaces as well as the regulatory burden on VAT authorities.





Person liable to deposit entry tax

Issue

3

Background and relevant provisions

Entry tax is levied on the physical entry of goods into a defined 'local area' within a particular state. The entry tax legislations of various states define the 'importer' or 'dealer' who is liable to take registration under entry tax laws and discharge the applicable tax.

The entry tax laws of Karnataka illustrate this. Entry tax is liable to be paid by a 'dealer' as defined under section 2 (A)(4) of the Karnataka Tax on the Entry of Goods into Local Areas Act, 2002, which includes an importer.

Key concerns



In view of the definition of 'dealer' under different state entry tax legislations, it is possible that an online marketplace and its associated fulfilment centre in a state qualify as an 'importer' in some states.

In such cases, online marketplaces are being expected to obtain registration, deposit tax and undertake all related compliance. Currently, there is ambiguity regarding the entry tax treatment of these transactions in various states.

Certain states have made specific provisions putting the onus of entry tax compliance on courier companies. For example, Assam has introduced explicit provisions pertaining to e-commerce, with the introduction of section 9A in the Assam Entry Tax Act, 2008, requiring courier companies to register and pay entry tax on e-commerce transactions.

Similar to entry tax provisions, octroi or local body tax is levied on the entry of goods into the municipal limits of a city by the municipal corporation of that city (e.g. in Maharashtra). Certain online marketplaces have recently received notices on the payment of local body tax in Maharashtra.

Requirements



It is imperative to have consistent guidelines under different entry tax legislations and to outline the definition of 'importer' in the case of online transactions.

Furnishing of information as prescribed under VAT legislation

Issue

4

Background and relevant provisions

Several states have recently started making provisions for furnishing of information by e-commerce players:

- Kerala has introduced section 54A to the Kerala VAT Act, 2003, which provides that e-commerce companies have to obtain registration and file returns.
- Tamil Nadu VAT authorities have issued a press release seeking to tax various transactions undertaken by online portals.
- Delhi has prescribed a return format for the filing of information for e-commerce players on a quarterly basis.
- UP VAT authorities have also issued instructions to their field officers for scrutiny of the transactions of e-commerce players and ascertaining whether or not tax is duly discharged.
- Maharashtra VAT authorities have proposed the introduction of an amendment to track all sales and purchases by online portals for ensuring that VAT/CST is duly paid.

Key concerns



There are no provisions under most VAT legislations that correctly identify online transactions.

VAT authorities have started to demand a vast amount of information under the assumption that this information will help to avoid tax leakage.

The fluctuating statutory obligations in each state lead to a high compliance cost and time for online marketplaces.

Requirements



Rationalised and consistent compliance is required by e-commerce players across different states to simplify the process of doing business.

Valuation in case of 'discount funding'

Issue

5

Background and relevant provisions

VAT/CST is required to be paid on the sale of goods. The 'sale price' on which such VAT/CST is payable is defined under different VAT legislation. Generally, sale price refers to the amount of valuable consideration paid or payable to a dealer for any sale made, including any sum charged for anything done by the seller in respect of the goods prior to delivery (transportation, installation, etc.).

Key concerns



In practical terms, the cost of the sizable discounts offered by vendors on e-commerce sites is borne by the e-commerce players.

For example, products priced at 100 INR per unit are sold by the dealer on the website at a discounted price of 70 INR per unit. While the end consumer ends up paying the discounted price, the balance 30 INR is paid by the e-commerce player to the vendor for promoting its own business. In e-commerce trade parlance, this is commonly known as 'burning cash for promotion'.

VAT authorities are demanding tax on the discount funding by treating the amount being paid by the e-commerce players as part of the sale price for goods on behalf of the buyers. Thus, the authorities intend to tax the loss incurred on trading of goods.

Requirements



Given the peculiar nature of e-commerce transactions, VAT/CST laws should provide clarity on the treatment of such situations to ensure minimal litigation.

Issue 6

Background and relevant provisions

Generally, there are specific provisions under state VAT legislation for adjustments to be made in taxable turnover on account of sales returns, cancellations, etc.

For instance, VAT is chargeable on 'turnover of sales' under the Maharashtra VAT Act, 2002. The definition of turnover under section 2(33) of the Maharashtra VAT Act, 2002, specifically excludes the turnover pertaining to sales returns which has been refunded to customers. This deduction is subject to the condition that the sales returns are made within six months of the sale. Appropriate disclosures pertaining to the sales returns are required to be made in the periodic returns.

Key concerns



E-commerce players routinely offer products on cash on delivery (CoD) terms to customers. According to the CoD terms, a customer is liable to pay cash only when the goods are physically in his/her hands and he/she is satisfied with the delivered product.

This leads to an increased number of cases when sale of goods does not eventually occur because the customer is either not satisfied with the product and refuses to pay or is not reachable at the address provided. Further, since the delivery time for goods is generally a few days, some customers may cancel the order before delivery.

Given the above, the quantum of sales returns and order cancellations in the e-commerce sector is very high. There are also piecemeal returns and cancellations rather than bulk ones, as in the case of conventional sellers.

In such situations, it is difficult to keep the paper trail intact for each case in each state as well as to appropriately claim adjustment for such returns from the VAT authorities.

Even when such returns are duly adjusted, substantiating the amount of deduction claimed as sales returns at the time of VAT assessments becomes difficult.

Requirements



Robust systems are required, keeping in mind the peculiarities of the e-commerce sector, to ensure that sales returns, cancellations, etc., are duly tracked and all requisite compliance, such as maintenance of documents, disclosure of returns, payment of taxes and availing of deductions, is done accurately.



Issue

7

Sale of digital content

Background and relevant provisions

Sale of goods attracts VAT/CST and 'goods', as defined under various VAT legislations, include tangibles as well as intangibles. Some states have specific entries for taxing intangibles.

While the taxing of intangibles that are supplied over a medium is relatively easier, there are no specific provisions for the download of digital content online.

Key concerns



Digital content such as software, e-books and music albums is often sold over the Internet. Generally, once this content is purchased from the portal, it can be accessed by the customer from any

device by simply downloading after entering the login credentials. This mode of delivery is peculiar to the e-commerce industry.

While there are no clear laws in this regard, based on the principles laid down by the Supreme Court in the case of Tata Consultancy Services, given that such digital content is capable of being bought and sold, transmitted and delivered, and has inherent utility, such content may be deemed to be goods liable to VAT/CST.

Further, if a position that VAT/CST is payable is adopted, then there will be ensuing concerns such as who is liable to pay VAT/CST, the appropriate state (location of seller vs location of server vs location of buyer) and compliance to be undertaken.

Requirements



With the increase in transactions relating to digital content, it is vital that clear laws are formulated with regard to taxability, along with related compliance.



Issue

8

Combo offers

Background and relevant provisions

VAT/CST is payable at the applicable rate on the sale of goods. The applicable rate is based on the exact nature and description of the goods sold.

Further, composite supplies of both goods and services may qualify as 'works contracts' which entail specific tax treatment under indirect taxes.

Key concerns



Similar to traditional retail sales, a bundle of two or more related goods (or goods plus services) is offered as a combo offer for a single consideration by sellers over online marketplaces.

In case the goods bundled together under the combo offer attract VAT/CST at different rates, the authorities may levy tax at the higher rate, thereby leading to an increase in the overall cost of the product.

In the absence of any reasonable basis of bifurcation of the consideration, in many cases, tax is being paid at the highest applicable rate to avoid litigation, leading to an increased cost.

Further, if goods and services are being combined under these combo offers, such offers should be clearly analysed to ascertain whether they qualify as works contracts.

Requirements



Clear and concise guidelines regarding classification and valuation in the case of e-commerce transactions should be laid down to avoid placing an excessive burden on end users as well as high litigation costs for both e-commerce players as well as the authorities.



Appropriate state to discharge VAT/CST

Issue

9

Background and relevant provisions

CST is payable on the interstate movement of goods. While CST is a central tax, it is administered by the state VAT authorities. Thus, CST has to be deposited with the VAT authorities of the 'appropriate state', as determined under the Central Sales Tax Act, 1956. The appropriate state is generally the state where the movement of goods commences.

Key concerns



Given that online marketplaces cater to the entire country (as well as overseas), movement of goods happens across India.

Further, unlike conventional businesses, the number of unique transactions is also high. Given this fact, it is difficult to ascertain the 'appropriate state' to discharge VAT/CST as every single transaction needs to be carefully analysed.

In cases where goods are moved from one state to another before finally being dispatched to the customer, it is essential to have clarity on which tax is chargeable on the transaction and in which state.

Requirements



While it is tricky enough to determine the appropriate state in regular businesses, given the pan-India business model of online marketplaces, it is critical that clear guidelines are established with regard to such transactions.

Credit blockage

Issue

10

Background and relevant provisions

Input VAT is creditable against output VAT/CST subject to the prescribed conditions and procedural requirements in each state.

