GST Guidance Note -1

Introduction to GST

What this Guidance Note contains?

1.01 What is Goods and services Tax (GST)?

Goods and Services Tax (GST), also known in some countries as value-added tax (VAT), is a tax on consumption that is collected incrementally i.e. based on the value added at each stage of production or distribution. The standard way to implement a GST is to pay GST on the price of the product minus all taxes previously paid on goods and services. Nearly 160 of the world's approximately 193 countries levy some form of VAT/GST.

A perfect value-added tax system aims at eliminating cascading effect of taxes in a supply chain of producer/manufacturer and end consumer. A continuous chain of set-off of earlier taxes from the original producer's point and service provider's point up to the retailer's level is established so that burden of tax is passed on to end consumer, i.e. destination. This is achieved through the mechanism of Input Tax Credit.

India has been following a truncated version of VAT for more than

30 years in Central Taxes (Excise and Service Tax) and since 2005 in State Taxes (VAT and Entry Tax).

1.02 What are the advantages of GST?

GST will help in allowing businesses the benefit of conducting their activities unmindful of taxes or place of manufacture or distribution chain.

The design of law will considerably reduce disallowance/restriction of input tax credits by States due to movement of goods out of the State as stock transfer, or in some cases even in case of sale in the course of inter-state trade or commerce.

GST is particularly important to provide domestic businesses a level playing field vis-à-vis imports and full refund of taxes on exports. This is possible by capturing the full impact of taxes at final stage rather than as embedded costs.

It is expected that the introduction of GST in India will result in the increase of national income by 1 percent to 1.5 percent (USD 20 – 40 billion annually) on a recurring basis.

1.03 What are the unique features of Indian GST?

India has chosen one of the most ambitious form of GST in the entire world. There will be single common market with goods and services moving seamlessly in the entire country. This is achieved through levy of integrated GST on inter-State transfers and imports which will be available as tax credits to the recipients of supplies.

GST is a dual levy in India and the eligible transactions are subject to levy of both Central Tax and State Tax. Integrated Tax is levied by Centre in the case of inter-State supplies and imports/ exports. Certain goods and services are subjected to a further levy of GST Compensation Cess. Supplies to or from Union Territories are treated as inter-State supplies. Supplies within a Union Territory without legislature are charged to UT Tax.

India, at this stage, has chosen a slightly truncated GST keeping certain critical sectors outside GST e.g. Petroleum (5 specified products*) and alcoholic liquor for human consumption. Electrical energy is also kept out of GST by providing absolute exemption from whole of tax vide entry no. 104 of Notification No.2/2017- Central Tax (Rate) dated 28.06.2017.

*Petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel

1.04 Which of the pre--GST taxes are subsumed under GST?

The GST has replaced following taxes:

(i) Taxes levied and collected by the Centre:

- Central Excise Duty
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional Duties of Excise (Goods of Special Importance)
- Additional Duties of Excise (Textiles and Textile Products)
- Additional Duties of Customs (commonly known as CVD) and Special Additional Duty of Customs (SAD)[@]
- Service Tax
- Central Surcharges and cesses as far as they relate to supply of goods and services

[@] Under GST, it is collected as Integrated Tax

(ii) State taxes that have been subsumed under the GST are

- State VAT
- Central Sales Tax (CST)
- Luxury Tax
- Entry Tax (including Octroi and Local Body Tax)
- Entertainment and Amusement Tax (except when levied by the local bodies)
- Taxes on advertisements
- Purchase Tax
- Taxes on lotteries, betting and gambling
- State surcharges and cesses so far as they relate to supply of goods and services.

1.05 Which of the pre-GST taxes are not subsumed under GST?

The GST has not replaced following taxes:

- Taxes currently levied and collected by the Centre:
  - Taxes on income, wealth or gifts (never included in a GST kind of tax)
  - Basic Customs Duty (never included in GST, being tariff barrier)
  - Duty of Excise on tobacco and tobacco products (will be levied over and above GST)
  - Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights
  - Central Stamp Duties
  - Oil Industries Development Act Cess (OIDB Cess) (as petroleum is kept outside GST)
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- State taxes that would not be subsumed under the GST are:
  - Fees in respect of markets and fairs (Mandi fees)
  - Taxes on lands and buildings (property tax)
  - State Stamp Duties
  - Taxes on mineral rights
  - Electricity Duty
  - Taxes on goods and passengers carried by road or on inland waterways
  - Taxes on vehicles (Road Transport Authority)
  - Tolls
  - Taxes on professions, trades, callings and employments
  - Entertainment Tax by local bodies

1.06 Which goods/sectors are kept outside GST?

- Alcoholic liquor for human consumption (already done by Constitution);
- Petroleum crude
- High speed diesel (HSD)
- Motor spirit (commonly known as petrol)
- Natural gas
- Aviation turbine fuel (ATF)
- Actionable claims except lotteries, betting and gambling
- Specified Real Estate
- Securities

[However 'transaction in securities' have been included in the scope of exempt supplies while determining pro rata reversal of input tax credits used for making both taxable and exempt supplies]

- Money

1.07 Is there any possibility of commodities listed in para 1.06 above being subject to GST in future?

Definition of 'goods and services tax' in the Constitution excludes 'supply of the alcoholic liquor for human consumption'. Thus alcoholic liquor for human consumption cannot be subject to GST without making amendment in the Constitution.

