

ICAI Nagpur Branch
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GST
GOODS & SERVICES
TAX
BROAD CONCEPTS

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- **Present Indirect Tax Structure in India.**
- **Enabling Constitutional Amendments.**
- **Destination Based Tax System.**
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- **Levy & Composition**
- **Definitions : Business, Goods, Services, Taxable Person.**
- **Role of GST Council**

INDIRECT TAX STRUCTURE IN INDIA

Three Tiers of Government

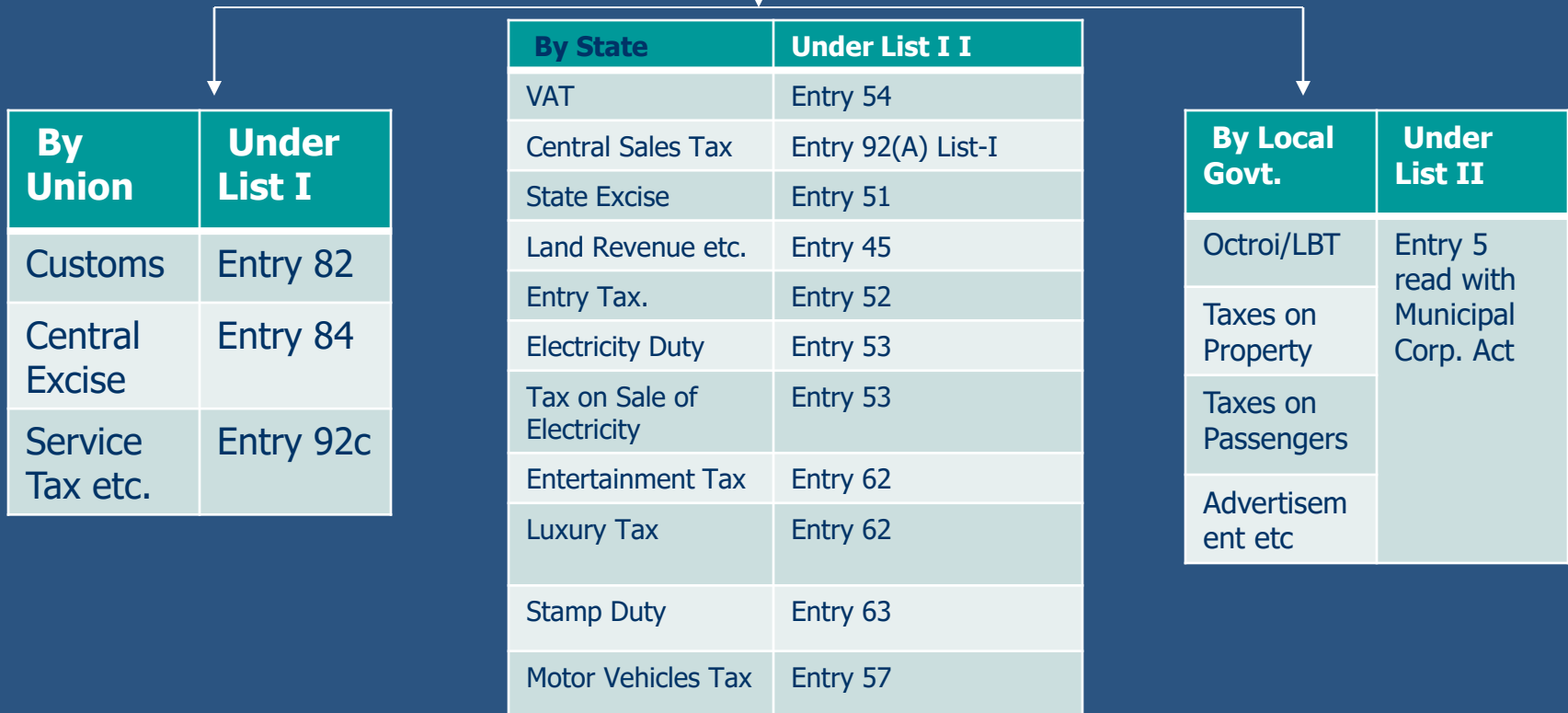
* Union

* State

* Local

• Union & State Taxation Powers are in List I & List II respectively of the 7th Schedule. List 3 Common

• Main Indirect Taxes



ENABLING CONSTITUTIONAL AMENDMENT

Pre GST Regime :

- ✓ Central Govt. cannot impose tax on goods beyond manufacturer or production of goods.
- ✓ Services are in the exclusive domain of the Central Govt.
- ✓ State Govts. have got a power to tax the sale and purchase of goods (Excluding Inter State Sales, Imports, Exports)

THUS

In order to enable the union to levy the tax beyond manufacture of goods and upto final sale of goods (for consumption) and the state to tax the services constitutional amendment was necessary.