Key concerns



Given the complex transaction structures, credit blockage at each stage of the transaction translates into higher cost for the online marketplaces as well as increased cost for the final consumer.

Requirements



Increased fungibility of credits between service tax and VAT/CST or a credit mechanism more suitable to the peculiarities of online marketplaces is required.



Service tax and excise issues

Issue

1

Sale of digital content

Background and relevant provisions

Service tax is leviable on an activity for a consideration (unless specifically exempted or excluded). Further, service tax is payable on services relating to access of online information, database access and retrieval services, as well as the development and supply of digital content and software.

In the case of digital content, the definitions of 'goods' and 'services' overlap.

Key concerns



In practical terms, online marketplaces end up paying both VAT/CST as well as service tax on transactions in digital content, leading to double taxation.

The taxability of transactions in digital content is subject to extensive dispute and litigation. Whether the content is standardised or customised, service tax vis-à-vis VAT and location of transfer of content are leading to dual taxation of such transactions.

Requirements



Given that extensive disputes and litigation surrounding the taxability of software and digital content are leading to dual taxation, it is imperative that clear guidelines are issued with respect to their taxability.

Issue

2

Credit blockage

Background and relevant provisions

Service tax paid on input services is only eligible against output service tax (or excise duty for a manufacturer), subject to the fulfilment of conditions prescribed under the Central Value Added Tax (CENVAT) Credit Rules, 2004.

Key concerns



Given the complex transaction structures, credit blockage at each stage of the transaction translates into higher cost for the e-commerce player as well as for the final consumer.

Requirements



Increased fungibility of credits between service tax and VAT/CST or a credit mechanism more suitable to the peculiarities of the e-commerce sector is required.

Issue 3

Packing/repacking/labelling amounting to manufacture

Background and relevant provisions

Excise duty is payable on the manufacture of goods in India. Under excise legislation, the definition of the term 'manufacture' includes a number of activities.

Further, activities such as packing, repacking and labelling with respect to certain goods have been 'deemed' to be manufacture under excise legislation.

Thus, any entity undertaking an activity that amounts to manufacture is liable to pay excise duty at the applicable rate on any such activity and to undertake all related compliance in this regard.

Excise duty in the case of manufacture of certain goods covered by the Legal Metrology Act, 2009, is based on the maximum retail price (MRP).

Key concerns



The activities undertaken need to be analysed in light of the definition of manufacture under excise legislation.

If such activities qualify as manufacture,

then online marketplaces will be required to obtain excise registration and undertake related compliance.

The e-tail giant Amazon received a favourable ruling from the Authority for Advance Rulings (AAR) with regard to this issue in the case of the warehousing model.

While in the case of Amazon it was clarified that the activity undertaken is purely a service and, thus, is outside the purview of excise duty, this ruling is only binding on Amazon. In other cases, even where there is a slight change in the transaction model followed by the e-commerce player, especially under the inventory model, the authorities may seek to levy excise duty.

The onus of compliance with the Legal Metrology Act is on the vendors in the case of marketplace and warehousing models. However, online marketplaces are still expected to extend full cooperation to the authorities under the Legal Metrology Act and to exercise due diligence from this perspective, if required. Thus, even if no excise duty is payable, it adds to the compliance burden of e-commerce players.

Requirements



Given the distinctive nature of activities undertaken by e-commerce players, the transactions should be scrutinised and appropriate clarification regarding levability of excise duty should be issued by the authorities.



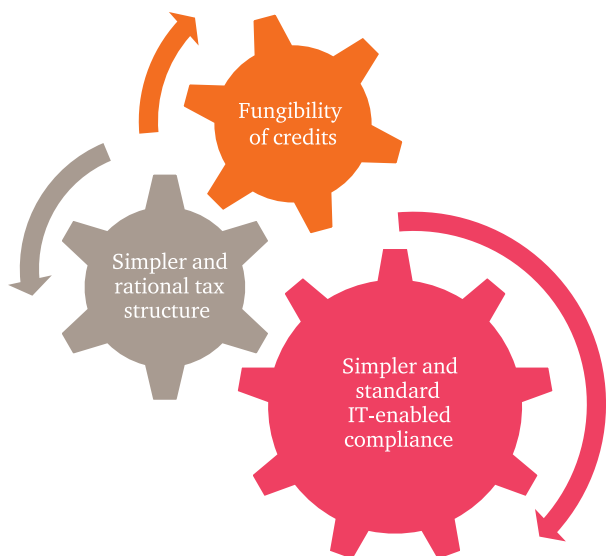
Overview of GST¹

Overview of the proposed GST regime

The current indirect tax regime in India provides a highly complex tax environment due to multiplicity of taxes, convoluted compliance obligations, tax cascading and extensive litigation. To address such problems, GST, a comprehensive consumption tax to be levied on the supply of all goods and services, has been proposed. The introduction of GST is the most awaited and single biggest tax reform in India. It intends to rationalise the current indirect tax regime, thereby providing a stable economic environment favourable for growth and development.

GST is being introduced not only to revamp the current patchwork of indirect taxes that suffers from infirmities but also to improve tax compliance. A unified GST will not only help streamline different types of indirect taxes but also be in line with international practices. GST will subsume the majority of indirect taxes, thus eliminating the need for different sets of indirect tax legislation.

The motto of the GST regime seems to be 'one tax one market', which aims at providing a cohesive tax approach across India.



GST will affect how companies operate their businesses, making it not just a tax reform but an overall business reform.

The dual GST model has been proposed by the Constitution Amendment Bill, 2014 (GST Bill). Under this model, the following taxes are chargeable on the supply of goods and services:

- Central GST (CGST): To be collected by the central government
- State GST (SGST): To be collected by state governments
- Integrated GST (IGST): To be collected by the central government



The taxes that will be subsumed under GST are listed below:

Taxes to be subsumed under GST	
Central levies	State levies
<ul style="list-style-type: none"> • Additional customs duty (ACD) • Special additional duty of customs (SAD) • Excise duty • Service tax • Central sales tax (CST) • Centre-levied surcharge and cess related to supply of goods and services 	<ul style="list-style-type: none"> • Value added tax (VAT) • Other state levies such as luxury tax, octroi, entry tax and purchase tax • State-levied surcharge and cess related to the supply of goods and services • Taxes on lottery, betting and gambling
Taxes outside GST	
<ul style="list-style-type: none"> • Basic customs duty (BCD) • Stamp duty • Taxes and duties on alcohol for human consumption and amusement/entertainment/petroleum products until recommended otherwise by the GST Council 	<ul style="list-style-type: none"> • Taxes and duties on electricity • State excise duty

Salient features of the proposed regime

The key aspects of the proposed regime have been released by the regulatory authorities in the public domain. Some of these are discussed below.

Levy of GST

The term 'goods' has been defined in Article 366 (12) of the Constitution of India: 'Goods include all materials, commodities, and articles.' Further, the GST Bill defines 'services' under Article 366 (26A): 'Services mean anything other than goods.'

Hence, both the terms will have a very wide ambit and may include various transactions. In each case, it will be determined whether a transaction qualifies under goods or services.

¹ For proposed compliance issues, please see the section 'Looking forward: Proposed compliances'.



Place of supply rules

Once a transaction is covered in GST and is identifiable under goods or services, it will need to be determined where such goods or services are deemed to be supplied. For this purpose, the Place of Supply of Goods and Services Rules (PoS Rules) will be framed. On the basis of information available in the public domain and discussions, it appears that the generic place of supply of goods and services is expected to be as follows.

Rules	Proposed PoS of goods or service
Services	
Generic rule	<ul style="list-style-type: none"> • Location of service receiver • Where service receiver is not a registered person, location of service provider
Goods	
Place of supply of goods with movement of goods	Location at which goods are delivered to the receiver
Place of supply of goods without any movement of goods	Place where goods are located at the time of delivery to the receiver

Further, there will be other separate rules for both goods and services for specific transactions.

Nature of supply

Whether supplies constitute interstate or intrastate trade of commerce will need to be determined. This is important in determining which taxes will be levied.

- Intrastate: CGST and SGST
- Interstate: IGST. Further, an additional tax of 1% is proposed to be levied on the interstate sale of goods for a period of two years. The Select Committee has suggested in its report that such additional tax should only be applied on supplies for a consideration (i.e. such additional tax should only be levied on sales and not stock transfers). The chief economic advisor has also recommended that such additional tax should be scrapped.

Hence, it will be important to analyse whether a transaction involving the supply of goods or services will qualify as an intrastate or interstate transaction in order to determine the type of tax that is payable. The GST Bill does not provide for when goods or services will be deemed to be provided in the course of interstate trade of commerce.

Threshold limit

The threshold limit is currently under discussion between the central government and the Empowered Committee (EC) of state finance ministers. The Centre had initially proposed a threshold limit of 2.5 million INR, while the EC had proposed a threshold limit of 1 million INR.²

Although the matter is still under discussion and the final decision will be taken by the GST Council, a common threshold for SGST and CGST is anticipated, and it is proposed to be increased from 1 million INR to 2.5 million INR for both goods and services. However, there could be a nil threshold for interstate transactions.

