GST IN INDIA: DECODING HALF A DECADE OF A UNIFIED TAX SYSTEM

BDO IN INDIA
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PREFACE

GST – A TRANSFORMATIVE CHANGE AND ITS IMPORTANCE

The introduction of the Goods & Services Tax (GST) has been a significant step in the field of indirect tax reforms in India. The Union and State governments and other stakeholders, sinking their differences, adopted the Constitution (One Hundred and First Amendment) Act, 2016 and pieced together a remarkable fiscal legislation to usher-in GST in India with effect from 1 July 2017. The GST law now completes its first 5-year milestone.

By amalgamating many Central and State taxes into a common levy and introducing a uniform taxable event 'supply', unlike the legacy laws, GST sought to extricate the economy from the adverse effect of cascading taxes or double taxation, in a major way. The input tax credit scheme, which existed under the legacy Central and State laws with dissimilarity, has converged into a uniform and relatively seamless framework to help remove restrictions and trappings of the past. The transition from multiple compliance dates to a common compliance date with a uniform filing process/format, facilitated faster embracement of a technology-enabled compliance eco-system.

A common national market with a uniform tax rate, compliance code and a technology-backed and easier tax administration, which was thought impossible a decade ago, has been materialised in this significant transformation which is reckoned by many as the most important fiscal law reform in free India.

REVENUE GENERATION AND COMPLIANCE

One of the major risks associated with the phase-out of old levies and the introduction of a new levy for the government would be the uncertainty associated with the revenue generation capacity of the future. GST, however, has witnessed strong growth (24%) in the first two months of FY 2022-23, including a record of INR 1675bn in April 2022. This was preceded by 19% growth in 2021-22, from a monthly average of INR 947bn in 2020-21 to INR 1240bn in 2021-22. The negative growth (7%) recorded in 2019-20 and the modest growth (4%) in 2018-19, can now be considered as a reflection of the impact of the pandemic and aberrations of the past.

The introduction of the E-way bill system and E-Invoicing, coupled with electronic filings, facilitated increased use of data-analytics to eradicate tax frauds. The self-policing mechanism inherent to a good value added tax system is expected to unleash its full potential in the coming times as the quality of reporting improves.

WHAT HAS CHANGED?

UNIFORMITY IN TAX LAW

A key factor of a good taxation system of a country is its uniform application, without discriminating subjects. This means that the tax must be uniform and equal throughout the country. GST has achieved this remarkable and long-elusive approach to taxation to phase-out tax-induced distortions that existed in the past.

NATIONAL MARKET INTEGRATION

Uniform tax rates across products removed the tax arbitrage due to differential tax rates that existed between States in the past, which in turn helped create a single national market, where the buyers' focus remains on quality and economy, rather than tax arbitrage.

SINGLE COMPLIANCE PROCESS/DATE

Promoting uniformity or compatibility in tax compliance and filings is a significant component of a good indirect tax system. The introduction of GST encouraged simplification and improvement of concurrent levy and collection of GST by the Union and State governments, following the destination principle. Removal of multiplicity and divergence in the compliance processes that existed under legacy indirect tax laws, paved the way for ease in tax compliance and consequently, tax administration.

TRACEABILITY OF FRAUDULENT TRANSACTIONS AND PLUGGING REVENUE LEAKAGE (INCREASED COLLECTIONS)

Automation of compliance processes with the e-invoice and e-way bill systems, along with increased use of data analysis resulted in the identification of hitherto undetected fraudulent transactions, which, coupled with the stringent punitive action, began to dissuade tax evasion.

USE OF TECHNOLOGY IN TAX ADMINISTRATION AND COMPLIANCE

While the goal of a completely automated process of administration and compliance is yet to be materialised entirely, significant progress is made towards automation of the compliance process and tax administration, resulting in time/cost savings and improved analytics for businesses. The march towards complete automation and faceless administration is underway.

WHAT HAS NOT CHANGED?

SHIFT IN MIND-SET

While the introduction of GST has brought with it enormous benefits, there is a need for a change in mind-set for tax administrators and taxpayer alike, which remains a key concern. The approach of the tax administrators continues to remain revenue-centric. In case of Advance Ruling Authorities (and the appellate forum), the approach of authorities is dissuading taxpayers from seeking clarity even on critical issues. Often, when a reasonable interpretation of the law appears to favour a taxpayer or when the precedents exist in legacy indirect tax laws, advance rulings largely take positions inclined towards revenue. Refund claims, investigations against alleged incorrect claims of tax credits, blocking of credits, etc. remain other areas where the taxpayers continue to experience revenue bias and unreasonable stance, even inviting adverse remarks from Courts.

One cannot also lose sight of mushrooming cases of tax evasions and fraudulent transactions to make unjust gains by certain unscrupulous elements.

While the Government is constrained to impose additional precautionary processes (introduction of E-way bill, E-Invoice, Credit matching, etc.) to weed-out these elements, one cannot ignore the fact that it is at the cost of the honest taxpayers, who are compelled to follow tax processes/codes, which are targeted against fraudulent operators.