CONSTITUTION (101 AMENDMENT) ACT, 2016

- It was passed by Rajyasabha and was cleared by the Loksabha unanimously on 8th Aug., 2016.
- The Constitution (101st Amendment Act, 2016) has been published on 8th Sept., 2016 , after receiving the assent of the President and is brought into force on 10/09/2016 (Article 279A) and entire act on 16.09.2016.
- Major sections of this act are section 2,9,12,14,17,which are discussed.

1. INSERTION OF ARTICLE 246A

- By Section 2 of the Act, a new article 246A has been inserted to specifically provide for special provisions with respect to Goods and Services Tax Act.
- Now the Parliament/Legislature of the every State shall have power to make laws with respect to goods and services tax imposed by the Union or by the State.
- To tax supply in the course of Inter-State Trade and Commerce powers are only with Union.

2. INSERTION OF ARTICLE 269A

- By Section 9 of the Act a new article 269A has been inserted under which Parliament will have exclusive power to make laws with respect to GST where the supply of goods/services/both take place in the course of Inter State trade or commerce.(IGST Law)
- Goods and Services Tax on the supplies in the course of Inter-State Trade or Commerce to be levied and collected by the Govt. of India and to be apportioned between the Union and the State as provided by Parliament by law on recommendation of GST Council.

2. INSERTION OF ARTICLE 269A

- Supply of goods or services or both in the course of import shall be deemed to be supply of good/services/or both in the course of Inter-State Trade or Commerce.
- Parliament may by law formulate the principles to determine the place of supply which takes place in the course of Inter-State Trade or Commerce.

3. INSERTION OF ARTICLE 279A

- By section 12 of the Act a new Article 279A is inserted to the Constitution to form *Goods & Service Tax Council*.
- Formation of Goods and Services Tax Council and its role. The Constitution and Role is being discussed in later slides.
- Union Finance Minister will be the Chairman and minister of State for Finance in Union Government and Finance Minister of All State/Union Territories will be members.
- The quorum of the GST Council for its meeting will be one half of the total members of the GST Council.
- The GST Council shall determine the procedure in performance of its functions.

3. INSERTION OF ARTICLE 279A

- Decision of the GST Council is to be taken in the meeting by a majority.
- The Majority is of not less than $\frac{3}{4}$ the of the weighted votes of the members present and voting.
- For counting majority, the vote of the central government will have a weightage of $\frac{1}{3}$ rd of the total votes cast and the votes of all state governments taken together shall have weightage of $\frac{2}{3}$ rd of the total votes cast.

3. INSERTION OF ARTICLE 279A

- GST Council shall-

 establish a mechanism to resolve any *Dispute*
- Between the Govt. of India & one or more States
- Between Govt of India and any state or states on one side and one or more other states on opposite sides
- Between two or more states arising out of the recommendations of the council or implementation thereof.

4. AMENDMENT IN ARTICLE 366

- By section 14 of the Act, Amendment in Article 366 of the Constitution are carried out.
- Clause 12(A) a new definition of “goods and service tax” is inserted to mean tax on any supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption.
- Clause 26(A) a new definition of “Services” is inserted to mean anything other than goods
- By Clause 26(B) a new definition of “State” is inserted which mean to include a Union Territory with legislature for the purpose of GST only.

5. AMENDMENT IN LIST I & II

- Amendments in List I (Union List)
- Entry 84 amended so as to reduced the power of Centre to levy duties of excise only on limited products (i.e. petroleum products & tobacco products)
- Entry 92 under which omitted centre had powers to levy tax on news paper and on advertisements published therein is
- Entry 92C under which omitted centre had powers to levy tax on inter state transactions is

5. AMENDMENT IN LIST I & II

- Amendments in List II
- Entry 52 omitted.
- Earlier Entry 52 empowers State Govt. to levy tax on entry of goods into local area for consumption, use or sale therein.
- Entry 54 under which State had powers to levy tax on sale or purchase of goods is amended. Now States are empowered to levy tax only on sale or purchases of Liquor products & petroleum products.
- Entry 55 omitted.
- Earlier Entry 55 empowers State Govt. to levy tax on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.
- Entry 62 amended so as to include Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council