It is anticipated that the threshold limit will be calculated on a pan-India basis—i.e. in case the total turnover (of all transactions all over India) exceeds the threshold limit, the transaction may be liable to be taxed under GST.

Separately, a compounding scheme is expected to be introduced for dealers whose turnover does not exceed a specific limit. However, such dealers will not be allowed to participate in the credit chain and hence will not be able to avail of or pass on credit. The expected threshold limit for the composition scheme is expected to be approximately 5 million INR.³

Rates of GST and revenue-neutral rate (RNR)

RNR has been the subject of deliberation between the central and state governments, and a final verdict has still not been reached. Provided below are the various changes that the proposed RNR has gone through since the idea of GST was first floated in the Indian economy:

- The first official recommendation by the Thirteenth Finance Commission Report of the Task Force on GST⁴ proposed taxation of all goods and services at a single GST rate of 12%—comprising 5% for CGST and 7% for SGST.
- Subsequently, the then finance minister had proposed a rate of 16% for services, 24% for goods and 12% for concessional goods.
- The National Institute of Public Finance and Policy (NIPFP), in its report submitted to EC, suggested an RNR of up to 26.68%, which is being recalculated by NIPFP on the basis of current revenue data.
- It is anticipated that a single rate would be applicable for both goods and services.
- The incumbent finance minister has stated in a public forum that the RNR would be lower than 27%.
- A new committee has been set up to examine the RNR, depending on various factors, including growth of the economy.

² PTI. (17 November 2014). Centre against low GST threshold; wants a fresh look. Retrieved 16 June 2015 from http://articles.economictimes.indiatimes.com/2014-11-17/news/56174776_1_central-gst-gst-constitutional-amendment-bill-gst-net

³ ET Bureau. (4 January 2001). Special scheme for SSIs in works on way to GST. The Economic Times. Retrieved 16 June 2015 from http://articles.economictimes.indiatimes.com/2011-01-04/news/28430700_1_gst-framework-central-and-state-gst-turnover-threshold

⁴ Thirteenth Finance Commission. (15 December 2009). Report of the task force of goods and services tax. Retrieved 16 June 2015 from <http://rajtax.gov.in/vatweb/download/gst/13th%20FCR.pdf>

- The Select Committee has recommended in its report that RNR should not go beyond 20% for standard rate and 14% for reduced rate.
- The report of the CEA has provided that RNR should be between 15% and 15.5%. A standard rate of 17–18% has been provided for both goods and services (subject to a few exemptions). Further, a lower rate of 12% has been prescribed for essential goods (there has been no recommendation for essential services). Additionally, a de-merit rate of 40% has been recommended for few goods such as luxury cars, aerated beverages and tobacco products.
- It is expected that RNR would be between 18% and 22%. Further, there would be a lower rate for a few goods and services.

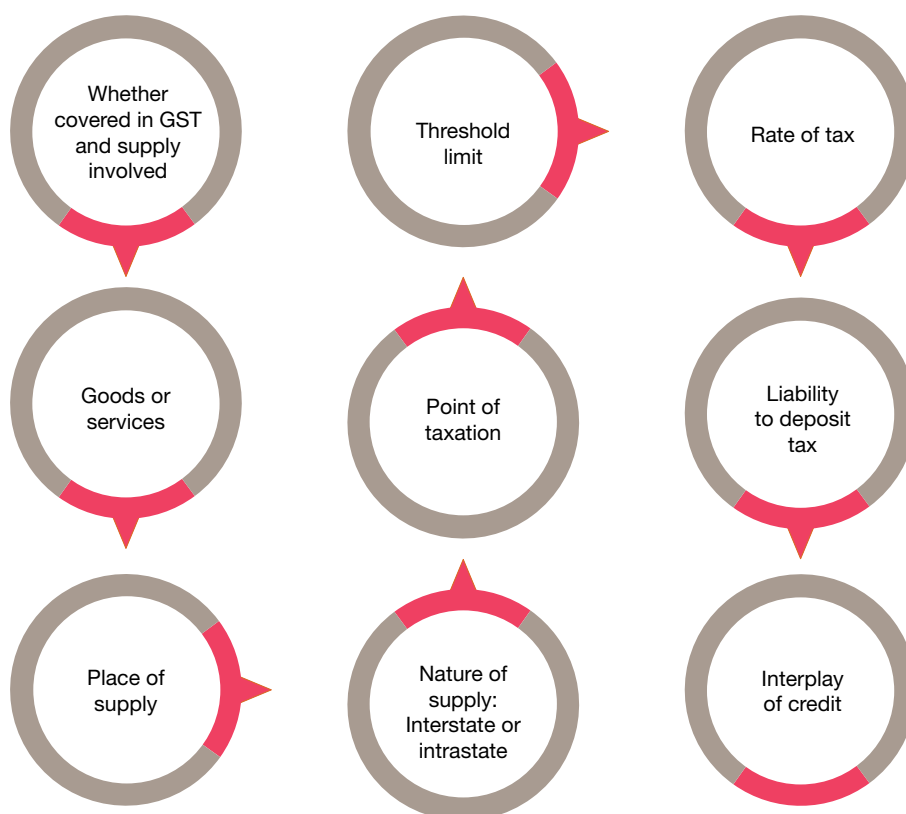
Input tax credit

It is expected that input tax credit of CGST would be available only against output CGST and IGST. Similarly, input tax credit of SGST would be available only against output SGST and IGST. On the other hand, credit of IGST would be available against all output taxes. The expected credit provisions are summarised below.

Input tax paid	Output tax set-off		
	CGST	SGST	IGST
CGST	✓	✗	✓
SGST	✗	✓	✓
IGST	✓	✓	✓



To summarise, the following aspects should be taken into account by each business to analyse the impact of GST on it:



GST: Impact on online marketplaces and Recommendations



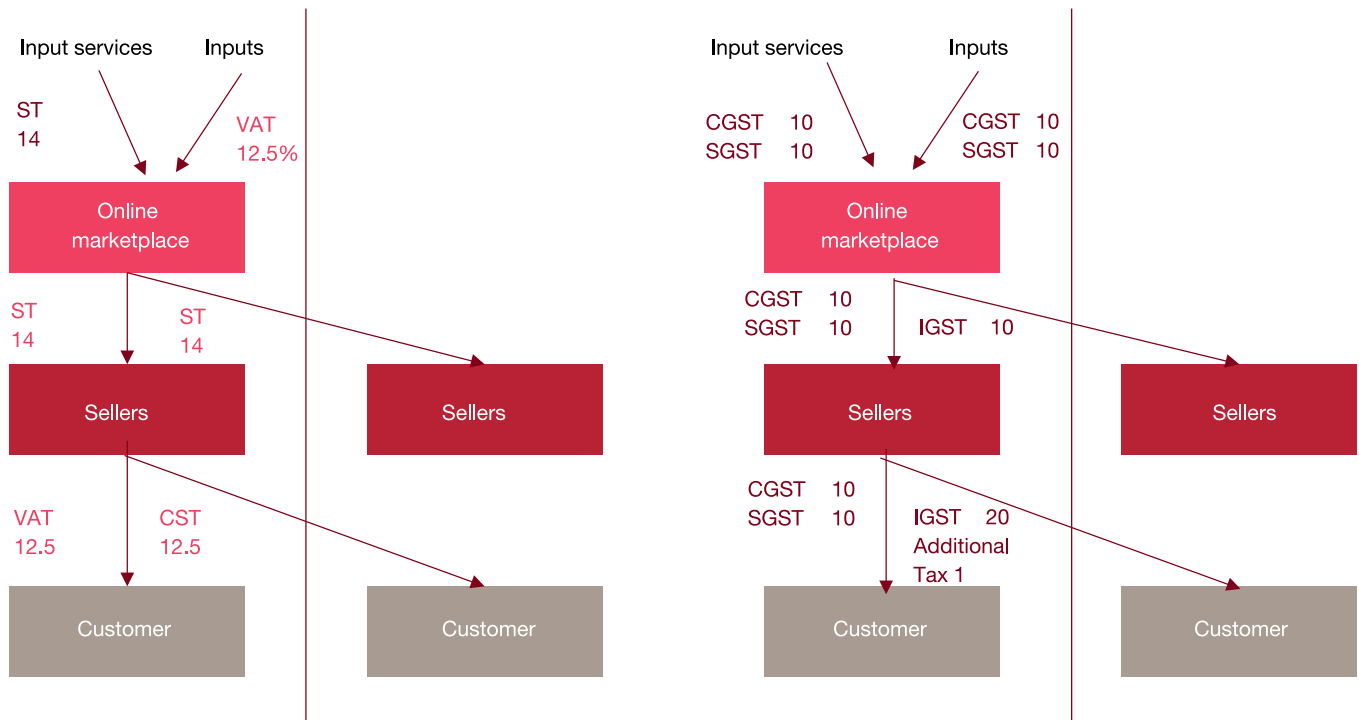
- The online marketplace maintains an online listing of all available products on its website. Orders from consumers are taken on the website and passed onto the respective vendors by the e-commerce player.
- Further, the online marketplace may also provide a facilitation centre where vendors can stock their goods, which are then dispatched to the customers as well as logistics services. This is the hybrid/warehousing model.

