October 2016

INDIA UNLEASHED

Dear Readers,

A much awaited tax reform is finally here! The Constitution (One Hundred and First) Amendment Act, 2016 ('**Constitutional Amendment**') was recently notified, enabling the imposition of a uniform 'Goods and Services Tax' ('**GST**') across India. Prior to this, the Amendment Act was unanimously passed in India's Upper House of Parliament, ratified by over 17 States and accorded the Presidential assent in quick succession. The Government has also notified provisions pertaining to the setting up of the GST Council, thus kick-starting the process for fixing the GST standard rate and the final implementation of the GST structure. The targeted date for rolling out the GST is 1 April 2017.

The imposition of the GST in India has been touted as the largest tax reform since India's independence. And it is to the present Government's credit that it managed to build the necessary political consensus in seeing this reform through.

This edition of India Unleashed is dedicated to providing an overview of the GST and its impact on various sectors. We hope you find India Unleashed useful. Please feel free to provide your feedback at indiaunleashed@khaitanlegal.com

Warm Regards,

Sakate Khaitan,
Senior Partner

IN BRIEF

Budget Process Makeover

In a bid to implement the Union Budget before the start of the fiscal year on 1 April 2017, the Indian Government has decided to shift the presentation of Union Budget 2017-18 by one month, i.e. from end of February 2017 to end of January 2017.

Traditionally, the Union Budget in India has always been presented by the Finance Minister on the last working day in February and approved by the Parliament by mid-May. This necessitated the Government to take the Parliament's approval for a vote-on-account in March, for the period from the beginning of the fiscal year to such time that the Union Budget is passed by the Parliament. With the proposed timelines, the Government is aiming at doing away with the vote-on-account and making the resources for implementation of the Budget available to the various stakeholders and ministries from the beginning of the fiscal year.

Apart from the advancement of the Union Budget, the Government will also be implementing other key structural reforms starting from Budget 2017-18. These include merger of the Railway Budget with the Union Budget and replacing the five year plans with a long-term fifteen year National Development Agenda. Unlike the five year plans, the National Development Agenda will also deal with the issues of internal security, defence and external affairs. The National Development Agenda will be implemented through seven year National Development plans which will be subject to three year review cycles.

With the abolition of the five year plan, another key change in the budget document from financial year 2017-18 onwards will be the simplification of accounts by the shift of presentation of the envisaged expenditure of various ministries from planned and non-planned expenditure to revenue and capital expenditure.

Further, with the proposed implementation of the GST regime from 1 April 2017, the rates of indirect taxes, including excise duty, service tax and cesses will be as recommended by the GST Council and may not form a part of the Union Budget from financial year 2017-18.

Adding 'SPICe' to the company incorporation process!

Keeping up with the reforms to make India a preferred investment destination, the Ministry of Corporate Affairs has further simplified the integrated process for incorporating a company in India. This time, further automating and digitalising the process. On 1 October 2016, the Ministry has introduced the Simplified Proforma for Incorporating Company Electronically ('SPICe'), a new electronic form for incorporation of a company in India.

With the introduction of SPICe, the Ministry intends to phase out the regular ('three staged') incorporation process. Accordingly, SPICe is also available for incorporating 'Section 8 companies' – a not for profit entity, which was earlier not allowed to be incorporated under the integrated process.

From a process perspective, the Memorandum of Association and Articles of Association of companies being incorporated with SPICe, can now be prepared online in standard electronic form/template. Accordingly, no wet signature will be required on the Memorandum of Association and Articles of Association. This move is expected to save time in preparing the documents for incorporation. However, this will necessitate obtaining the digital signature certificate for the signatories to these documents.

The SPICe is also expected to facilitate obtaining of other registrations like the permanent account number (PAN) and tax deduction account number (TAN) for the purposes of income tax and ESIC registration (a social security registration required to be obtained by certain companies for their employees). This will reduce the number of registrations that a company is required to obtain at incorporation.

GOODS AND SERVICES TAX*: A Game Changer

With the passage of The Constitution ('One Hundred and First') Act, 2016, India is now one step closer to adopting 'goods and services tax' ('**GST**') as its new indirect tax structure. Although this is the first step in the legislative process for transition of the indirect taxes in India to the GST regime, it is a major leap towards the final implementation of GST in India.

GST has been defined as *any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption*. In essence, GST is a comprehensive single tax that is levied on supply of goods and services in the country. It is a value added tax that is levied throughout the supply chain with permissible credits for tax paid on inputs acquired.