OTHER KEY POINTS OF CONSTITUTIONAL AMENDMENT ACT, 2016

- Centre and the States, both have powers to make laws with respect to levy of taxes on supply of both goods and services. However, the Parliament will have exclusive powers to make laws with respect to goods and services tax where the supply of goods, or services or both takes place in the course of inter-State trade or commerce ;
- CGST collected from Intra-State trade or commerce shall be assigned to States in accordance with law formulated by the Parliament on recommendation of GST Council ;
- IGST collected from Inter-State Trade or commerce shall be apportioned between the Union and the Destination State or States on the recommendations of the GST Council.
- The President of India will constitute GST council;

OTHER KEY POINTS OF CONSTITUTIONAL AMENDMENT ACT, 2016

- Petroleum products are presently outside the ambit of GST. However, GST Council will recommend the date on which the GST would be levied on such products.
- GST Council shall establish a mechanism to adjudicate any dispute between the Centre and the State(s) or two or more States;
- The Parliament will provide compensation to the States for loss of revenue arising on account of implementation of the GST for a period of five years on the recommendations of the GST Council;
- List III (Concurrent List) is amended so as to empower both Centre & State Government to levy tax.

A DESTINATION BASED TAX

- **INDIRECT TAXES CAN BE EITHER ORIGIN BASED OR BE DESTINATION BASED.**
- **IN ORIGIN BASED TAX SYSTEM TAX IS LEVYED AT THE STAGE OF ORIGIN.**
- **IN DESTINATION BASED TAX GOODS/ SERVICES ARE TAXED AT A PLACE WHERE GOODS/ SERVICES ARE CONSUMED.**
- **DESTINATION BASED TAX IS ALSO KNOWN AS CONSUMPTION TAX.**
- **IN DESTINATION BASED TAX, EXPORT ARE ALLOWED WITH ZERO TAXES. WHERE AS IMPORTS ARE TAXED ON PAR WITH DOMESTIC PRODUCTION.**

IMPACT OF DESTINATION BASED GST

- **DESTINATION BASED TAX IS MORE BENEFICIAL FOR THE STATES WHICH CONSUMES MORE GOODS/ SERVICES THAN THEY PRODUCE LIKE UTTAR PRADESH AND BIHAR.**
- **DESTINATION BASED TAX IS NOT ENCOURAGING FOR THOSE STATES WHICH PRODUCE GOODS AS NOTHING ACCRUES TO THEM ON GOODS / SERVICES NOT CONSUMED LIKE MAHARASHTRA, TAMILNADU AND GUJRAT.**

GST IS ESSENTIALLY A DESTINATION BASED TAX.

WHAT IS GST ?

- Goods and Services Tax as name suggests.
- To be levied on supply of goods and services.
- GST is a multistage tax to be imposed at final consumption.
- Levied as a proportion of value added (like VAT).
- CGST & IGST to go to the Consolidated Fund of India.
- SGST to go to the Consolidated Fund of the State.

WHY GST ?

IN PLACE OF PRESENT
SYSTEM

- Multiple taxes lead to **double taxation** and **cascading effect**
- Indian indirect tax structure involving **multiple taxes** not in sync with global practices
- **High cost of tax compliance and double taxation** leads to higher prices of goods & services
- **Lack of uniformity** in provisions and rates
- **High cost of tax collection** leads to lower tax yield to the Government
- Procedural simplification for registering and filing of returns.
- Reduced record keeping.
- Improved tax administration.
- Single registration and identification for assessee both under Central and State GST.
- Improved compliance by tax payers.
- Reduction in unethical practices.
- Improved legal redress system.
- Electronic filing of statutory forms and payments.

- **One taxable event** against multiple events at present. A destination based consumption tax on goods and services "ONE NATION ONE TAX"
- **Comprehensive value added tax** on goods & service; GST to **subsume multiple taxes**
- Expected to **widen the tax base** and lower the effective tax rate on goods ;
- Tax neutrality for business through **Input Tax Credit** mechanism
- Objective is to make India a **common market**

What is the proposed GST?