The table below provides a summary of the GST impact on various parties involved in this model:

Party	Current regime	GST regime	Impact under GST
Seller	Charges VAT/CST to customer depending on movement of goods. The service tax charged by online marketplace (listing fee, facilitation fee, etc.) becomes a cost as the same cannot be utilised.	Seller would charge CGST + SGST or IGST + additional tax, depending on the nature of transaction. All input taxes (including GST charged by online marketplace) would now be available as credit, leading to efficiency in costs.	<ul style="list-style-type: none"> • Possible higher tax rate on output side • Seller can claim credit of all taxes on input side except additional tax (currently, excise duty, CST and service tax on procurements become a cost). • Impact on pricing to be analysed keeping in mind interplay between tax rate and credits
Online market- place	The online marketplace charges service tax to the vendor for providing facilitation services. The online marketplace can avail of service tax credit of input services. However, any VAT credit on purchase of goods becomes a cost.	<p>The online marketplace would charge CGST + SGST or IGST depending on the nature of transaction. Such taxes would be now available as credit to the vendor.</p> <p>Further, the marketplace can now also avail of full credit of all inputs and input services.</p>	<ul style="list-style-type: none"> • Possible higher tax rate on output side • All output taxes to be creditable on provision of services to seller • The online marketplace can also claim credit of all taxes on input side (currently taxes on procurements becomes cost). • No concept of centralised registration: multiple registrations may be required • Impact on pricing to be analysed keeping in mind the interplay between tax rate and credits



The above impact is explained through the diagram below:



Given the above, the following are the key impacts for an e-commerce company on account of GST:

- **Pricing impact:** The output rate of tax could be higher for the company compared to the current service tax rate. However, the companies should have a higher credit pool than they do in the current regime, which could reduce the prices of their services.
- **Place of supply in case of B2C transactions** would be the location of the service provider.
- **Place of supply in case of B2B transactions** would be the location of the service recipient: It will be important to examine whether there would be rules to define inter-state service or intrastate service. This could be important to understand additional compliance requirement for e-commerce companies. For instance, in case it is stated that e-commerce companies would need to pay applicable CGST + SGST in the state where the service recipient is located, it would result in e-commerce companies taking registration in almost all the states where the service recipients (i.e. vendors) are located.
- **Compliance requirement:** Currently, e-commerce companies discharge their output service tax liability through centralised registration. Under GST, the centralised registration option may not be available. Hence, e-commerce companies would need to as such obtain registration in each state where they have their place of business, resulting in increased compliances.



Recommendations for e-commerce

E-commerce specific provisions: Currently, a lot of issues are arising under indirect tax laws on account of lack of understanding of the e-commerce business model. Therefore, it is imperative that there be e-commerce-specific provisions under the GST regime. This should ensure that there is absolute clarity with regard to applicability of taxes on transactions undertaken by e-commerce companies as well as companies using e-commerce platforms for their transactions. This will be the first and most important step toward helping the e-commerce industry have clear laws under GST, which could ensure that the industry is not plagued by the issues it is currently facing.



1 Setting up of an e-commerce-specific committee: For the above purposes, at this stage, it is highly recommended that an e-commerce specific committee be set up. The committee should have government as well as business representation. It should understand various business models followed by the e-commerce industry as well as issues the industry is currently facing while undertaking business in India. We understand that a step in this direction has already been taken from the GST perspective.

2 Define e-commerce appropriately: Currently, there is no standard definition of e-commerce under indirect tax laws. Instead, concepts such as ‘aggregator’ and ‘intermediary’ have been introduced to tax e-commerce transactions. Due to the manner in which the concepts have been defined, there has been more ambiguity than clarity regarding the taxability of e-commerce transactions. This only increases the disputes and prolongs litigations.

The new legislation provides an opportunity to remove such ambiguity and have a clear framework with regard to taxability of e-commerce transactions. So, it is important that e-commerce transactions are appropriately defined under the GST law. For this, the Organisation for Economic Cooperation and Development (OECD) definition of e-commerce transactions can be referred to, along with the definition provided in section 2(1) (w) of the Information Technology Act, 2000, which recognises the online marketplaces as ‘intermediaries’.

3 Identifying who is liable to pay tax: Under the current regime, one of the major issues being faced by e-commerce players is that the state VAT authorities are demanding VAT from them. This has arisen purely on account of a lack of understanding on the part of the authorities with regard to the business model of such companies. To avoid such ambiguity and unnecessary litigation, e-commerce provisions under the GST law are specific. One of the provisions to this effect should clearly state when and for which transaction the e-commerce company or vendor on the e-commerce platform is liable to pay GST.

In a marketplace model, it should be clarified that the e-commerce company is liable to pay tax on the amount charged by the company from the vendors for providing various services. With regard to goods sold through the marketplace platform by vendors, the liability to pay tax should be on them and not on the e-commerce company. This position should remain valid even if the company provides facilitation centres to stock goods owned by the vendors since ownership of goods remains with the vendors.

Further, the government may come out with clear guidelines with regard to the taxability of various types of e-commerce transactions under GST. For this purpose, the government may release a guide in line with the education guide issued at the time of introduction of the negative list under the service tax law. The guide should be prepared in consultation with industry representatives to ensure there is a clear understanding of the business model to be followed while providing clarification regarding taxability of transactions.

4

Clear ‘place of supply’ provisions for e-commerce transactions: ‘Place of supply’ provisions would determine the state in which the goods or services are supplied by the assessee. For services, there is a possibility that the ‘place of supply’ rules are in line with the current Place of Provision of Services Rules under the service tax law.

As per the information available, it is expected that for B2B transactions, the place of supply would be the location of the recipient. For B2C transactions, it is expected that the place of supply would be the location of the provider. It is expected that there could be specific rules for certain types of transactions, such as those related to events and immovable property.

Since e-commerce transactions could pertain to events, real estate, etc., the possibility of ambiguity about the state in which such transactions should be taxed cannot be ruled out. To avoid any such possibility, it is imperative that there be ‘place of supply’ rules specific to e-commerce transactions. In case of any overlap, specific rules pertaining to e-commerce transaction should prevail.

The following should be taken into consideration for the e-commerce industry from the perspective of ‘place of supply’ rules:

- For e-commerce transactions, the general rule stated above could be followed.
- Important to define location of provider with clarity: For e-commerce transactions, it is essential to define in what scenario which place of business (such as facilitation centre, head office, logistics division office) of the e-commerce company should be construed as the location of provider.
- Place of supply of goods apportioned in warehouse (on order by customer) but sold subsequently (as per delivery terms) should be clarified: It is to be clarified whether place of supply is the warehouse or the spot of final delivery.
- Back-to-back sales where wholesaler, retailer and customer are located in different states and there is only one movement of goods: Places of supply for wholesaler and retailer should be clarified.
- Clarity to be provided on the place of supply if goods are collected by the customer from the delivery centre directly (when not delivered to the customer’s house): Such sale should continue to be interstate sale to customer and not intrastate sale.

5

Provisions about when a transaction qualifies as interstate and intrastate: Unlike goods, services are intangible in nature. It can be difficult to determine whether the services have been provided within the same state or from one state to another. There can be instances where services are provided by a person located in one state and are actually performed in a second state for a person located in a third state. Also, quite often, services may be consumed in more than one state.

Under the current regime, since services are taxed under the service tax law which is a central levy, there is no requirement to determine whether the services have been rendered on an interstate or intrastate basis.

However, under the GST regime, this aspect would need to be carefully addressed. For instance, where the place of supply for a particular service is location of the recipient, would this mean that such service is an intrastate service in the state where the recipient is located? In such a case, the provider would be required to pay CGST and SGST in the recipient state and would need to obtain registration in that state. This could result in a manifold increase in compliance requirement for a service provider.

To avoid such a situation, it is recommended that in a transaction where the place of business of provider and recipient are in two different states, even if the place of supply is the location of recipient, the service should be considered as interstate. This would allow the provider to pay IGST on the transaction which it can discharge in the state where it has its place of business, and at the same time, the recipient would be able to take credit of such IGST charged in its state.

The same should also be clarified for transactions involving interstate sale of goods.

Further, for transactions such as cash on delivery, it should be clearly specified that if the seller and buyer are located in two different states and the goods actually move between states, the transaction would be an interstate transaction liable to IGST in the hands of the seller.