GSTC has been empowered under the Constitution to recommend the date on which GST will be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel. The Central Government has been empowered under the GST Act to notify such date on the recommendation of the GST Council. A decision is yet to be taken by the Council to bring these petroleum products under GST.

All other products are strictly not excluded from GST. However GSTC has also decided to exclude land and buildings except those that are supplied before completion or first occupation from GST. Money and securities are usually not taxed in GST and have been kept outside the definition of supply and are unlikely to be included at a later stage. Same is the position with actionable claims except lotteries.

1.08 What would be the status of 'electricity' under GST?

It is now well settled through a catena of judgments from the Apex Court that electricity is 'goods'. There is no Constitutional bar on levy of GST on electricity. Levy of Electricity duty by States on consumption or sale of electricity can co-exist with levy of GST on electricity. The GST Act does not exclude power from GST.

As mentioned earlier, electrical energy is exempt for whole of levy of GST absolutely through notification.

1.09 Whether real estate will be taxed under GST?

Supply of real estate (land, buildings and civil structures) are generally immovable and are subject to levy of stamp duty which has not been subsumed in GST.

Schedule II of the CGST Act, 2017 excludes land and buildings except those that are supplied before completion or first occupation from the ambit of supply of services. Apart from this sale of land and buildings has been listed as one of the transactions that will be treated as neither a supply of goods nor of service under Schedule III of the CGST Act.

However 'sale of land and buildings' have been included in the scope of exempt supplies while determining pro rata reversal of input tax credits used for making both taxable and exempt supplies.

1.10 How do you summarize various taxes after the introduction of GST?

Description	**Pre-GST taxes**		**GST**
	State Taxes	**Central Taxes**	
Alcohol	✓	X	X
Tobacco & Tobacco products	X	✓	✓
Specified petroleum products	✓	✓	X*
Power	✓	X	**
Real Estate	✓	✓ #	Partially

Entertainment and amusement	√	X	X@
Luxury Tax	X	X	✓

* to be applicable from a date to be notified by GSTC;
** included in GST at the statue level but exempted absolutely through notification;
# applicable on service portion only;
@ except by local bodies

1.11 What is GSTC and its functions?

GSTC is the abbreviation for The Goods and Services Tax Council. It is a Constitutional Body created for taking policy decisions about introduction and implementation of GST, including about exemptions, tax rates and tax credits.

Union Finance Minister is the Chairperson of GST Council. The Union Minister of State in charge of Revenue or Finance of the Central Government. And the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are members of the GSTC.

Decisions of GSTC are not binding on legislatures. However, it is expected that both the Centre and States will abide by the recommendations of GSTC. GSTC will devise a mechanism for dispute resolution if any constituent deviates from its recommendations.

GSTC has the powers to allow exceptions or deviations to any tax regime from the agreed mandate in circumstances of exceptional nature e.g. earthquake.

1.12 What is the broad scheme of GST?

Barring exceptions, as provided above, and some exemptions, all goods and services are to be charged to GST. The supplier charges Central Tax and State Tax/ Union Territory Tax in case of intra-State supply of goods and/or services and Integrated Tax in case of inter- State supply.

GST is levied on price agreed between a supplier and the recipient except where such price is influenced or in any other way tainted. A registered tax payer recipient is allowed to take input tax credits of taxes paid to the supplier. This chain of tax credit does not stop till the goods and/or services reach the final consumer.

Import of goods is subject to Integrated Tax and is charged in terms of the Customs Act, 1962 read with the Customs Tariff Act, 1975. Baring exceptions, import of services are taxed on reverse charge basis.

For a single taxpayer, both the Central Tax and State Tax will be administratively dealt with by one of the two tax administrations: Centre or States as per an understanding and risk management tools finalized and operationalized.

1.13 How the supplies to and from Union territories are treated under GST?

In the GST Act the Union territories have been divided into two categories-

- Union territories with legislature (i.e., Delhi and Puducherry) which have been included in the definition of State. Accordingly supplies to and from such UTs and supplies from one such UT to another will be treated as inter-State supplies chargeable to Integrated Tax. Supplies within such UTs will be treated as intra-State supplies chargeable to Central Tax and State Tax.
- Union territories without legislature i.e., the Andaman and Nicobar Islands, Lakshadweep, Chandigarh, Dadra and Nagar Haveli, Daman and Diu and also the area in Exclusive Economic Zone and Continental Shelf. Supplies to such UTs from another State or from such UTs to another State or from one such UT to another have been deemed to be inter-State supply and would be chargeable to Integrated Tax. Supplies within such UTs would be chargeable to UT GST or UT Tax that would be levied and collected under the UT GST Act.

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