Important Dimensions

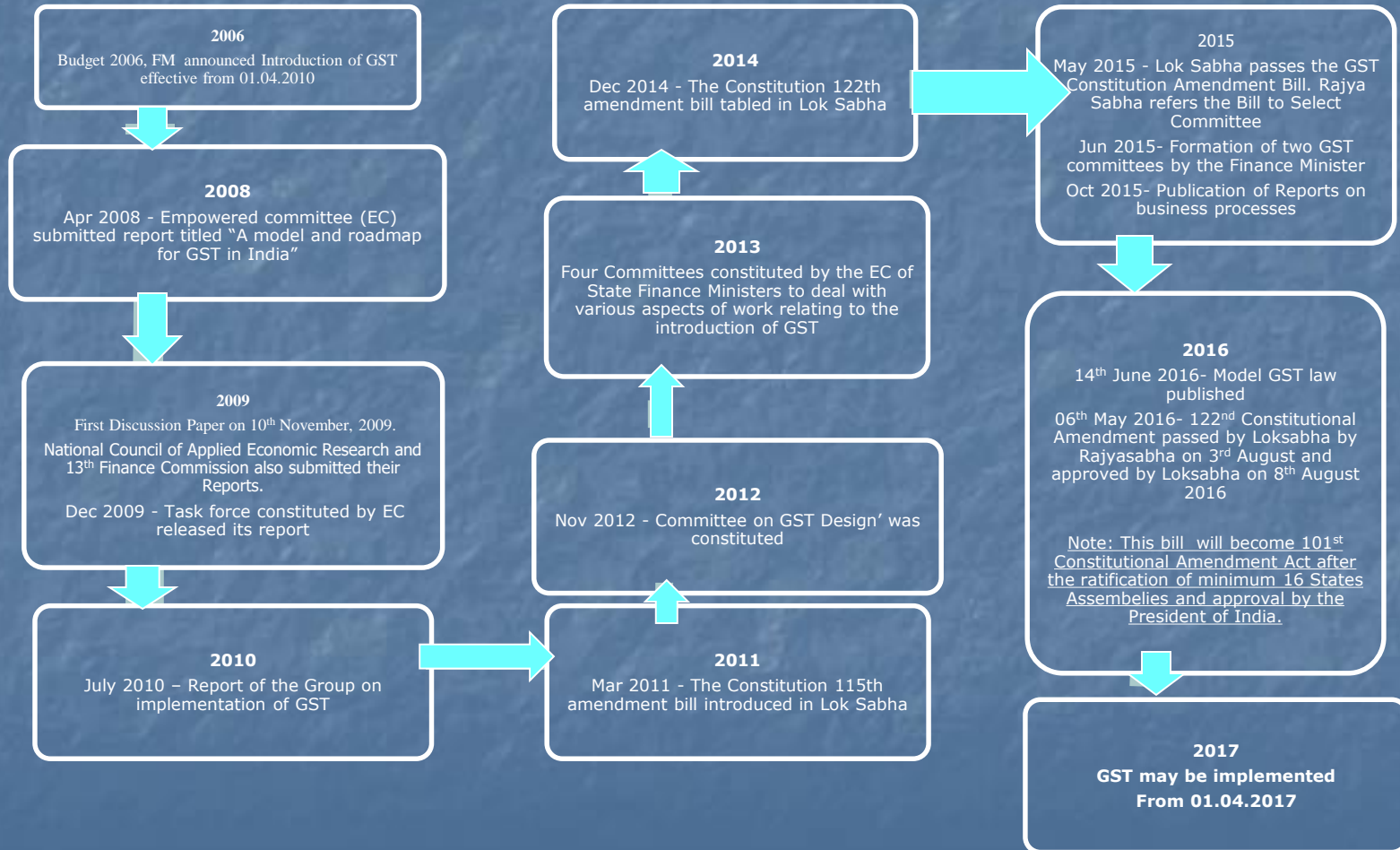
- **Dual GST-** Central GST (CGST) and State GST (SGST) to **be imposed concurrently** on supply of goods and services
- **Inter-State transactions** subject to **Integrated GST (IGST)** which will be generally **aggregate of CGST and SGST**
- **Taxable event is 'supply'** as against manufacture (excise), sales (VAT) and service (service tax)
- **Cross utilization** of CGST and SGST credit not allowed but permitted in respect of IGST
- Exports to be **zero-rated**
- **Imports** would be **subjected to IGST**

ROAD TO GST IN INDIA

INDIRECT TAXES (EVOLUTION)