The above will ensure ease of undertaking compliances without breaking the credit chain or any loss of revenue to the states.

6

Point of taxation: refers to when the tax has to be paid in respect of a transaction. With respect to e-commerce transactions, following are the key recommendations on this aspect:

- Point of taxation for the services rendered by the e-commerce marketplace company should be the date of invoice raised or date of payment received, whichever is earlier.
- Point of taxation for the vendors/retail companies selling goods through the online portal should be the date of invoice.
- There should be a specific provision for sale on return basis, i.e. transactions where the customer has the right to refuse the goods delivered, which would be returned to the vendor and entail a refund of any amount received. In such cases, the seller should be able to adjust the tax amount paid on that transaction on an immediate basis through a simple and clearly defined procedure.

7

Applicable rate of tax: The overall GST rate should be lower, especially since currently services are taxed at 14.5%, and any increase beyond 18% could make services extremely expensive for the end customer.

Given the above, following are the key recommendation with respect to the rate of tax under GST:

- GST rate for goods and services should be uniform and not more than 18%.
- It should be kept the same throughout the country in light of the 'one tax, one market' concept. This would also help in easier administration and compliances, and ensure uniformity. For this purpose, CGST, SGST and IGST rates should be uniform across the country.
- The proposal of levying additional 1% tax should be dropped, as it would have a cascading effect and defeat the basic objective of GST.
- Classification of goods and services should be uniform across states to avoid variation in tax rate from the same type of goods/services in different states.
- Rate of tax for combo offers: If there are different rates for some goods which are sold in a combo, clear provisions should be stipulated about which rate should apply.
- Back-to-back sales: involve cases where there are two sales but only one movement of goods. In such cases, it needs to be clarified whether additional tax would be levied once or depending on the number of sales.

8

Registration requirement: Currently, there is the concept of centralised registration for service providers. This ensures that e-commerce companies can discharge applicable service tax liability for all the transaction from one place of business.

Also, the companies need to interact with only one tax authority.

However, under the GST regime, registration may be required for each place of business. Hence, the e-commerce company may be required to obtain multiple registrations (in each state where it has a place of business) in absence of the concept of centralised registration. Following are the key recommendations with respect to registration requirements:

- Centralised registration should be allowed for undertaking compliances relevant for all the places of business across India through one registration. With regard to deposit of tax under the SGST in different states, the same should be allowed through centralised registration. The IT network being developed by the GST network (GSTN) should allow for such a provision. This would ensure that the assessee can easily comply with the relevant GST legislation without being required to undertake compliances under multiple registrations.
- Alternately, the concept of one-stop registration may be introduced, under which a company can take registration in one state and comply with provisions across all states. This is similar to the 'Mini One Stop Shop Scheme' in the European Union (discussed later).
- One company should be assessed/audited by only one tax office for all its compliances under the GST regime.
- A clear and simple procedure should be specified to register the same place of business (such as warehouse) by multiple dealers that stock and sell goods. This would ensure uniform practice across states and remove any ambiguity and difficulty for obtaining registration.

9

Credits: As there would be credit fungibility between all legs of the transaction, it should help in reducing costs. A seamless credit chain and fungibility of credits would ensure that there is no cascading of taxes, and hence reduction in price of the goods or services supplied. For the above purposes, following are the key recommendation from a credit perspective:

- Credit rules should be liberal. An assessee (regardless of whether it supplies goods or services) should be allowed to avail of credit of any tax paid while incurring any kind of business expenses.
- Any credit availed of in respect of goods should be allowed to be offset against GST liability on account of rendering services and vice versa.
- Important to ensure that credit of central taxes (CGST and IGST) should be available across registered units (located in various states) of one entity. For this purpose, it is imperative that the concept of input service distributor continues. Further, credit should be allowed to be transferred in case of goods as well as services through the input service distributor.
- Unutilised credit standing at the end of the current regime should be allowed to be carried forward to the GST regime. Specific transition provisions should be framed to enable such a carry-forward of credits.

10

Stock transfers: In the e-commerce model, goods may be stock-transferred from vendor location to warehouse (maintained by the e-commerce company), or from one warehouse to another if needed. Currently, stock transfers are not liable to any tax (except for VAT credit retention) and entry tax, if applicable. Under GST, interstate stock transfers will be liable to IGST. Further, additional tax of 1% may not be levied (the Select Committee has also recommended that 1% tax should not be levied on stock transfers). This could have a severe impact, especially on MSME, which are supported through the e-commerce industry. Considering the above, stock transfers should be tax-free or tax should be paid on stock transfers only when the actual sale of goods takes place, to avoid any undue financial burden on MSMEs and other assesseees.

11

Waybill/transit form requirements: E-commerce companies are facing various issues currently with the check-post authorities, which is leading to delays in delivery of consignments, undue seizure of goods, penalties, etc.

It is strongly recommended that the requirement of waybills/transit forms should be dispensed with to ensure that the 'India as one market' objective is achieved under GST. Since GST aims at being a unified tax across India, elimination of waybills and transit forms is important. Since all purchases and sales would be already linked on the GST portal, there should be no requirement of waybills/transit forms as all movement of goods can be tracked on the GST portal itself.

Further, even if documents are required to track inward and outward movement of goods, the forms should be standard across India for ease of compliance and this should be electronic, completely automated and user-friendly (which is also followed currently in a few states such as Karnataka). The following may be incorporated:

- The system should allow uploading of details of multiple commodities specified in a single invoice through a consolidated value and there should not be any requirement to enter details of each commodity separately.
- It should allow the entry of multiple invoices relating to the same consignor/consignee as a consolidated value.
- It should allow generation of waybills/documents through mobile application directly through SMS.
- There should be a standardised form of waybills across states along with common procedures.
- It should automatically map outward details of one state with inward details of another.
- Penalty provisions should not be harsh and lead to harassment of the assessee.
- If the transporting vehicle is stopped by the check-post authorities, there should be a quick and automated dispute resolution system so that consignments are not stopped and business is not hampered in bona fide cases.

12

Taxability of digital supplies: Digital supplies include supply of goods and services over the Internet, such as e-books, music, ringtones and images, which are downloadable and can be viewed online/offline by a customer. There is an ongoing litigation on whether digital supplies qualify as goods or services under the current regime.

It should be clearly specified whether digital supplies qualify as goods or services, to mitigate any risk of ambiguity with regard to their taxation under GST. In some international jurisdictions, there are clear rules with regard to taxation of digital supplies, which have been classified as services.

The following are the recommendations with regard to taxability of digital supplies:

- Digital supplies to be clearly classified as 'services'
- Place of supply for digital services to be clearly defined so that they are easily determinable; they should be based on the billing address of the customer in case of B2B transactions and location of service provider for B2C transactions
- Clear provisions to determine a scenario where digital supplies be considered as 'interstate' or intrastate. The same should be based on the physical locations of the service provider and service recipient (as provided by him during payment processing), instead of IP addresses of the service recipient (which would be difficult to process and proved at a later time)

13

Treatment of sales returns/cancellations/replacements/discounts: The concept of sales return/replacement of goods/replacement of products is very common in the e-commerce industry. The following scenarios may arise:

- Booking of a sale in month A and cancellation of the same in month B
- Sale of goods in month A while goods are returned by customer in month B
- Sale of goods in month A, subsequent return in month B and replacement in month C

Further, it is very common that sale returns can happen in a state other than from where the goods were originally dispatched. Also, replacements may be made from another vendor than the one who had originally sold the goods. These situations are common in the e-tailing model and the authorities are unable to correctly reach a conclusion on these aspects under the current laws.

For example, say goods were originally dispatched from Karnataka to a customer in Maharashtra. However, the customer returns the goods and they are sent to another warehouse of the seller in Kerala. In such a case, the original sale would have been recorded in the registration in Karnataka but the goods are never returned to Karnataka and are sent to Kerala directly. There is no clarity with regard to the treatment of such transactions under GST, as well as on the applicability of additional tax of 1% (whether the same would be adjustable in case of sale return).

It is expected that any transaction which affects the credit chain may be handled by linking credit/debit notes with the uploaded invoice on the GST portal. This aspect would entail a lot of compliance as each debit/credit note would be required to be linked with the original invoice to maintain transparency of data.

Further, there is ambiguity on how a sale return would be recorded if goods are returned to a warehouse in a state other than from where they were dispatched. There is no clarity on how such transactions would be recorded.

With respect to discounts, typically only cash discounts are provided in the e-commerce model at the time of sale itself. There are very few cases of after-sale discounts to end customers. However, e-commerce service companies may provide year-end discounts in a few cases.

