CHAPTER -1

GST IN INDIA- AN INTRODUCTION

OVERVIEW OF TAXATION SYSTEM IN INDIA

What is tax?

A tax is defined as a "pecuniary burden laid upon individuals or property owners to support the Government; a payment exacted by legislative authority. A tax "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority". In simple words, tax is nothing but money that people pay to the Government, which is used to provide public services.

What is Direct tax?

A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons on whom it is imposed. A direct tax cannot be shifted by the taxpayer to someone else. A significant direct tax imposed in India is income tax.

What is Indirect tax?

Its incidence is borne by the consumers who ultimately consume the product or the service, while the immediate liability to pay the tax may fall upon another person such as a manufacturer or provider of service or seller of goods. An indirect tax can be shifted by the taxpayer to someone else.

Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay. All the consumers, including the economically challenged bear the brunt of the indirect taxes equally.

Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property. Earlier, a number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.

Difference between Direct Tax and Indirect Tax

Basis	Direct tax(DT)	Indirect tax(IDT)
Basic character	Taxable person and the person effectively paying the tax(i.e. the final taxpayer) are same. Tax paid to the government cannot be transferred or shifted to another person. E.g. Mr. Y pays income tax to govt., he cannot shift to other person. **DT = tax collected directly from final taxpayer**	Taxable person and the person effectively paying the tax(i.e. the final taxpayer) are different. Tax paid to the government is supposed to be shifted from taxable person to a different person in the price of the goods supplied or services rendered by the former to the latter, who thereby becomes the final taxpayer. E.g. Mr. Y pays GST to govt. he includes GST in his bill, recovers it from customer and thus, effectively shifts it to recipient. **IDT = tax collected indirectly from final taxpayer**
Nature of tax	It is progressive by nature. These are linked to the paying capacity. Rich person is taxed more compared to poor person Eg. Income tax is higher for persons belonging to higher income groups and lower for persons belonging to lower income groups.	It is regressive by nature. These are not linked to the paying capacity. The poor or rich are equally impacted by this and hence considered regressive. Eg. Tax on Diesel consumed from audi car owners to tractors by farmers-tax is equally applicable without considering the fiscal capability of the consumer.

GENESIS OF GST IN INDIA

In the year 2000, the then Prime Minister mooted the conceptof GST and set up a Committee to design a Goods and Services Tax (GST) model for the country. In 2003, the Central Government formed a task force on Fiscal Responsibility and Budget Management, which in 2004 strongly recommended fully integrated 'GST' on national basis.

Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Union Budget (2006-2007), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.