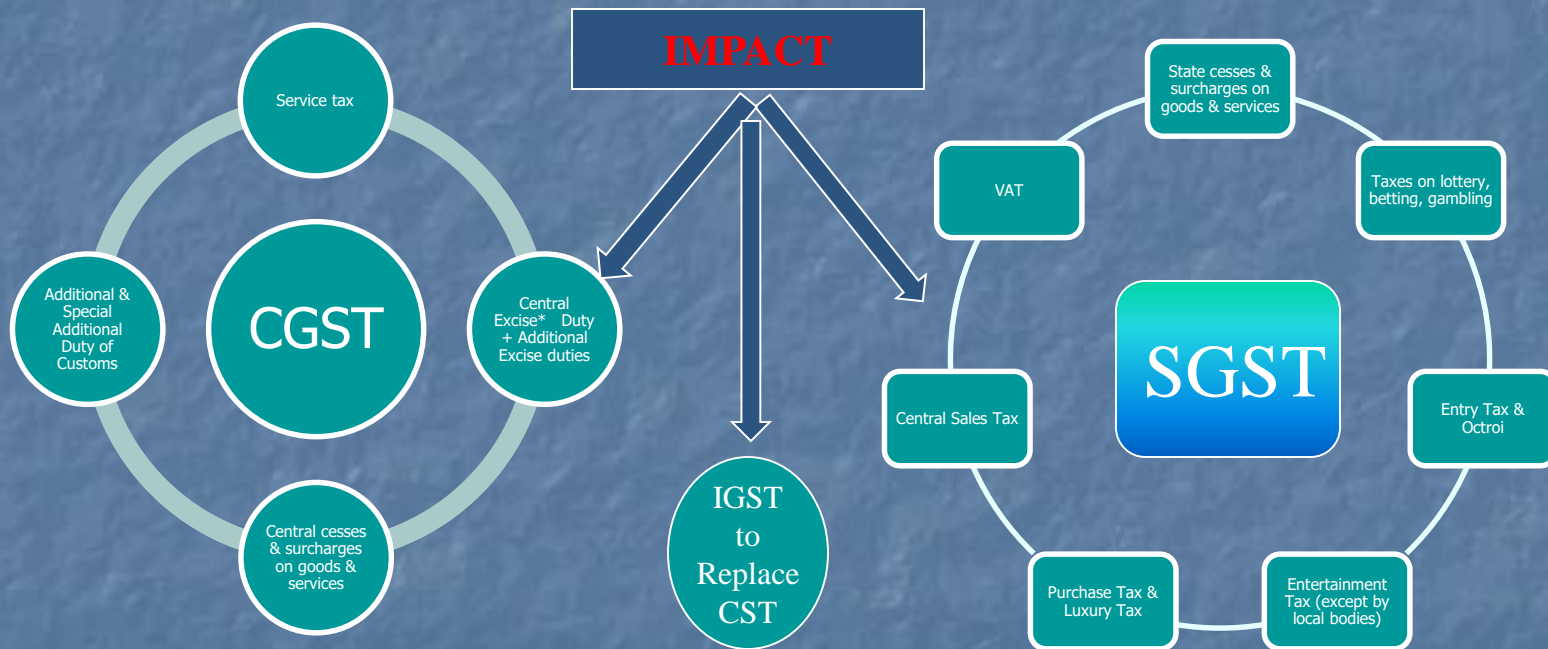
YEAR	LANDMARK/MILESTONE
1939	Sales Tax
1944	Excise
1962	Customs
1985	MODVAT in Excise
1994	Service Tax
1995	Preliminary Discussion for State level VAT
2000	Formation of Empowered Committee of State Finance Ministers for Pan India VAT
2004	Inter Sectoral Credit Introduced
2005 to 2008	VAT Introduced by all States
February 2007	Union FM Announces introduction of GST w.e.f. Apr 2010
July 2012	Paradigm shift in Service Tax by introduction of Negative list
August 2016	GST Constitutional Bill Passed by Parliament
April 2017	Expected Date of Introduction of GST

GST IN INDIA: Journey till Date



GST STRUCTURE

Around 17 Laws to be Repealed/Subsumed



TAXES TO BE SUBSUMMED

GST STRUCTURE

Taxes to Remain post GST



No Clarity about (a) Various cesses & (b) Tax on Sale of Electricity

GOODS AND SERVICES PROPOSED TO BE KEPT OUT OF GST

- Alcoholic beverages, tobacco products and certain petroleum products such as crude, motor spirit including aviation turbine fuel and high speed diesel. Sales Tax/VAT could continue to be levied on alcoholic beverages and Petroleum Products as per existing practices. Excise duty that is levied thereon by States may also not be affected.
- Certain States like Punjab/Kerala/Assam feel that substantial revenue is generated from Purchase Tax. Thus, the tax be kept outside GST.