Keeping in mind the above aspects, the following are the recommendations for GST regime:

- There should be clear provisions allowing the adjustment of any tax paid (including additional 1%) on account of a sale return or cancellation.
- In case of replacement of goods, provisions should be such that they do not result in double taxation. For instance, replacement would involve both the return of original goods as well as their replacement with new ones. Hence, provisions may allow for adjustment of tax paid on original goods and payment of tax on new goods (which replace the original), thereby making the transaction tax-neutral.
- Treatment of debit note, credit note and invoice cancellation: There need to be specific provisions stipulating payment or adjustment of tax, as the case may be; for the purpose of adjustment on account of debit/credit note, there should be no requirement of matching of the credit note issued with individual invoices.
- There should be no time limitation for claiming tax adjustment on account of sale returns, cancellations or issuance of credit note.
- Treatment of promotional fee/discounts granted by e-commerce marketplace to vendors: The provisions should lay down whether the vendor is liable to pay any tax on payments received from the e-commerce marketplace on the aforesaid account.

14

Treatment of transactions pertaining to Jammu & Kashmir (J&K): Currently, most of the services provided to J&K are exempt (if place of provision is based on location of recipient) as the state is considered outside taxable territory. Under GST, there is no clarity on whether services provided in J&K would be taxable. If yes, these may increase costs with respect to services provided there. Specific clarification should be provided on this aspect.

15

Transition provisions: In light of the major changes that GST would bring, one of the key areas of consideration is the transition process, both for the government as well as assessees. Transition provisions would need to be structured comprehensively to avoid any ambiguity or disputes. Further, a reasonable amount of time needs to be provided to the assessees for transitioning to the new regime. A few key areas of transition, which require consideration, are given below:

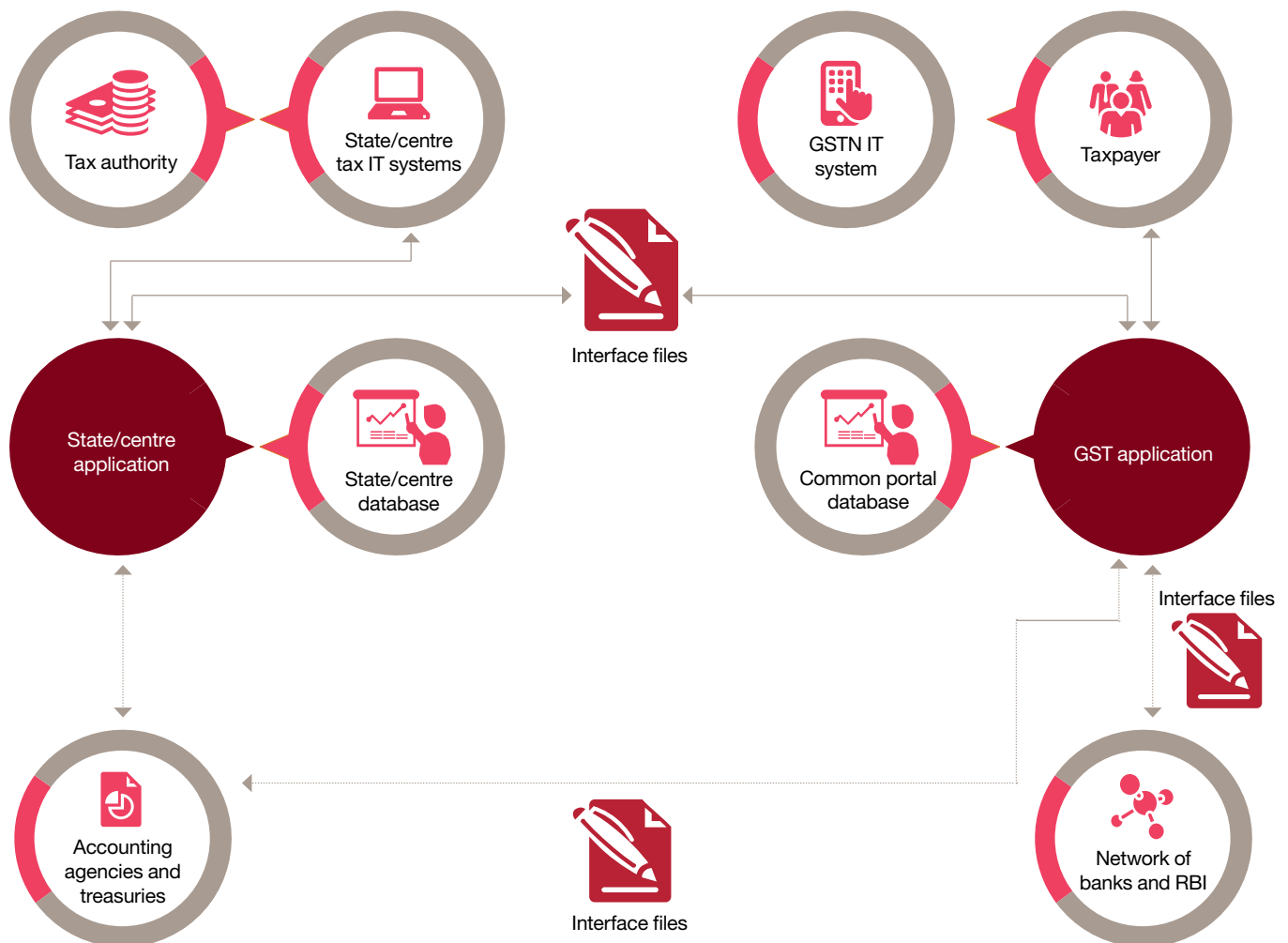
- **Credits:** There is no clarity how existing credits would be transitioned. It is expected that existing credit balance (both for cenvat credit as well as input tax credit) would be allowed to be carried forward. However, in case credit running up to a particular period is allowed to be carried forward, there may be some credit lapse for the assessee (for example, if credit which is only up to 1–2 years old is allowed to be carried forward, credit pertaining to any prior period may lapse and become a cost). Further, for service providers, there is no clarity on how the existing centralised pool of cenvat credit would be distributed among various registrations. In this regard, the following points should be considered:
 - The transition provisions should allow entire credit balance to be carried forward (and there should be no limitation period prescribed). In case credit is not allowed to be carried forward, the balance should be allowed to be claimed as refund by the assessees and the refund provisions should be framed in an easy and assessee-friendly manner.
 - For cenvat credit pertaining to centralised service tax registration/input service distributor, assessees should be provided a choice on how such credit would be distributed among various premises in GST (as there would be separate registrations for all premises in GST). This is imperative because in case all credit is transferred to the head office location, there may be a situation of excess credit at one location and deficit credit at other locations.
- **Refunds:** The transition mechanism for transfer of existing refund claims as well as refund claims to be filed for a period pertaining to a time prior to the introduction of GST legislation should be framed in an easy and assessee-friendly manner. Further, guidelines should be issued for quick disposal of such refund claims.
- **Compliances:** In case a transition period is provided in GST, there may be an overlap in compliances under the existing regime and GST regime. In such a case, the compliances should be standardised and automated across the states so there is no unnecessary burden on the assessees.
- **Point of taxation:** Specific rules should be provided for what the point of taxation would be for supplies (both goods and services) that have taken place prior to the introduction of the GST legislation but for which the invoice is raised or payment is received afterwards.
- **Other points for transition:** There are various other points that need to be considered while framing the transition provisions. These include:
 - **Warranty:** It is applicable for goods sold/services provided in the erstwhile regime and warranty provided in the GST regime.
 - **Periodic supplies:** This is applicable in cases where there is continued supply of goods or services.
 - **Transfer of right to use:** Clear provisions are needed where a right has been transferred and payment is received over a period of time.
 - **Unredeemed vouchers:** Provisions are also needed for vouchers issued in the erstwhile regime by the supplier but which would be redeemed in the GST regime by the receiver.
 - **Retention payments/security deposits:** Taxability of retention payments/security deposits which were collected in the erstwhile regime but paid in the GST regime needs to be clarified.
 - **Credit notes/sales returns/purchase returns:** Treatment of credit notes or return of goods made in the GST regime where the original transaction took place in the erstwhile regime needs to be laid down clearly.
 - **Revision of returns:** Clear provisions need to be provided for filing of return, payment of tax, etc., which pertain to the period prior to the GST legislation.
 - **Transition guide:** A detailed and comprehensive transition guide should be issued, providing for various scenarios and provisions to help assessees for a smooth transition process. This has also been done in various other countries where GST was introduced (such as Malaysia).

Looking forward: Proposed compliances

One of the key highlights of the GST regime is to provide a common portal and standardised compliance across the country in line with the 'one market' concept. The success of GST is equally dependent on a robust IT system for both the revenue and the assessee. For this purpose, the GSTN, which is a special purpose vehicle (SPV), has been set up and is responsible for developing the IT and administrative system for the GST regime. The aims of the GSTN include providing

common registration, return filing, and e-payment facilities as well as ensuring integration of the GST Common Portal/state with the existing tax administration systems of the central/state governments and other stakeholders.

