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Government still needs to notify key aspects under the GST Acts

Background

Four GST Bills namely, the Central GST Bill, the Integrated GST Bill, the Union Territory GST Bill and the Compensation Bill, received assent from the President of India on 12 April 2017 to become Acts of Parliament. Draft GST Rules have also been released in the public domain, which marks an important step on way to reach the date of 1 July 2017 for implementation of GST in India.

However, under the said Acts, key aspects are yet to be notified by the Government, which could impact the preparedness of trade and industry for implementation of GST. We are highlighting some of these, including our views on them.

Deemed exports

- The concept of 'deemed exports' evolves around the exemptions currently granted by the Government under Foreign Trade Policy to promote specific sectors in India. 'Deemed exports' refer to the supply of goods manufactured in India which do not leave India and where the payment for such goods is often received in INR.
- Under the current indirect tax regime, the following transactions are treated as 'deemed exports' and enjoy the benefit of exemptions from various duties/ taxes:
  - supply of goods against advance authorisation/ advance authorisation for annual requirement / Duty Free Import Authorisation Scheme (DFIA).
  - supply of goods to Export Oriented Units (EOUs) or Software Technology Parks (STPs) or Electronic Hardware Technology Parks (EHTPs) or Bio Technology Parks (BTP).
  - supply of capital goods against Export Promotion Capital Goods (EPCG) authorisation.
  - supply of marine freight containers by 100 per cent EOU (domestic freight containers-manufacturers) provided said containers are exported out of India within six months or such further period as permitted by customs.
  - specified supplies by main contractors/ sub-contractors.
- While the concept of 'deemed exports' has been mentioned in the Central GST Act, there is no clarity with regard to the form and manner in which the exemptions would continue under the GST regime.
- The Government on the recommendation of the GST Council would be notifying certain supplies of goods which would qualify as 'deemed exports' (Section 147 of the Central GST Act).

Our comments

Currently, for transactions qualifying as 'deemed exports', typically the benefit is provided through exemption notifications under central indirect taxes. Since, GST in India is designed as a tax wherein, both, central Government and state Government would have a share of tax on the transaction, it would be interesting to know if exemptions would cover both, the central GST as well as the state GST.

Reverse charge on the supply of goods and services in India

- Under the existing indirect tax regime, the reverse charge applies only to the provision of specified services in India, wherein, whole or part of Service tax on such services needs to be deposited by the service recipient directly with the Government.
- However, the GST Acts allow the Government to notify categories of supply of such goods or services on the recommendation of the GST Council, on which tax is payable on a reverse charge basis.
- Also, the supply of goods and services by an unregistered person to a registered person would be taxable on reverse charge basis, where, the GST liability would be discharged by the registered person.

Our comments

This is a major shift from the conventional way of taxing the supply of goods and services. This is likely to encourage better tax coverage, promote recorded economy and better tax compliance, especially in the unorganised and partly-organised sector. Of course, there is an associated risk of small vendors losing the inherent advantage of being below the threshold limit.

Activities or transactions to be treated neither as a supply of goods nor as supply of services

- Schedule III to the Central GST Act provides for the activities or transactions which are neither treated as a supply of goods nor a supply of services.
- *Inter alia* services provided by an employee to the employer in the course of or in relation to his employment, services by any court or Tribunal, actionable claims other than a lottery, betting and gambling have been specified in the above Schedule.
- Further, it has been provided that the Government on the recommendation of GST Council, would notify the activities or transactions undertaken by the central Government, a state Government or any local authority, in which they are engaged as public authorities, to be treated neither as a supply of goods nor a supply of services.

Our comments

The above is likely to address the activities or transactions which are kept outside the purview of taxation under the existing indirect tax legislations, *inter alia*, services specified under the Negative list and specific exemptions under the central indirect tax legislations.

Input Tax Credit (ITC) – Government to notify services obligatory for an employer to provide to its employees

- Under the existing CENVAT Credit Rules, 2004, certain exclusions from the definition of input services have been specified, which *inter alia* include services used primarily for the personal consumption of employees.
- Similar exclusions have also been included in the provisions pertaining to ITC under the Central GST Act. However, with respect to the services pertaining to rent-a-cab, life insurance, and health insurance, ITC would be available where such services are obligatory for an employer to provide to its employees under any law and are notified by the Government.

Our comments

These could serve as a relief to specific industries, which are mandated by law to provide services such as life insurance or transportation to its employees.

GST rates

- The GST Council approved the four tier rate structure under GST; 5 per cent, 12 per cent, 18 per cent and 28 per cent. However, as per the GST Acts, the maximum GST rate is pegged at 40 per cent.
- In addition, Compensation Cess would be charged on luxury goods like cars, aerated drinks, cigarettes, over and above the peak GST rate.
- It is expected that essential items including food, would be taxed at zero rates.
- It is also expected that the lowest rate of 5 per cent would be for common use items while there would be two standard rates of 12 and 18 per cent under the GST regime.

Our comments

GST rates are long awaited by the trade and industry. A plethora of representations has also been made to the GST Council by various industries in respect of their respective goods/ services.

The intent behind determining the item wise GST rates is to ensure that the rate structure doesn't lead to consumer price inflation.

Timely release of GST rates by the GST Council would enable the industry to understand better the financial impact of implementation of GST. It will also help trade and industry in taking pricing decisions.

Person or class of persons required to register as may be notified by the Government

- The Central GST Act provides for compulsory registration in certain cases which *inter alia* includes person making any inter-state supply, casual taxable persons making taxable supply, persons who are required to pay tax under reverse charge.
- It is also provided that certain class of persons may be notified by the Government to be compulsorily registered under GST.

Our comments

GST in India, is much more than an indirect tax reform, as it transforms the conventional levy of indirect tax from origin-based tax to consumption based destination tax. Therefore, such person or class of persons also would be required to compulsorily register themselves under GST and should be notified in a timely manner by the Government so that the said person or class of persons are well prepared for the new tax.

Excise free zones and state incentives

- Currently, certain units enjoy the benefit of area-based exemption under the Central Excise legislation on setting up of their manufacturing units in specified areas, known as Excise Free Zones viz. Uttarakhand, Himachal Pradesh, North Eastern states, etc.
- Also, tax incentives are granted by the state Governments for making investments in their respective states. Such benefits are granted by the state Governments under the industrial promotion schemes, for example, Package Scheme of Incentives (PSI) in Maharashtra.
- These exemptions have not been specifically addressed under the GST Acts. Also, transitional provisions are silent in respect of the treatment of the said exemptions/ incentives under the GST regime.

Our comments

GST in India aims at assuring the free flow of credits from one state to another state. And, to promote this, it has been proposed to provide less/ no exemptions under the GST regime.

It is pertinent to note that area-based exemptions have provided a boost to the dispersal of a manufacturing business in India under some of the crucial sectors viz. FMCG, pharmaceuticals, auto, etc. Earlier, discussion papers had mentioned a continuance of these exemptions under a refund mechanism at least for some time. It would be crucial for such units that this benefit continues.

With regard to the investment-linked state incentives, since these incentives are linked to VAT and CST paid by the unit, taxpayers are expecting a substantial reduction in benefits post GST. States would do well to expressly assure the continuance of these benefits.

Way forward

- For the effective and seamless implementation of GST, it is necessary that the industry is truly geared up for this major business change.
- The Government should notify the above discussed key aspects in a timely manner along with the other aspects under the GST legislation (which are not listed here but number more than 80 in all four Acts) so as to enable the trade and industry to re-engineer their GST impacted processes, upgrade their existing IT systems, and get ready for the change.

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