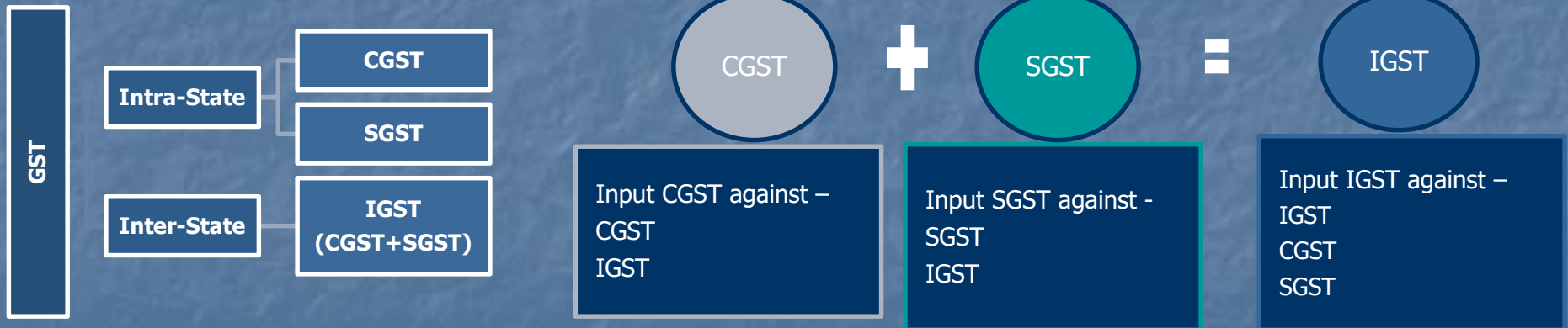
What is Dual GST

Dual GST signifies that GST will be levied by both, the Central Government and the State, on supply of goods or services. Under the Constitution, presently (before 101 Act) the taxing powers were split between the State and the Central. In case of certain transactions, the power to tax is vested with the Central and while in certain others, the power is vested with the State. Under GST, the power to tax on supply of all goods and services will be vested in the hands of both, the State and the Central. In certain cases, such as the inter-State transactions, the power to tax will be vested with the Central Government, while the revenue will in some appropriate manner, get distributed to the States. Considering the dual taxation power to tax transactions under GST, the structure is referred to as Dual GST.

Considering the basic framework of the constitution and keeping its structure intact. Dual GST appears to be Best solution for India scenario.

GST STRUCTURE

GST would be levied by both the Central Government and the State Government on the same transaction, making GST a dual transaction tax structure.(CGST & SGST)



CGST/SGST/IGST

CGST would be levied by the Central Government and will be on value of goods and services. Will subsume Excise Duty/Service Tax/CVD/SAD/Surcharge/Cesses. Basic custom duty will continue.

SGST would be levied by the State Government and will be on value of goods and services. Will subsume VAT/Entertainment Tax/Luxury Tax/Surcharges/Cesses/ Entry Tax (including in lieu of octroi).

Octroi, Stamp Duty, Municipal Levies, Royalties, Electricity Duty may continue. The position of Special Sales Tax Payable in some cases like sale of Electricity. No clarity-should be subsumed.

IGST would be total of CGST and SGST and will be levied on inter-State transaction of sales and services. If SGST rates differ in various States then IGST rate will be as notified under IGST Act in such cases importing State will get credit only of SGST at Standard Rate.

Will replace Central Sales Tax (CST).

How does GST work?

Under GST, every specified supply of Goods and/or Services (as 'covered transaction') would be subject to tax and tax paid on inputs/capital goods/services would be available as input credit.

Supply to include every kind of Supply of Goods and Services for consideration and in some cases without consideration.

Goods: will include all live stock, securities, News Papers etc. which are presently not taxed under VAT Act.

Services : Definition provides services means any thing other than goods. All intangible property and actionable claims will also be services and some deemed sales which were earlier taxable because of Article 366(29B) of the Constitution under VAT will now be services and not as sale and purchase of goods

Impact : Shares & Securities, News Papers, Actionable Claims, Services presently under Negative list (like Bank interest, Education, Health care etc.) will become taxable.

SALIENT FEATURE OF GST

The salient features of GST are given below :

- The basic principle would be that GST would be a consumption based levy. Destination principle would be applicable in normal course. Exceptions in service are bound to be there wherein other criterion such as performance or location may be set out.
- India would implement a dual GST with the tax structure and powers split between the State and the Central.
- GST would subsume all major indirect taxes levied by the Central Govt. i.e. central excise, customs (except Basic Custom Duty) and Service Tax and majority of the taxes levied by the State Government i.e. VAT, luxury tax, entertainment tax, etc. However, taxation of alcohol and narcotics intended to be kept outside G.S.T. Petroleum may be included in GST at later date.

SALIENT FEATURE OF GST

Contd...