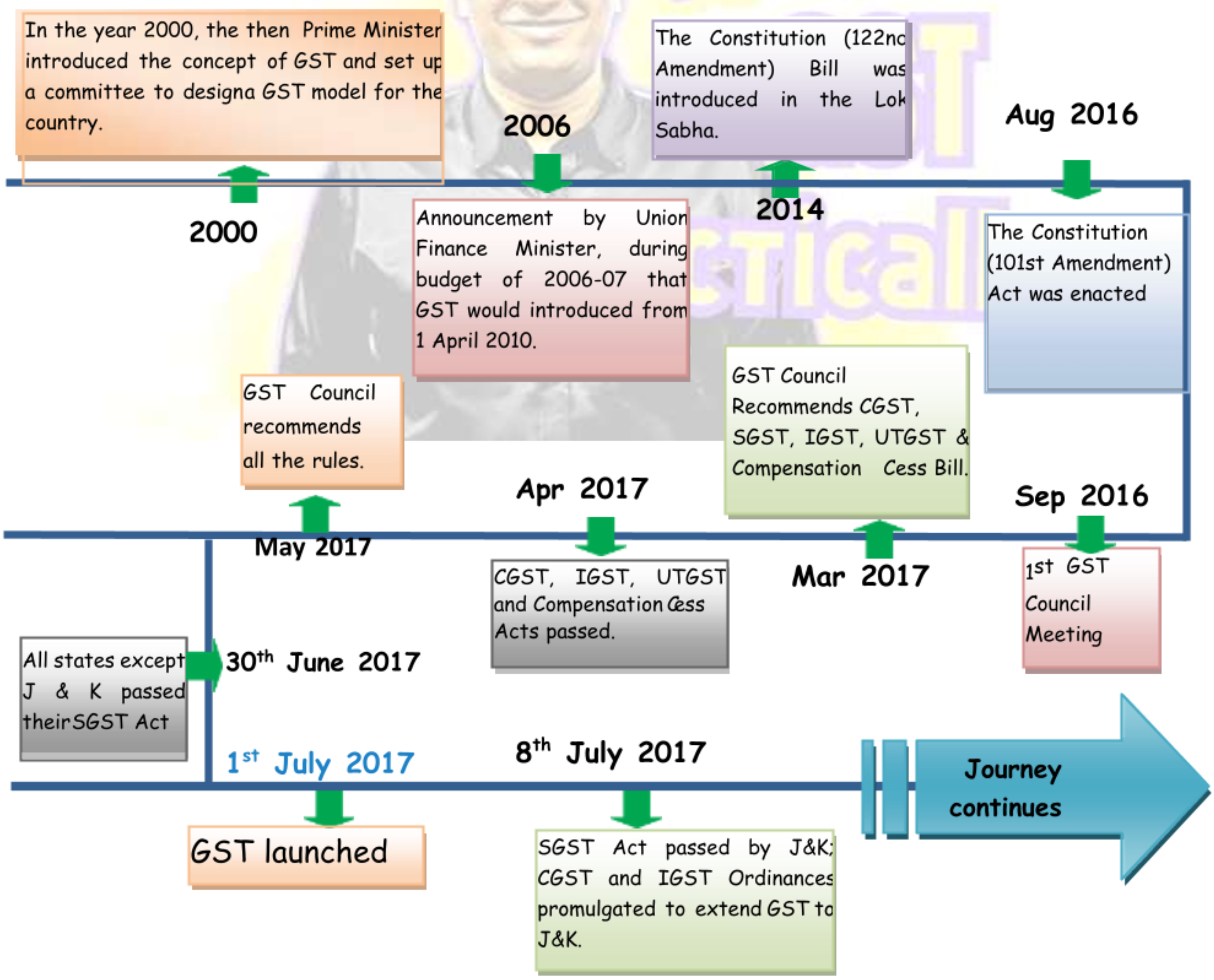
The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th

December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution(122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became the **Constitution (101st Amendment) Act, 2016,** which paved the way for introduction of GST in India.

In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, UnionTerritory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted.

The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws. By 30th June, 2017, all States and Union Territories had passed their respective SGST and UTGST Acts except Jammu and Kashmir. With effect from 1st July, 2017, the historic indirect tax reform - GST was introduced.

GST law was extended to Jammu and Kashmir on 8th July, 2017.



GST is a path breaking indirect tax reform which attempts to create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

VAT and GST are often used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT/GST in 1954. Presently, more than 160 countries have implemented VAT/GST in some form or the other because this tax has the capacity to raise revenue in the most transparent and neutral manner. Most of the countries follow unified GST i.e., a single tax applicable throughoutthe country. However, in federal polities like Brazil and Canada, a dual GST system is prevalent. Under dual system, GST is levied by both the federal and the State Governments. India has adopted dual GST model because of its unique federal nature.

Bihar was the 1st state to adopt GST, despite of the fact that Central and State Governments were different. Bihar is a state where consumption of goods is high due to its high population, but the production is very less as the industries are not much developed in the state. So, Bihar Govt. acknowledged the benefits of GST for their state as it would lead to higher collection of taxes as compared to the previous tax structure.

CONCEPT OF GST

Let us first understand the basic concept of GST.

- **VALUE ADDED TAX**- GST is a value added tax levied on supply i.e., manufacture or sale of goods and provision of services.
- **CONTINUOUS CHAIN OF TAX CREDITS**- GST offers comprehensive and continuous chain of tax credits from theproducer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- **BURDEN BORNE BY FINAL CONSUMER**- The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to bemade by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
- **NO CASCADING OF TAXES**- Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system.
- **CONSUMPTION TAX**- It means that the tax is ultimately borne by customers, not by suppliers (producers, traders or service providers). Business entity, in reality, act as collector of tax of Government.
- **DESTINATION BASED TAX**- GST is based on the principle of destination-based consumption taxation as against the present principle of origin-based taxation. Its revenue is collected by the destination jurisdiction where the goods or services are

ultimately consumed.