Below is a diagram explaining the broad contours of the GSTN and how the IT system will work for the government as well as the assesseees:



There will be a common GST portal, which will act as an interface between the tax authorities and GST dealers, where dealers will file/submit all the necessary information, apply for registration and submit other details, file returns and pay tax. The portal will act as an interface to forward the registrations, returns and payment information to the central

and respective state tax authorities. It will also provide the assesseees with a dealer ledger through which they can view a consolidated summary of the tax liability, payment history, input tax credit entitlement and utilisation (set off against tax liability).

Registration

Framework

- GST registration is imperative in order to collect GST as well as claim input tax credit.
- Threshold: There will be a threshold of gross annual turnover, including exports and exempted supplies (to be calculated on an all-India basis), wherein any person engaged in the supply of goods or services or both may not be required to register. Such a threshold will be on a pan-India basis. A person below the threshold may also obtain registration, in which case he will be allowed to enter the credit chain. The threshold limit is not applicable for interstate transactions and reverse charge mechanism (RCM), and the registration will have to be obtained by a person carrying out an interstate transaction or who is liable to pay tax under the reverse charge mechanism.⁵
- Compounding scheme: Dealers may be allowed to get registered under a compounding scheme. Under this scheme, the registered person can opt to pay tax at a specified percentage of the turnover without entering the credit chain up to one compounding turnover. Such registered persons will neither be allowed to collect tax from their customers nor claim any input tax credit.
- As per a report issued by the Department of Revenue, a non-registered person can obtain registration for a limited period as a casual dealer. Further, a person registered in one state can obtain registration in another, even without any presence in the other state, as a non-resident dealer. In this case, such a person will be required to pay tax in advance and claim credit on procurements.
- All other taxable persons will be required to undergo

GST registration. Such persons will be able to take the credit of taxes paid on inputs/input services/capital goods and pass on the credit of GST to their customers/recipients of goods or services or both.

- Existing registered persons shall be migrated to the GST portal.
- The registration number is expected to be a statewide PAN-based 15-digit number.

Number of registrations

- Registration may be required to be obtained in states where the assessee has a place of business and from where the goods/services are supplied. Hence, where the assessee has a place of business in four states from where services are provided throughout India, registration may be required in all four states. Another alternative is that because GST is a consumption-based tax, registration may be required in all states where place of supply exists. If the place of supply is based on the location of the customer, the registration may be required in all states where the customer is located, which will lead to an increase in compliance obligations. However, there are no clear instructions on registration requirements.
- The concept of centralised registration in the current service tax regime may not exist and hence, e-commerce companies may be required to register multiple times.
- Multiple registrations within one state to business verticals of a taxable person may also be permitted, subject to specified conditions.

⁵ As per a report issued by the Department of Revenue on registrations.



Anticipated procedure for obtaining registration

New applicants:

- New applicants need a standard registration form for obtaining registration. The application is to be filed within 30 days of being liable to pay tax.
- If the registration is required in more than one state, it is anticipated that there will be a system/form through which more than one registration can be obtained at the same time, subject to the provision of relevant information. Furthermore, additional places of business may be allowed to be included in each registration (per state).
- Since the registration will be automated, the assessee may be required to upload specified documents such as documents substantiating the constitution of entity, proof of place of business, bank account details and details of the authorised signatory.
- The application may be required to be signed digitally. In the absence of a digital signature, a system of manual submission may be permitted. The application form is to be forwarded by the GSTN portal to the IT system of the state/central authorities along with the supporting documents. Both central and state authorities will be required to approve the application within a specified time, after which the application may be approved.

Existing assessee:

- Existing registrants are those who are either registered with a state or with the Centre or both.
- It is anticipated that the GSTN will migrate the existing data by itself and generate the registration number.
- Existing VAT/excise registrations: If PAN is validated, the Goods and Services Tax Identification Number (GSTIN)

will be generated and sent to the respective state tax authorities. After the communication of the GSTIN to the taxpayer, they will be required to fill the remaining necessary data, if any, on the GST portal.

- Existing service tax registrations: Taxpayers will be asked to intimate the states about where they want to get registered. The GST portal will generate the GSTIN and communicate it to the service tax authorities and the taxpayer. After this, the taxpayer will be required to fill the remaining required data, if any.

Recommendations

- The concept of centralised registration should preferably be continued for service providers (including e-commerce companies). This will be in line with the current practice and will ensure ease of compliance.
- E-commerce service companies (which only facilitate sale of goods on online portals) should not be required to register in all the states where goods are sold through their portals. The current requirement or demand being raised in a few states—for e-commerce companies to take VAT registration—is a huge hurdle and requires various forms of compliance. Since the GST portal will be fully automated, the movement of goods from dealers to customers may be tracked; hence, there should be no requirement for e-commerce companies to obtain registration and account for sale of goods taking place through their portals.



Payment of tax

- It is anticipated that tax will be required to be paid prior to filing the return (which will typically be monthly).
- Tax may be required for each registration (in each state) separately. However, a standardised challan format across India is expected. The mode of tax payment can be online or offline (through banks).
- In the case of imports, it is anticipated that IGST will also be required on the basis of frequency of returns alone and not at the time of the import itself (unlike the current customs duty). However, clarity on this is awaited.
- Tax can be paid by utilising input tax credit, which is available in the ledger of the dealer on the GSTN.
- The report issued on the GST process for payment of tax states the following:
 - GST payment is allowed only by way of a challan. No other means of payment (e.g. by book adjustment in case of government departments or by debit to export scrips, etc.) is to be allowed.
 - Challan is to be generated only from GSTN; manual challan is not to be used.

The three modes of payment:

- Internet banking or through debit/credit card
 - Over-the-counter through authorised banks
 - Through NEFT/RTGS
- The proposed four main accounting codes are CGST, SGST, IGST and additional tax. Moreover, the five subcodes for each accounting code are tax, interest, penalty, fee and other receipts.

Recommendations

- There should be standardised challan formats and accounting codes for payment of tax across all states.
- Specific provisions should be provided for adjustment/refund of tax paid incorrectly or in excess in another state by mistake.
- Tax payments are required to be made monthly. However, in various cases, sales and purchases may not be booked in the systems (due to delay in accounting). Specific provisions should be provided in such cases, and interest/penal provisions should not be harsh in case of bona fide reasons for delay in the payment of tax.



Returns

The Department of Revenue has released its draft process on the return process. The key features are as follows:

- There will be a standardised form of return for all states. All returns need to be filed electronically.
- There will be one common return for CGST, SGST, additional tax and IGST. It is to be filed separately per registration (per state).
- Eight return formats have been notified:

Sr. no.	Return	For	Due date	To be filed by
1	GSTR 1	Outward supplies made by the taxpayer (other than compounding taxpayer and input service distributor [ISD])	10 th of the next month	All regular taxpayers and casual/non-resident taxpayers
2	GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	15 th of the next month	All regular taxpayers and casual/non-resident taxpayers
3	GSTR 3	Monthly return (other than compounding taxpayer and ISD). This return will be auto populated based on other returns, i.e. it will be filed automatically.	20 th of the next month	All regular taxpayers and casual/non-resident taxpayers
4	GSTR 4	Quarterly return for compounding taxpayer	18 th of the month next to quarter	Compounding taxpayers
5	GSTR 5	Periodic return by non-resident foreign taxpayer	Last day of registration	Non-resident taxpayers
6	GSTR 6	Return for ISD	15 th of the next month	
7	GSTR 7	Return for tax deducted at source (TDS)	10 th of the next month	
8	GSTR 8	Annual return	By 31 December of next FY	All regular taxpayers (simple annual return to be filed by compounding taxpayer; format not notified)

- Revisions of returns are not permitted.
- GSTN will maintain ledgers of ITC claim, cash payment and liability of the assessee online.
- Quantity-wise details to be provided in the annual return.
- All unreported invoices of the previous tax period are to be reflected in the return for the period in which they are proposed to be included.
- The debit note/credit note details will have provisions to record original invoice data to link it with the original invoice.
- In case the tax is not paid, the return may be allowed to be uploaded, but the data uploaded will not be considered for matching of data, inter-government fund transfer, etc., unless the tax is paid.
- GSTN will maintain ledgers of ITC claim cash payment and liability of the assessee online.

Invoice-wise details for all B2B supplies and interstate B2C supplies (option to file summary of statewise supplies for

interstate B2C supplies for invoices below 250,000 INR per invoice available instead of submission of all the invoice-wise details) to be provided in GSTR 1. In case of intrastate B2C supplies, consolidated supply details are to be uploaded.

Recommendations

- Return filing should not be kept dependent on filing of data/return by the counterparty as one party should not be penalised if a third party does not comply with the provisions or files incorrect details.
- Returns should be allowed to be revised in case of bona fide mistakes and within a reasonable period of time.
- Any omissions/incorrect details should be allowed to be rectified during filing of annual return and there should be no penal implications in the case of bona fide disclosures.

Input tax credit

The GST regime is being introduced to ensure a seamless credit chain. Unlike the current regime, cross-utilisation of credits will be allowed between goods and services. Furthermore, there will be minimal credit restrictions to continue the credit chain.