- There are multiple rates for goods/services. Recently GST Council has recommended 5 rates of GST (i.e. 0%, 5%, 12%, 18% & 28%). HSN would form the basis of product classification for both CGST and SGST.
- Recently GST Council has proposed that there would be Cess as well as Clean Energy Cess to create a pool for compensating states.
- It has also been proposed that Cess would lapse after 5 years.
- GST will be levied on supply of goods and services and the supplier will be allowed credit for the GST paid on purchases. The credit would be seamless except that the credit of CGST paid will not be allowed for set-off against SGST payable and vice versa.
- If there is any excess credit of un-utilised SGST or CGST it may not be refundable except in case of exports and supplies to SEZ.

- Administered by Three Laws
 - (a) Central Goods and Services Tax Act
 - (b) Integrated Goods and Service Tax Act- lot of changes in present concept of CST Act.
 - (c) State Goods and Services Tax Act
- Local supplies would be subject to Central GST (CGST) and State GST (SGST) at specified rates, while inter-State supplies would be subject to Integrated GST (IGST). Export of goods and services would be zero rated.
- Both the Central Government and State Government will have the authority and control over the assessee. Accordingly, the assessee dealer would be required to pay GST into the specified account of the State/Central and file periodic returns separately with the State/Central Government.
- Distribution of Jurisdiction over the assessee is proposed but yet to be finalised. Broadly assessee under Central Excise and Service Tax would be with Centre and others under State.
- **Concerns** : Number of Returns, Assessment and Appeals & Other Compliances

How GST is different from the current system?

- In the current system, there is plethora of taxes, while GST seeks to subsume majority of them into a single legislation.
- Further, in the current system, the supplier is restricted on taking input tax credit against the output tax payable.
- GST seeks to eliminate/ reduce the effect of cascading of tax by providing seamless credit through the entire chain.
- The current scenario is different in the context of manufacturer, trader and service provider. GST seeks to have common treatment.
- GST will allow seamless flow of credit eliminating or reducing the effect of cascading and seeks to do away with plethora of taxes in the supply chain.
- **Concern** \implies Mismatch Provision

Local Supply (within the State)

Local transaction of supply of goods and/or services dual GST i.e. CGST and SGST will be payable. For example :

Basic value charged for supply of goods or services	10,000
<u>Add</u> : CGST @ 9%	900
<u>Add</u> : SGST @ 9%	900
Total price charged for local supply of goods or services	11,800

Note : In the above illustration, the rate of CGST & SGST is assumed to be 9% each.

The CGST & SGST charged on the customer for supply of goods or services will be remitted by the seller into the appropriate account of the State/Central Government.

Inter-State Supply (from one State to another State)

Inter-State transaction of supply of goods and/or services a single IGST which will be prescribed under IGST law and likely to be equivalent to CGST and SGST. For example :

Basic value charged for supply of goods or services	10,000
<u>Add</u> : IGST @ 18%	1,800
Total price charged for inter-State supply of goods or services	11,800

Note : In the above illustration, the rate of CGST & SGST is assumed to be 10% each.

Inter-State Supply

Contd...

Total IGST will be remitted by the seller into the appropriate account of the Central Government.

The CGST component will go to Central Government and SGST component will be refunded by Central Government to the purchasing State.

The inter-State purchaser will be eligible for credit of IGST.

The exporting State would therefore lose the tax which is being compensated by way of allowing tax on services and compensation from the Centre.

How would imports be taxed under GST?

In the current scenario, imports are subject to basic customs duty, countervailing duty, customs cess and special additional duty in the hands of importer. In the GST regime, imports would be subject to basic customs duty, CGST and SGST. Again in the hands of Importer CGST + SGST would be allowed as set off. Thus effective rate of tax may come down.

Pre-GST		GST	
Basic Customs duty	10.00%	Basic Customs duty (Assumed rate)	10.00%
Countervailing duty	12.36%	CGST (Assumed rate)	10.00%
Customs Cess	3.00%	SGST (Assumed rate)	10.00%
Special Additional Duty	4.00%		
Total duty (Pre GST)	29.36%	Total duty (GST)	30.0%

LEVY OF GST

- Section 7 of the Model GST Law is charging provision of CGST/SGST.
- All intra states (within the state) supplies would be liable to CGST/ SGST.
- All inter state supplies will be taxed under IGST.
- Supply includes both goods and service.
- GST to be paid by a *taxable person*.

LEVY OF GST

- The levy of tax on supply of goods/services can be
 - a) In the hands of provider of supply
 - b) In the hand of recipient of supply (under reverse charge mechanism).
- Reverse charge basis can be on the recommendation of GST Council after a notification specifying the category of supply is taken out (mainly in case of inport).
- Rate of tax under GST will be as specified in schedule.
- Value of supplies will be as determined in Section 15 of the Model GST Law.