	Territory-1 (Place of origin)	Territory-1 (Place of consumption)
Origin based tax	It will tax the transaction.	It will not tax the transaction.
Destination based tax	It will not tax the transaction.	It will tax the transaction.

NEED FOR GST IN INDIA

DEFICIENCIES IN THE VALUE ADDED TAXATION SYSTEM

Under the earlier indirect tax regime, despite the introduction of the principle of taxation of value added in India – at the Central level (in the form of CENVAT i.e. Central Excise) and at the State level (in the form of State VAT) - its application always remained piecemeal and fragmented on account of the following reasons:

- Certain transactions were subject to **double taxation** and were taxed as both goods and services, since under the earlier regime, distinction between goods and services was often blurred. Eg. Earlier software was subject to both service tax and VAT.
- CENVAT did **not include chain of value addition** in the distributive trade after the stage of production. Similarly, in the State-level VAT, CENVAT loadon the goods was not removed. This led to the **cascading of taxes**. Below mentioned example illustrates that under the earlier indirect tax regime, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied.

Under the earlier tax regime, if goods were manufactured for 1000/- and excise duty was payable @ 12.5% and VAT was payable@ 14.30%, the billing was being done as under:

Assessable value of goods under excise law	1000

Excise duty @ 12.5%	125
Taxable value for VAT	1125
VAT @ 14.30%	160.88
Total invoice value	1285.88

- Though CENVAT and State-Level VAT were essentially value added taxes, **set off of one against the credit of another was not possible** as CENVAT was a central levy and State-Level VAT was a State levy.
- **Non inclusion of several local levies** in state VAT such as luxury tax, entertainment tax, etc. hence for a single transaction, multiple taxes in multiple forms were required to be paid.
- **Non integration of VAT and service tax**. Exclusion of services from the tax base of the states potentially eroded their tax buoyancy.
- **Cascading of taxes** on account of-
  - levy of Non VATable CST and
  - inclusion of CENVAT in the value for imposing VAT

Under the earlier tax regime, if a dealer in Delhi purchases goods from a manufacturer in Punjab for ₹1000 + ₹20 (2% CST) = ₹1020/- and sells such goods within Delhi for ₹1200/-.The tax rate onsales is 12.5% and hence output tax liability is ₹150/-. Credit of ₹20/- is not allowed while making payment of ₹150/- and hence the dealer has to pay ₹150 as VAT.

GST- A CUE FOR ILLS OF EXISTING INDIRECT TAX REGIME

- GST addresses most of the above stated issues. Simultaneous introduction of GST at both centre and state levels has integrated taxes on goods and services for the purpose of set-off relief and ensures that both the cascading effects of CENVAT and service tax are removed and a **continuous chain of set-**off from the original producer's point/service provider's point upto the retailer's level/ consumer's level is established.

- The major indirect taxes have been subsumed in the ambit of GST. the erstwhile concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on "supply of goods and/or services".

FRAMEWORK OF GST AS INTRODUCED IN INDIA

(i) Dual GST:

GST has been implemented in India on a **Dual structure model** i.e., the Centre and States simultaneously levy GST, collect and administer GST. Now,the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the Union Territory of Jammu and Kashmir and Ladakh.

(ii) <u>CGST/SGST/UTGST/IGST:</u>

- GST is a destination-based tax applicable on all transactions involving supply of goods or services or both for a consideration subject to exceptions thereof.
- GST in India comprises of –
  - ❑ In case of intra-state supplies of taxable goods and/or services-
    - ➢ Central Goods and Services Tax (CGST) – levied and collected by Central Government
    - ➢ State Goods and Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures
    - ➢ Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures
  - ❑ In case of inter-state supplies of taxable goods and/or services, Integrated Goods and Services Tax (IGST) is levied by the Centre on all inter-State supplies. IGST is the sum total of CGST and SGST/UTGST.

Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as **intra-State supply** of goods or services respectively.

Further, where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as **inter-State supply** of goods or services respectively.

(iii) <u>Legislative Framework:</u> There are total 35 GST Acts in India:

- The Central Goods and Services Tax Act, 2017 for levying CGST
- States Goods and Services Tax Act, 2017 for levying SGST i.e., 28 States and 3 Union Territories with Legislature (Jammu and Kashmir, Delhi, Puducherry)
- The Union Territory Goods and Services Tax Act, 2017 for levying UTGST in 5 Union Territories without State Legislatures (i.e. Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Chandigarh, Ladakh)

- The Integrated Goods and Services Tax Act, 2017 for levying IGST
- The Goods and Services Tax (Compensation to States) Act, 2017 for levying GST Compensation Cess.

(iv) Classification of Goods and Services

HSN (Harmonised System of Nomenclature) is used for classifying the goods under the GST. A new Scheme of Classification of Services has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff). SAC (Services Accounting Code) is used for classifying the services under the GST like HSN for goods.

(v) Composition Scheme

For providing relief to small businesses, manufacturers, service providers, suppliers of food articles, traders, etc., making intra-State supplies, a simpler method of paying taxes is prescribed, known as composition levy.

(vi) Registration

Every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds the threshold limit during a FY.

Different threshold limits have been prescribed for various States and Union Territories depending upon the fact whether the supplier is engaged exclusively in supply of goods, or exclusively in supply of services or in supply of both goods and services. The threshold limit of aggregate turnover prescribed for various States/UTs are as follows:

States with threshold limit of ₹10 lakh for supplier of goods and/or services	States with threshold limit of ₹20 lakh for supplier of goods and/or services	States with threshold limit of ₹20 lakh for exclusive supplier of services/both goods and services and threshold limit of ₹40 lakh for exclusive supplier of goods making only intra-State supplies
Nagaland नाग Manipur मणि Tripura तेरा पूरा Mizoram मज़ा	Sikkim Uttarakhand Meghalaya Arunachal Pradesh Telangana Puducherry	All other States

However, in certain specified cases mandatory registration is required under GST irrespective of the quantum of aggregate turnover.

(vii) Exemptions

Apart from providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on essential goods and/or services.

(viii) Seamless flow of credit

Since GST is a destination-based consumption tax, revenue of SGST ordinarily accrues to the consuming States. The inter-State supplier in the exporting State is allowed to set off the available credit (IGST, CGST and SGST/UTGST)against the IGST payable on inter-State supply made by him.

The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchases made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST regime there is a seamless credit flow in case of inter-State supplies too.

The revenue of inter-State sale does not accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST.

The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST.

There is a specified order in which ITC should be utilized.

First, IGST credit should be utilized towards IGST payment, and then towards payment of CGST and SGST/UTGST in any order and in any proportion.

After entire ITC of IGST is utilized, ITC of CGST should be utilized for payment of CGST and IGST in that order.

Thereafter, ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order.

Note: ITC of CGST cannot be utilized for payment of SGST/UTGST and vice versa. Also, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully.

Example 1

Supply of goods/ services by A to B

Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900

Total price charged by A from B for local supply of goods/ services	11800

Supply of goods/services by B to C – Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilize such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

Value charged for supply of goods/ services (₹10,000 x 120%)	12000
Add: CGST @ 9%	1080
Add: SGST @ 9%	1080
Total price charged by B from C for local supply of goods/ services	14160

Computation of CGST, SGST payable by B to Government

CGST payable	1080
Less: Credit of CGST	900
CGST payable to Central Government	180
SGST payable	1080
Less: Credit of SGST	900
SGST payable to State Government	180

Statement of revenue earned by Central and State Government

Transaction	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Example 2

Supply of goods/services by X of State 1 to A of State 1

Value charged for supply of goods/services	10000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X from A for intra-State supply of goods/services	**11800**

Supply of goods/services by A of State 1 to B of State 2 - Value addition @ 20%

Value charged for supply of goods/services (` 10,000 x 120%)	12000
Add: IGST @ 18%	2160
Total price charged by A from B for inter-State supply of goods/services	**14160**