Once implemented, GST is expected to give more relief to businesses by adopting a more comprehensive and wider coverage of input tax set-off and service tax set-off. Additionally, GST will subsume a majority of the central and state levies within its fold, eventually phasing out the different taxes and levies and bringing them under the umbrella of GST. The existing indirect tax laws have not been able to completely remove the cascading burden of taxes already paid at earlier stages. In addition to this, there are several levies by the Centre and the State on manufacture and sale of goods and provision of services for which no set-off for input tax credit is available. GST is expected to mitigate these indirect tax inefficiencies currently prevalent under the existing framework.

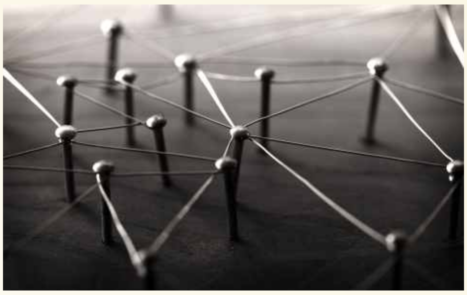
GST is not merely a tax change, but is expected to have a multifaceted impact on business. Given its omnipresence in almost every business transaction, any change in the indirect tax regime will impact almost every level of the value chain. The implementation of GST is expected to create a paradigm shift in the Indian economy at both, the micro level and the macro level. At a macro level, GST will promote transparency, cost effectiveness and lead to a shift from unorganized to organized trade in India. At a micro level, GST will, *inter alia*, impact the organization's supply chain, procurement, logistics, finance, taxation and pricing policies. The basic premise behind GST is to create a single, co-operative and undivided Indian market thereby making the economy stronger and more powerful.

Brass Tacks

As mentioned above, GST will subsume central and state levies within its fold. To this end, GST will have three charging components, Central GST ('**CGST**') and State GST ('**SGST**') levied together on intrastate supplies of goods and services and Integrated GST ('**IGST**') on interstate supplies of goods and services. The rates would be prescribed keeping in mind revenue considerations and acceptability. While the GST model will be implemented through multiple statutes, the basic features of indirect tax law, including, *inter alia*, charge ability, definition of taxable event and taxable person, measure of levy and basis of classification would remain uniform across these statutes.

CGST and SGST will be applicable to all transactions of goods and services made for consideration except those specifically exempted or outside the purview of GST ('such as alcoholic liquor for human consumption and petroleum products') and transactions which are below a prescribed threshold.

Every person who is engaged in an inter-state transaction will have to be registered under GST, irrespective of the turnover limits. Inter-state transactions shall be subject to IGST, which shall be collected by the Centre. The input tax paid, which may include IGST, CGST and SGST, on goods or services acquired by the person can be utilised against the payment of IGST, CGST and SGST in that order. Thus the biggest transition which GST seeks to bring is the free set-off provision and utilisation of inputs available.



Compensation to States

Setting aside value added tax and merging it with GST may reduce the revenue generated by States. To provide some solace, for the first five years of GST's implementation, the Centre will compensate the loss of revenue ('if any') which the States may incur due to such implementation.

Impact on Business

In general, GST is expected to provide a welcome relief to businesses by providing a wider coverage of input tax set-off by subsuming several Central and State levies. Further, by providing a continuous chain of set-off from the manufacturer to the retailer, the tax burden of goods and services on the end-consumer is expected to reduce. This reduced tax burden will also reduce the price of exports, thereby increasing the competitiveness of Indian goods and services in international markets.

SALIENT FEATURES OF GST

- CGST and SGST to be paid into separate accounts maintained by Centre and State.
- IGST, CGST and SGST input/credit to be used towards payment of output tax as per Model GST Law.
- Cross-utilisation of credit of CGST, SGST and IGST permitted between goods and services.
- Cross-utilisation not available between CGST and SGST.
- IGST will be levied on import of goods and services.
- SGST will accrue to the State in which goods and services consumed.
- Tax payer to submit returns to Central and State authorities.
- GST Council to be constituted which will make recommendations on all aspects of GST.

GST Rate Structure

With the government's intention to enforce GST from 1 April 2017, the rate of tax is likely to be decided in the upcoming winter session of the Parliament. The GST rate is to be recommended by the GST Council depending on various factors such as economic conditions, revenue buoyancy and revenue neutral rate. The GST Council is also empowered to propose 'floor rate with band' to provide flexibility to States to levy tax at rates higher than the floor rate, but within the band.