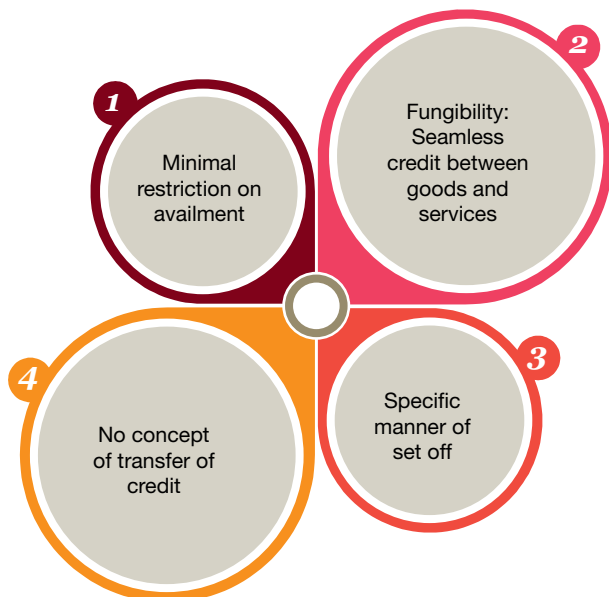
Providing a continuous flow of credit is one of the cornerstones of the GST regime. By ensuring an uninterrupted and coherent credit chain, the current bane of loss of credit is expected to be eradicated.

It is anticipated that there will be minimal credit restrictions and credit will be allowed to be availed of on a majority of goods as well as services. This will be in line with the proposed approach of increasing the output tax base and providing a wider input credit mechanism.

There is no clarity available yet on whether there will be any bifurcation of the nature of credits such as inputs, input services and capital goods.

However, cross-utilisation of credit will only be allowed in a specified manner:

Nature of levy	Leviable on	Adjustable against (in specified order)
CGST	<ul style="list-style-type: none"> Local supply of goods/services 	<ul style="list-style-type: none"> CGST IGST
SGST	<ul style="list-style-type: none"> Local supply of goods/services 	<ul style="list-style-type: none"> SGST payable on local sale in the same state IGST
IGST	<ul style="list-style-type: none"> Interstate supply of goods/services Imports into India 	<ul style="list-style-type: none"> IGST CGST SGST



For e-commerce companies, cross-utilisation of credits will be highly beneficial as the current input costs (which were non-creditable) will now be allowed to be utilised. Here are some examples:

- Service e-commerce companies will be eligible for input credit on purchase of goods (which is currently non-creditable).

- Traders selling goods through e-commerce portals will be eligible to claim input tax credit on services received against the output on the sale of goods (which is currently not available).

It will be imperative to analyse the interplay between the credit availability and output rate of GST to analyse the net impact on pricing.

Transfer of credit

The Department of Revenue, in its report on the GST process for registration, has recommended that the concept of input service distributor may continue for common services by obtaining GSTIN, but this is yet to be made clear.

In case the concept of ISD does not continue, transfer of credit between two registrations may not be allowed (unlike the current system of ISD). In such a case, the IGST, CGST or SGST credit available in one registration cannot be set off against the output liability of another registration, and this may also not be allowed to be transferred to another registration. In other words, a concept like an ISD, where an office of one entity is allowed to distribute credit to other office locations, may not exist. This may be a potential issue as it can lead to credit accumulation in one location, which may not have sufficient output liability.

Recommendations

Concept of distribution of credit between offices of the same entity should be continued (credit of at least IGST and CGST being central levies should be allowed to be transferred). Furthermore, the procedure for transfer of credit should be simplified and should also be allowed for transfer of credit of goods.

Waybills

Waybills are currently required under most of the state VAT legislation, during movement of goods into or outside a state. The e-commerce industry is currently facing various issues on the movement of goods from one state to another. Business is being impacted due to issues regarding waybills, transit forms, seizure of goods at check-posts, etc.

It is anticipated that the requirement of waybills may be dispensed to ensure a 'one market' concept. Since GST aims at being a unified tax across India, waybills and transit forms can be eliminated. Furthermore, since all purchases and sales would already be linked to the GST portal, there may not be any requirement of waybills as all movement of goods can be tracked on the GST portal itself.

Recommendations

- Since GST aims at being a unified tax across India, elimination of waybills and transit forms should be ensured. This will also facilitate the ease of doing business.
- Even if documents are required to track inward and outward movement of goods, the forms should be standard across India for ease of compliance and the same should be electronic and completely automated.

Statutory forms

Currently, the VAT/CST legislation provides various statutory forms in the case of various transactions. A complete exemption or reduced concessional rate of tax is allowed on provisions of such statutory forms.

GST aims at providing a seamless credit chain in which the majority of outputs will be taxed and complete credit may be available on the input side. In light of this, to continue the credit chain, the concept of statutory forms may be done away with as credit of tax paid on such transactions should be available. The report issued by the Department of Revenue also provides that in case of supplies to special economic zones (SEZs) or supplies made for goods/services to be exported, the input tax paid will be available as refund (as against outright exemptions). However, further clarity on this is awaited.

Assessments and audits

Currently, assessments of dealers registered for VAT/CST are carried out by the state VAT authorities in most states for each financial year. Further, under excise duty and service tax, there is no concept of assessments, but regular audits are carried out by the authorities to ensure accuracy and compliance.

Under the GST regime, the self-assessment regime will continue as assesseees will be required to file monthly returns on their own. The sales/purchase will automatically be verified on a monthly basis by comparing with the returns filed by vendors/customers. The number of registrations may increase and a requirement to undertake multiple assessments/audits can arise. There is no clarity on how these assessments/audits can be conducted.

To ensure that these processes do not burden the assesseees, it is important for the following aspects to be clearly spelt out in the GST legislation:

- Definite areas/aspects/parameters that can be assessed/audited by the authorities: This is required to ensure there is a curb on unnecessary information/documentation demanded by the assessing authorities.
- Possibility of only one authority assessing one assessee across India: This is to ensure there is limited physical interface between the assessee and the authorities.

Recommendations

Common assessment for CGST, SGST and IGST for each registration: One assessment should be carried out for one registration irrespective of whether the transaction is intrastate or interstate. This will help in avoiding duplication and will ensure easier compliance. Further, there should be defined parameters for which authorities have the power to assess/audit.

Refunds

The report on the GST process for refunds provides that refunds will be available in following cases:

- Excess payment of tax due to a mistake or inadvertence
- Export (including deemed export) of goods/services. No exemption on inputs/input services will be provided and the same will be required to be claimed as a refund.
- Finalisation of provisional assessment
- Refund of pre-deposit, including refund arising in pursuance of an appellate authority's order
- Payment of duty/tax during investigation but less liability arises at the time of finalisation of investigation/adjudication
- Refund of tax payment on purchases made by UN bodies, supplies to canteen stores department (CSD) canteens, paramilitary forces canteens, etc.
- Tax credit on inputs used for manufacturing/generation/production/creation of tax-free supplies or non-GST supplies
- Refund of carry-forward input tax credit: ITC accumulated due to inverted duty structure will be refunded.
- Refund on account of year-end or volume-based incentives provided by the supplier through credit notes: Application to be filed along with certification and input tax credit at the buyer's end and output liability at the supplier's end to get reduced simultaneously; important for e-commerce entities for year-end as well as volume discounts
- Tax refund for international tourists

The following key points have been mentioned for the refund process:

- Focus of the refund process is to grant refunds with the least possible submission of documents and ensure easy process
- Refund application to be submitted online in the prescribed format within one year from the prescribed relevant date along with other supporting documents
- CA certificate required if refund exceeds specified limit (in other cases, self-certification will be sufficient)
- Option to file refund application either on the GSTN portal or through respective state/central tax portals
- Preliminary scrutiny of refund applications to be carried out within 30 working days
- Refund to be paid by the government electronically through NEFT/RTGS/ECS
- For refund in excess of specified amounts, pre-audit of refund application has to be carried out
- Recommended rates of interest: For delayed payment of refund @ 6% and for default in payment of GST @ 18%
- Interest on refund to be payable from the last date when refund should have been sanctioned
- GST law may provide for adjustments of refund claims with outstanding tax demands

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The Internet and Mobile Association of India (IAMAI) is a young and vibrant association with ambitions of representing the entire gamut of digital businesses in India. It was established in 2004 by leading online publishers, but in the last 11 years, it has come to effectively address the challenges facing the digital and online industry, including mobile content and services, online publishing, mobile advertising, online advertising, e-commerce and mobile and digital payments among others.

Eleven years after its establishment, the association is still the only professional industry body representing the online and mobile value-added service (VAS) industry in India. The association is registered under the Societies Act, 1896, and is a recognised charity in Maharashtra. With a membership of 190 plus Indian and MNCs in Delhi, Mumbai and Bengaluru, the association is well placed to work towards charting a growth path for the digital industry in India.

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