LITIGATIONS GALORE

Even after 5 years, doubts persist with respect to many issues, both in the interpretation of law and implementation at a practical level. The disputes on what constitutes supply, taxability of liquidated damages/employee notice-pay recoveries, clarity surrounding taxability of corporate/administrative office cost allocation (and its valuation) vis à vis Input Service Distribution, scope and amplitude of 'intermediary' service, deductibility of certain discounts, taxability of cryptocurrencies and online gaming, etc. continues to remain. The recent Supreme Court judgment has reopened the debate on the taxability of secondment arrangements which might have implications under GST too. The full potential of GST can be realised only if the contentious and litigious matters are resolved timely.

WHAT NEEDS CHANGE?

NEED FOR A ROBUST TECHNOLOGY PLATFORM

In times of imminent and complete automation of compliances, a robust technology platform is the starting point. The performance issues of the compliance platform cause hurdles to automation and receipt of quality data, which in turn leads to sub-optimal use of data analytics, complexities in administration and poor compliance. Frequent changes in the law requiring technology changes, leads to frequent tinkering with taxpayer accounting and ERP systems.

CERTAINTY ON DISPUTED POINTS, CONSTITUTION OF APPELLATE AUTHORITY (AGAINST ORDER OF AAAR) AND TRIBUNAL, RECONSTITUTION OF SECTORAL COMMITTEES

A robust mechanism to offer clarifications and resolve concerns of the taxpayer community in a time-sensitive manner, is a basic pillar of an efficient tax administration. For obtaining clarity on the issues plaguing the entire industry, the Government can consider reconstituting the sectoral committees which were formed earlier to examine the issues for the respective sectors and provide clarifications. Further, a legal remedy against orders of the Appellate Authority Advance Ruling cannot be pursued in the absence of an appellate mechanism against such orders, leading to the escalation of disputed points to High courts. Additionally, the constitution of the GST Appellate Tribunal has been delayed on account of various hurdles and it is imperative that appellate tribunals are set-up expeditiously to address GST disputes.

CLOSURE OF LEGACY TAX DISPUTES BY COURTS/TRIBUNAL

Now that 5 years have passed since the roll-out of GST, it is necessary to conclude legacy indirect tax litigations. The announcements of Amnesty/Dispute Resolution schemes by the Central/State government have gone a long way in resolving many disputes of the past. It is equally important that cases pending before various appellate authorities are taken-up expeditiously, so that the stakeholders can shift focus to the future, while the Government can realise revenues locked-up in litigations.

TRANSITIONAL CHALLENGES STAND UNRESOLVED

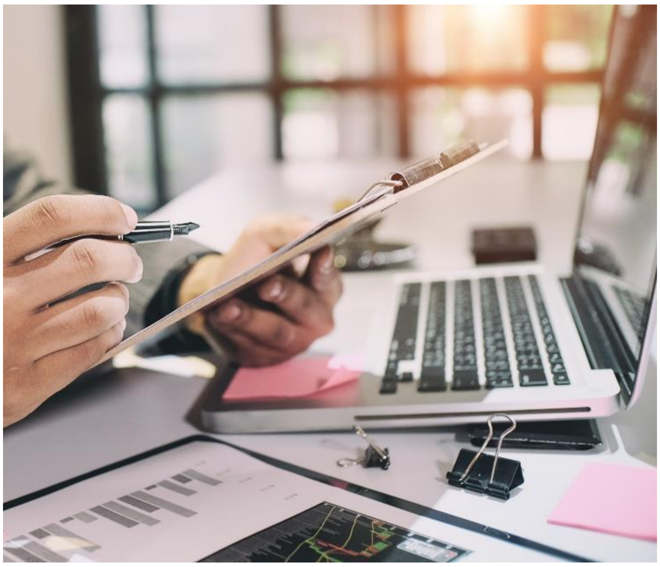
The technology challenges faced by the taxpayers and consequent inability in transitioning the legacy tax credit to the GST regime remains unresolved. Similarly, there exist difficulties in refunds/recredits/reclaims of taxes for various reasons. At present, there are numerous instances of tax differentials or tax demands found payable now, where the taxpayer could have claimed credit under legacy laws, without an adequate mechanism to transition the credit to the GST regime. A suitable facilitation mechanism is required to be devised to address such genuine concerns of the taxpayer community.

HANGOVER OF CENVAT/VAT LAWS – RESTRICTION IN ITC

One of the professed objectives of the GST law has been the mechanism for seamless input credit so that the cascading effect of indirect taxes is mitigated, making Indian goods and services internationally competitive. However, this expectation continues to remain a distant dream for Indian business. While enacting the GST law, many of the restrictive provisions that existed under the legacy laws (employee insurance, employee canteen, construction of building, telecommunication towers, pipeline laid outside factory premises, etc.) have found their way into the GST regime, leaving the promise of a seamless input tax credit unfulfilled.