Below are some impacts that organisations will need to consider under the proposed GST regime:

Finance and Working Capital
Organizations may need to rework their budgets and working capital expectations based on the GST tax rate applicable to them in order to appropriately meet working capital requirements.

Increased Compliance
With State-wise registrations required wherever the organisations have an establishment, along with increased filings on

a monthly basis, it is expected that compliance requirements will increase under the GST regime.

Supply Chain Management

Most goods have a multi-layered value chain structure with several layers between the manufacturer and the ultimate customer. Typically the value chain would comprise of Manufacturer → Warehouse → Wholesaler → Retailer → Customer. In this value chain, historically, warehousing was a layer largely meant to facilitate inter-State branch transfers to avoid the incidence of central sales tax.

Under the GST regime, seamless input tax credit will be available on inter-state transactions, thereby dispensing with the requirement of maintaining warehouses in every State. Multi-State organizations would now have the option to replace many of their small warehouses in multiple States with larger and strategically located mother warehouses in select States. This is expected to reduce distribution costs, which can be expected to be passed on to the end consumer.

Information Technology

One of the most crucial areas in the transition process will be the technology and ERP alignment from the current regime to the GST regime. Accounting software will need to be aligned to the provisions of the GST Law. Computer systems will have to be updated to include the new tax codes. In addition to this, new modules will need to be developed to enable generation of GST compliant output reports and invoices.

Business Realignment

Under the GST regime, the price of goods and services is expected to change. As mentioned above, there will be a tax credit at each level in the supply chain. Businesses may need to realign their current business models under the GST regime in order to stay competitive in the market. To this end, procurement, logistics, distribution and pricing policies may need to be revisited. Further, businesses may also re-negotiate contracts with vendors and, *inter alia*, decide the extent to which GST levies are to be absorbed or passed on to the consumer.

Potential Hurdles

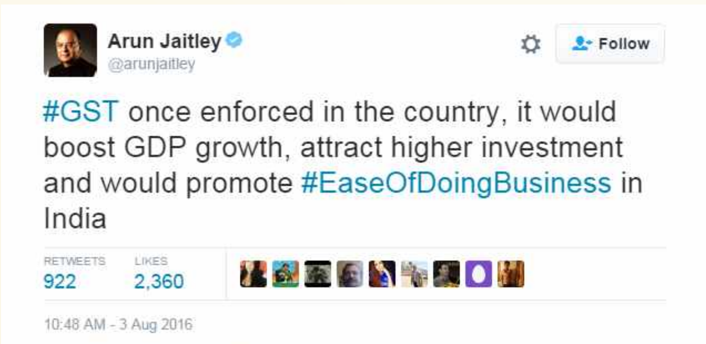
Like all significant changes in law, GST too, is expected to have its set of teething issues during the transition process, before the benefits, to their fullest extent, can be enjoyed by industry and consumers.

Technology Infrastructure

At present, the technology infrastructure prevalent across States operate on different platforms and differ in technical complexity. GST will require a single seamless integrated platform that can efficiently manage the requirements of tax payers across 29 States and 7 Union Territories. The Government will have to ensure that this infrastructure is in place before GST goes live.

Non-GST Items

At present, alcoholic liquor for human consumption and petroleum products are excluded from the GST basket. The Government will have to be careful to ensure that frequent changes are not made to the GST basket, so as to ensure that GST continues to remain the tax of convenience it is desired to be, rather than becoming a tax of validation.



Courtesy: Twitter

Administrative Realignment

The GST regime contemplates integration and information sharing between the CGST and the SGST arms. If history is any yardstick, implementation of systems which could enable harmonization and seamless flow of data between inter-Governmental bodies could be both time consuming and arduous.

Division of Tax Collections between States

The GST regime will result in States losing their individual identities, as they will only partake in a share of the total levies collected. In order for GST to succeed, it is essential that a just and equitable formula be sought for distribution of the receipts between the States and the Centre.

Different Taxing Powers

The key taxing powers are not merged under the GST regime and therefore continue to remain either with the Centre or the State. As a consequence, the non-GST levies of the Centre and the State will continue as are.

Conclusion

While the Government's initiative to make GST a reality has been received with overwhelming support and favour, the roadmap to its success is not straightforward and cannot be taken for granted.

In general, GST is expected to be a boon for commerce and industry due to expected cost reductions and lower tax rates. The ripple effect of these benefits is also expected to reach the end consumer. Further, GST will also provide an opportunity to less developed States to compete in the national market on an equal footing, thereby boosting their individual economies and the Indian economy at large. Lastly, the uniformity in tax rate will also improve the ease of doing business in India, which has been the mantra of the Indian Prime Minister.