Computation of IGST payable to Government

IGST payable	2160
Less: Credit of CGST	900
Less: Credit of SGST	900
IGST payable to Central Government	**360**

Supply of goods/services by B of State 2 to C of State 2 - Value addition @ 20%

Value charged for supply of goods/ services (` 12,000 x 120%)	14400
Add: CGST @ 9%	1296
Add: SGST @ 9%	1296
Total price charged by B from C for local supply of goods/services	**16992**

Computation of CGST, SGST payable to Government

CGST payable	1296

Less: Credit of IGST	1296
CGST payable to Central Government	**NIL**
SGST payable	1296
Less: Credit of IGST (₹2,160 - ₹1,296)	864
SGST payable to State Government	**432**

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government	Revenue to Government of State 1	Revenue to Government of State 2
Supply of goods/services by X to A	900	900	
Supply of goods/services by A to B	360		
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by Centre to State 2	(864)		864
Total	**1296**	**NIL**	**1296**

(ix) GST Common Portal

- Common GST Electronic Portal – www.gst.gov.in – a website managed by Goods and Services Network (GSTN) [a wholly owned Government Company] is set by the Government to establish a uniform interface for the taxpayer and a common and shared IT infrastructure between the Centre and States.
- The GST portal is accessible over Internet (by taxpayers and their CAs/Tax

Advocates etc.) and Intranet by Tax Officials etc. The portal is one single common portal for all GST related services.

- The functions of the GSTN include
  - facilitating registration,
  - forwarding the returns to Central and State authorities,
  - computation and settlement of IGST,
  - matching of tax payment details with banking network,
  - providing various MIS reports to the Central and the State Governments based on the taxpayer return information,
  - providing analysis of taxpayers' profile.
- Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.
- Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons*. It is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

*All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹5 crore are required to issue e-invoices w.e.f. August 1,2023.

(x) GSPs/ASPs

- GSTN has selected certain IT, IT enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs have the capability to develop applications to be used by taxpayers for interacting with the GSTN.
- They facilitate the taxpayers in uploading invoice, return filing and act as a single stop shop for GST related services.
- GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

(xi) Compensation Cess

- It is a specified rate imposed on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply.
- It is levied to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST.
- Initially, it was levied for a period of 5 years up to 30th June, 2022. However, its levy and collection has been extended till 31st March 2026.

(xii) GST – A tax on goods and services

GST is levied on all goods and services, except

- alcoholic liquor for human consumption,
- 5 petroleum products-
  - Petroleum Crude
  - Petrol
  - Diesel
  - Natural Gas
  - ATF (Aviation Turbine Fuel)

APPLICABILITY OF INDIRECT TAXES

Particulars	Pre GST	Post GST
Alcoholic liquor for human consumption	State excise + CST/VAT	State excise + CST/VAT
5 petroleum products	Central excise + CST/VAT	Central excise + CST/VAT
Tobacco and Tobacco products	Central excise + CST/VAT	Central excise + **GST**
Opium, Indian hemp and other narcotic drugs and narcotics	State excise + CST/VAT	State excise + **GST**
Services (Domestically)	Service tax	**GST**
Services (Imported from o/s India)	Service tax under Reverse charge	**IGST under Reverse Charge**

Other products (Domestically)	Central excise + CST/VAT	**GST**
Other products (Imported from o/s India)	BCD + Additional duties of customs in lieu of Excise duty & sales tax	BCD **+ IGST**

Real estate sector has been kept out of ambit of GST, i.e., GST will not be levied on sale/purchase of immovable property.