TAXPAYER FRIENDLY ADMINISTRATION

One of the main roles of revenue authorities is to ensure compliance with tax laws and facilitate taxpayers towards that ultimate objective of GST. Their effectiveness is dependent on a variety of external factors such as the state of the economy, public support for the priorities of the government and the willingness of taxpayers to comply with tax rules. In a dynamic environment, revenue authorities must have a clear focus on what their goals are and continually review their operational approaches to ensure they are making the most effective and efficient strategy. The genuine and honest taxpayer's confidence and compliance would erode if resort were taken to an aggressive method such as ex-parte orders, insistence on payment of tax without the issue of notice, denial of genuine refunds, unreasonable and mechanical allegation of suppression/misstatement, denial of genuine tax credits or credit blocking. Divergence in approaches among tax jurisdictions causes further challenges to the taxpayer, which cannot co-exist in a pan-India uniform law.



WHAT THE FUTURE HOLDS?

EASE IN TAX ADMINISTRATION

This important expectation sets the tone for the future of GST. A tax that is easy to comply with increases the compliance levels and consequently results in increase in revenue, formalisation of the economy and taxpayer confidence. With significant progress made in the compliance and administration of the tax since its inception, it is expected that the compliance challenges faced by the taxpayer, especially credit matching, difficulty in auto population of return, phase-out of multiple reporting (E-way bill, E-Invoice, GSTR-1, GSTR-3B, Annual return, etc.), difficulty in rectification of errors in returns, again followed by the physical interface with authority, will be weeded out quickly.

CONVERGENCE OF RATES INTO POSSIBLY 2 OR 3 RATES

While it may be very difficult to achieve in the Indian context, the current 5-rate structure of GST requires convergence into 2 or 3 rates in the next 5 years. This would facilitate ease in administering the tax including a reduction in disputes on classifications, claim of exemptions and demand for accommodation in lower tax brackets, etc. It is also worth recalling the gap between the 'Revenue Neutral Rate' (11% to 12%) estimated at the time of the introduction of GST and today's reality of a long list of goods falling under the 28% bracket, which is the natural progression of a long list of exemption and existence of the lower tax brackets. It is expected that the Group of Ministers (GoM), who have been tasked with this responsibility would conclude their discussion and a viable model is recommended for implementation.

PHASE OUT OF COMPENSATION CESS

The Compensation Cess under GST law was initially proposed to be levied up to June 2022 to compensate States for their revenue loss in the first 5 years of GST. Given the significant gap in the revenue mop-up in the first 5 years, the Union Government had to adopt alternative methods to fund the gap. It is thus likely that the levy of Compensation Cess would be extended (which has been notified to remain valid till March 2026) beyond the original plan. However, the levy of Cess, which is not creditable in most cases, leads to cost escalations and tax cascading, thus impacting one of the key objectives of the introduction of GST. It is expected that the Compensation Cess would be phased out quickly.

PETRO-PRODUCTS UNDER GST

One of the important demands of business and trade is to subsume Excise duty, VAT/CST and Cesses levied on petroleum products, under GST. While the tax on petro-products may be one of the important avenues for revenue generation for both Union and State governments currently, convergence is expected soon to bring these important items within the purview of GST to fuel the growth of the economy, even if it is done in a phased manner. It is expected that a clear roadmap would be laid down by the government in the coming months in this direction. Another sector that needs to be brought under GST in the next few years is the power sector.

TAIL PIECE

GST, at last, has stirred us from the long nights of slumber drugged by the archaic indirect tax laws in a bid to seize India from the contrasts of the past and achieve the daunting task of re-designing the indirect tax horizon. The future belongs to the nimble-footed, the adaptable and the adventurous.

While the launch of GST has been a historic moment that has the potential to unleash India’s strength in the global market, ironing-out of the rough edges requires attention. The thrust and initial acceleration achieved must be capitalised and converted into motive power to help the country cruise to the destination, rather than resting on the laurels.

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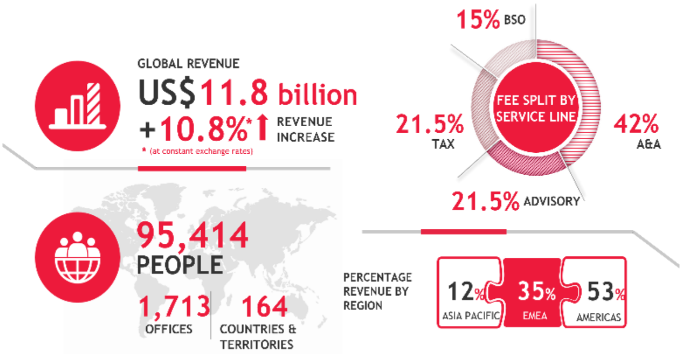

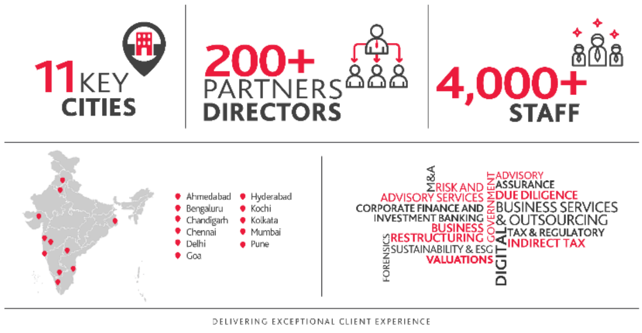

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