That said, the GST regime may not be tax favourable for all industries, for example, the cost of insurance products is expected to rise, which, if passed on to the end-consumer, will negatively impact insurance penetration in the country. Further, with the dual charging components, the compliance burden on businesses is expected to increase.

Despite the setbacks, industry is optimistic that GST will live up to its expectations. The National Council of Applied Economic Research projects that the introduction of GST would lead to a GDP growth in the range of 0.9 to 1.7 per cent and export growth between 3.2 per cent and 6.3 per cent[1]. Thus, GST will not just restructure indirect taxation in India, but will seminally influence the way businesses function.

While the Government has its work cut out to ensure that GST is the 'game changer' it is touted to be, its successful implementation could be a major step towards making India the economic powerhouse it is destined to become.

** Jointly authored by Khaitan Legal Associates and Sudit Parekh & Co.*

[1] *Report of the Select Committee on the Constitution 122nd Amendment Bill, 2014 dated 22 July 2015*

GST– The Road Ahead

The Constitution (One Hundred and First Amendment) Act, 2016 ('**Constitutional Amendment**'), which provides the framework for implementation of the Goods and Services Tax ('**GST**') regime in India, received the Indian President's assent and was notified in the Official Gazette on 8 September 2016. The Constitutional Amendment was brought into force in a phased manner on 12 September 2016 and 16 September 2016.

On 15 September 2016, the President constituted the Goods and Services Tax Council ('**Council**'), which will be chaired by the Union Finance Minister and will consist of the Union Minister of State in charge of Revenue or Finance and the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government as its members.

The Council is charged with the duty to make recommendations to the Government on the tax rate, exempted goods and the thresholds under the GST regime. It has already held a few meetings, where important decisions including *inter alia*, decisions with respect to jurisdiction of Centre and States for taxation control under the GST system, exemptions from taxation, rules for registration, payments, returns, invoices and refunds have been taken. However, the GST rates have not yet been finalised by the GST Council.

Apart from the finalisation of the legislative framework for GST, in preparation of the proposed target of April 2017 for roll-out of GST, the Government is also setting-up the IT infrastructure, which is expected to be ready by March 2017. Further, Central and State Governments revenue officials are also being trained on GST laws and IT infrastructure framework.

While the Government is aggressively working towards implementing the GST regime by 1 April 2017, given the history of delays and road-blocks in the journey so far, only time will tell if the Government is able to achieve this target.

Insurance Symposium 2016

Bima Gyaan and PLUS organised a symposium on 12 September 2016, which witnessed an active participation from experts from the insurance industry. General counsels, risk managers, claim handlers and experts, brain stormed on various relevant and practical issues concerning the area of D&O insurance, contract certainty and alternative dispute resolution. Standing from left to right: Dan Jenny of PLUS; Kevin M. LaCroix of RT ProExecme; Sakate Khaitan of Khaitan Legal Associates; Deepika Mathur of HDFC Ergo General Insurance; Aruno Rajaratnam of Huntington Partners LLP; Sankar Garigiparthy of Lloyds, India; Dr. N. Raveendram of XSentinal Claims and Advisory; Arun Agarwal of Lloyd's India; and Suresh B. of XSentinel Claims and Advisory.

CII 18th Insurance Summit 2016

On 12 August 2016, the Confederation of Indian Industry organised its 18th edition of the Insurance Summit: The 5 'X' Growth. The esteemed panel discussed the changing regulatory landscape of India, the emerging trends in economic reforms, the outlook for 2016 and how regulators and businesses can work together towards the creation of a conducive regulatory environment. The day long summit was well received by the audience and was a highly interactive session with the audience getting an opportunity to communicate with the panellists and experts. A glimpse of the panel discussion on Reinsurance Business in India, seated left to right: Mr Ankur Nijhawan; Mr Roopam Asthana; Mr Sakate Khaitan; Mr Shankar Garigiparthy; Mr Rajesh Dalmia.

Mumbai
1st Floor, Century Bhavan,
771, Dr. Annie Besant Road,
Worli, Mumbai - 400 030
T: +91 (0) 22 6140 0000
F: +91 (0) 22 6140 0099

London
Ground Floor,
29 Gloucester Place,
London, W1U 8HX
T: +44 20 7034 1430
F: +44 20 7034 1431

KHAITAN LEGAL ASSOCIATES
INDIAN ADVOCATES
:@KhaitanLegal
E: indiaunleashed@khaitanlegal.com
Publisher: Sakate Khaitan