Taxes subsumed in GST

Central Taxes

- Central Excise Duty & Additional Excise Duties
- Service Tax
- Excise Duty under Medicinal & Toilet Preparation Act, 1955
- CVD & Special CVD
- CST Central surcharges & Cesses in so far as they relate to supply of goods & services

State Taxes

- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms) & Purchase Tax
- VAT/ Sales tax
- Luxury Tax
- Taxes on advertisement

GST

BENEFITS OF GST

GST is introduced with a vision to bring benefits to all the stakeholders of industry, Government and the citizens. GST is a win-win situation for the entire country. It is envisaged that GST will accrue following significant benefits to the stake holders:

Benefits to Economy

- **Creation of unified national market**: GST aims to make India a common market with common tax rates and procedures and remove the economic barriers, thereby paving the way for an integrated economy at the national level.
- **Boost to 'Make in India' initiative:** GST has given a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.
- **Boost to investments and employment:** The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input tax on goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will boost investments and Indian exports and subsequently more employment would be generated and GDP would increase.

Simplified tax structure

- **Ease of doing business:** GST has led to simplification and uniformity in tax structure which makes doing business easier.
- **Certainty in tax administration:** Common procedures for registration of taxpayers, refund of taxes, etc. ensures certainty in tax administration across India.

Easy tax compliance

- **Automated procedures with greater use of IT:** The human interface between the taxpayer and the tax administration has greatly reduced thereby leading to speedy decisions.
- **Easier tax compliance:** Harmonization of laws, procedures and rates of tax has made compliance easier and simple. It helped in reduction in compliance costs, alleviate the need for multiple record keeping for a variety of taxes.

Advantages for trade and industry

- **Benefits to industry**: Average tax burden has come down, which has resulted in reduction in prices of goods and services. This has resulted in more consumption, which in turn means more production and thereby boosting the growth of the industries.
- **Mitigation of ill effects of cascading:** GST prevents cascading of taxes by providing a comprehensive input tax credit mechanism across the entire supply chain. It helps in mitigating the ill effects of cascading, improving competitiveness.
- **Benefits to small traders and entrepreneurs:** Small businesses have also been provided the benefit of composition scheme.

CONSTITUTIONAL PROVISIONS

India has a three-tier federal structure, comprising

- the Union Government,
- the State Governments and
- the Local Government.

The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules. Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called ultra vires the Constitution and is illegal and void.

The significant provisions of the Constitution relating to taxation are:

I. **Article 265** of the Constitution of India prohibits arbitrary collection of tax. It states that "no tax shall be levied or collected except by authority of law". The term "authority of law" means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

II. **Article 245** provides the power for enacting the laws. Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

III. **Article 246** gives the respective authority to Union and State Governments for levying tax.

IV. **Seventh Schedule to Article 246:** It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

LIST - 1

Union List

It contains the matters in respect of which the Parliament (Central Government) has the exclusive right to make laws.

LIST - 2

State List

It contains the matters in respect of which the State Government has the exclusive right make laws.

LIST - 3

Concurrent List

It contains the matters in respect of which both the Central & State Government have power to make laws.

Entries 82 to 91 of **List I** enumerate the subjects where the **Central Government** has power to levy taxes.

Entries 45 to 63 of **List II** enumerate the subjects where the **State Governments** have the power to levy taxes.

The Concurrent list does not contain any matter related to taxation. Accordingly, the Union and States have no concurrent power of taxation.

Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.

Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016.

NEED FOR CONSTITUTIONAL AMENDMENT

Introduction of the GST required amendment in the Constitution to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it. Consequently, Constitution (101st Amendment Act), 2016 was passed.

Significant amendments made by Constitution Amendment Act are discussed below in detail:

V. **Article 246A: Power to make laws:**
   - This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State. Article 246A has an over-riding effect over Article 246 of the constitution.
   - Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
   - In respect of the following goods, GST shall apply from the date recommended by the GST Council:
     - Petroleum Crude
     - Petrol
     - Diesel
     - Natural Gas
     - ATF (Aviation Turbine Fuel)

'Goods and Service Tax' has been defined under Article 366(12A) of the Constitution of India to mean any tax on supply of goods, or services or both except taxes on supply of alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.

VI. **Article 248 amended: Residuary powers of legislation amended**

Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List.

Such power shall include the power of making any law **imposing a tax not mentioned in either of those Lists**.

This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to GST.

VII. **Power of Parliament to legislate with respect to a matter in the State List, in the national interest/in case of emergency, extended to GST provided under Article 246A:**

Article 249 and 250 have been amended to grant power to parliament to make laws with respect to the Goods and Services tax provided under Article 246A also along with the matters in the state list, in the national interest/in case of emergency.