COMPOSITION SCHEMES WHETHER CONTINUE UNDER GST?

The model law provides for upper ceiling of gross annual turnover of INR 50 Lakhs with a floor tax rate of 1% across the States for composition scheme. The scheme would also allow option for GST registration for dealers below the compounding cut-off as basic limit is enhanced. This limit may be enhanced.

BUSINESS IN GST

- 'Business' is defined in Section 2 (17) of the model GST law.
- It includes any trade, commerce, manufacture, profession, vocation, or any other similar activity.
 - Even professions like Medical, Architecture, Law, Accountancy will get covered.
 - Thus Chartered Accountants will be within GST.*
- It is not necessary that the trade, commerce etc. should be for a pecuniary benefit.
- Capital assets and services in connections with commencement or closer of business is covered.
- Frequency and volume of transactions in the nature of trade, commerce etc. is not relevant. Even a single transaction in the nature of trade, commerce etc. will constitute business.

GOODS UNDER GST

- Goods defined in Section 2(48) of Model GST Law
- Goods to include all kinds of movable property
- Goods to include
 - Securities
 - Growing crops
 - Grass and
 - Things attached to land but agreed to be severed before supply or under a contract of supply
- Movable property *will not include any intangible property*
However, on all intangible properties GST will apply *treating them as 'Service'*
- *Money* and actionable claims still out of purview of goods however actionable claims are covered in definition of services.

SERVICES UNDER GST

- Service is defined in Section 2(88) of model GST law.
- Services defined to mean anything other than goods.
- Services to include intangible property and actionable claim.

Thus the *Double Taxation* of software will go away

- Services will not include money.
Even today *Money* is neither goods nor services.
- Immovable property will get covered in services by implication.
- Banking Services/Dividend Receipts are not outside definition of services.
- Deemed Sales as per 366(29A) of the Constitution will be services.

PERSON LIABLE TO PAY TAX

Section 9 & Schedule III of Model GST Act

- Person liable to pay tax is known as taxable person
- Taxable person means :-
 - i) Person who carries on business at any place/ in India/State and who is registered or required to be registered.

 - ii) Central Government/State Government or local authority will also be a taxable person in respect of all transactions or activities other than activities or transactions specified in Schedule IV.
- **Limit of Turnover : 20 lakhs and for north-eastern states 10 lakhs .**

Exemption:- Agriculturist, Employees providing services to employees, Exempted supply of goods and services, receiving services for personal use (under reverse charge). Section 7(3) is for goods & services both but exemption is only for services.

Deemed to be liable :- Registered under any law which is to be subsume in GST, Persons making Inter-State taxable supply , Casual persons, person liable to pay under reverse charge and all other persons as per clause 5 of Schedule VI

Clause 5 of Schedule VI

Notwithstanding anything contained in Act, The following categories of persons shall be required to be registered under this Act

- (i) Persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1;
- (ii) Casual taxable persons, irrespective of the threshold specified under paragraph 1;
- (iii) Persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1 ;
- (iv) non-resident taxable persons, irrespective of the threshold specified under paragraph 1;
- (v) Persons who are required to deduct tax under section 37 ;
- (vi) Persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;
- (vii) Input service distributor;
- (viii) Persons who supply goods and/or services, other than branded services, through electronic commerce operator, irrespective of the threshold specified in paragraph 1;
- (ix) Every electronic commerce operator, irrespective of the threshold specified in paragraph 1;
- (x) An aggregator who supplies services under his brand name or his trade name, irrespective of the threshold specified in paragraph 1; and
- (xi) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council

GST COUNCIL

GST Council to comprise up of

Chair person :- Union Finance Minister

Vice Chairman :- To be chosen by the GST Council amongst themselves

Members :- MOS in Finance Ministry (Revenue)

:- Finance Ministers of States or any other nominated by the State

Ex-officio Secretary :- Revenue Secretary of the Govt. of India.

Permanent Invitee:- CBEC chairman *who will not be allowed to vote*

ROLE OF GST COUNCIL

- To decide on GST rate, will include finalization of exemptions, and threshold as well.
- To determine the taxes, cesses to be subsumed in GST.
- To prepare a model GST bill, principles of levy etc.
- To fix date on which Petroleum Products will be brought under GST.
- To decide on special provisions for hilly and north-eastern states.
- To frame Rules
- To decide exercise of Jurisdiction over assesseees (whether by Central officers, or by State officers or by both)
- Settle disputes between States/Union etc.

THANK YOU

Any Questions ?