VIII. **Article 268: Duties levied by the Centre but collected and appropriated by the States:**

It stipulates that such stamp duties as are mentioned in the Union List shall be levy (by CG) but Collection (by SG) & appropriated by SG. In case of UTs, done by CG.

IX. **Article 268A: Article 268A empowering Union to levy service tax omitted.**

X. **Article 269A: Levy and collection of IGST on inter-State supply**

- IGST shall be levied and collected by CG and shall be apportioned between the Union and the States (31 states).
- Import of goods and/or services into India will also be deemed to be Inter-state supply. This will give power to CG to levy IGST on the import transactions which were earlier subject to Countervailing duties under the Customs Tariff Act, 1975.
- Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter-state trade or commerce.

XI. **Article 270: Distribution of Revenue from Central Taxes between the Centre and the States**

- Distribution of the Revenue (GST) between the Centre and the States **(28 states)**, by order of the President after considering recommendations of the Finance Commission.
- This applies for the tax amounts of CGST and that portion of IGST which are apportioned to CG (It also includes Income Tax).
- The revenue is distributed between Centre and States in the ratio of **59:41**.

Ques. **As per which article revenue from Central taxes is distributed between Centre and States?** **[CA FINAL (NOV 2023)]**

XII. **Article 271: Levy of Surcharge for purpose of Union**

Article 271 of constitution of India provides that Union can levy surcharge on taxes and duties specified in article 269 and 270(i.e on income tax, excise and CST), which will be retained by Union and will not be distributed among States. This will not include surcharge on GST. Thus, even if Union imposes surcharge on GST, it will have to be shared with States.

XIII. **Definitions of 'Goods and Services Tax', 'Services' and 'State' incorporated under Article 366**

Goods and services tax means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.

Services means anything other than goods.

State includes a Union territory with Legislature.

XIV. **Article 286: Restriction as to imposition of GST by State Legislature**

State can't make law imposing GST on

- Supply made outside the State
- Supply made in the course of Import/Export

XV. **GST Council: Article 279A**

COMPOSITION OF GST COUNCIL

Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council). It constitutes:

- Union Finance Minister - Chairperson
- Union Minister of State in charge of Revenue or Finance – Member of Council
- Minister in charge of Finance/Taxation or any other Minister nominated by each State/Union Territory with Legislature – Members of Council (From amongst these Vice Chairperson shall be selected)

SCOPE OF WORK OF GST COUNCIL

GST Council shall make recommendations (Union/States) on the following matters:

- taxes, cesses and surcharges to be subsumed into GST
- goods and services To be subjected to GST
  To be exempted from GST
- Model GST Law
  Principles of Levy
  Principles governing PoS
  Principles of apportionment of IGST
- Threshold limit of Turnover
- Rates of GST (including floor rates)
- Special rates for a specified period - to raise additional resources during any natural calamity or disaster
- Special provision w.r.t. the States of
  - Arunachal Pradesh
  - Assam
  - Manipur
  - Meghalaya
  - Mizoram
  - Nagaland
  - Tripura
  - Sikkim
  - Jammu and Kashmir
  - Himachal Pradesh
  - Uttarakhand

  *[Such States are referred as **Special Category States**]*
- Date from which GST will levied on petroleum crude, diesel, petrol, natural gas and ATF
- Any Other matter relating to GST, as the Council may decide

QUORUM : 50% of Total number of members

DECISION : Majority basis
>= $\frac{3}{4}$ of Weighted votes of members present and voting

WEIGHTAGE OF VOTES :
CG = 1/3
SG (all states taken together) = 2/3

XVI. **Article 368**

- **At least 2/3rd** of the majority in each House of the Parliament and
- ratification by **at least half** of the States is specifically required to make any amendment in Article 279A relating to GST Council.

Thus, practically, union Government has veto power. Any decision in GST Council cannot be taken without consent of Union Government.

Provision of decision with 75% voting means a few states cannot be adamant and block any decision by GST Council. This is a good and sensible provision.