

Flash on Constitutional Amendment Bill on the GST

pwc

March 23, 2011

As a first legislative step towards implementation of the ambitious indirect tax reform agenda by way of introduction of the GST in India, the Union Finance Minister has introduced the 115th Constitution Amendment Bill ('Bill') in the Lok Sabha yesterday. The Bill is a fourth draft and is a culmination of series of discussions and debates between the Centre and the States. Its tabling in the Parliament signals the strong intent of the Central Government to go ahead with the implementation of the GST. The broad features of the Bill, which introduce both new Articles in the Constitution and amend / modify existing ones, are as under:-

Powers of the Centre and States

The Centre and the States will both have powers with respect to making laws for the proposed GST. While the Centre will legislate the Central Goods and Service Tax ('CGST') law, the State Governments would have the power to legislate the State Goods and Service Tax ('SGST') laws in their respective States.

However, the Centre will have exclusive powers to make laws with respect to inter-State supplies of goods and services ('inter-State supplies'). The Centre will levy and collect the GST on inter-State supplies (Integrated GST) including on imports and such revenues so collected will be apportioned between the Centre and the States as prescribed under Article 270. The Centre will formulate the principles for determining the place of such inter State supplies.

Goods and Services Tax Council (GST Council)

A GST Council is proposed to be set up under a Presidential Order. The GST Council will be chaired by the Union Finance Minister and the Union Minister of State for Revenue and the States' Finance Ministers or any other nominated Ministers will all be members of the GST Council. The States will choose one person

amongst them to be the Vice-Chairperson of the GST Council.

The GST Council will inter alia, make recommendations on the following:-

- the taxes and surcharges which will be subsumed in the GST
- the applicability of and the exemptions from the GST
- the rates of the GST on both goods and services
- the thresholds limits of turnover below which the tax will be exempted
- other matters related to the GST as may be decided by the Council

Interestingly, the Bill visualizes that the GST Council shall be guided by the need for a harmonised structure of the GST and for the development of a harmonized national market for goods and services. This is a very salutary objective. The Bill also visualizes that all decisions of the GST Council will be taken with the consensus of all members who are present in the meeting.

Goods and Services Tax Dispute Settlement Authority (DSA)

Parliament will establish a DSA to adjudicate on any dispute or complaint referred to it by either the Centre or the States in respect of any deviation from any of the recommendations of the GST Council that results in a loss of revenue or affects the harmonized structure of the GST. The DSA will consist of a Chairman (a judge of the Supreme Court or the Chief justice of a High Court), to be recommended by the Chief Justice of India, and two other members who will be experts in the field of law, economics or public affairs, as may be recommended by the GST Council. All appointments will be made by the President of India.

It is proposed that only the Supreme Court will have jurisdiction over the matters dealt with by the DSA.

Taxes proposed to be subsumed

The Bill has proposed to subsume the following Central and State indirect tax levies:

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Central levies

- Central Excise Duty
- Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- Additional Excise Duties
- Service Tax
- Additional Customs Duty levied on imports of goods
- Special Additional Duty of Customs levied on imports of goods
- Central Surcharges and Cesses (excluding those applicable to Income-Tax, Customs Duties and to Excise Duties as they relate to goods outside the purview of the GST)

State levies

- Value Added Tax / Sales Tax
- Purchase tax
- Entertainment Tax, other than those levied by local bodies
- Entry Tax, other than those levied by local bodies
- Luxury Tax
- Taxes on lottery, betting and gambling
- Tax on advertisements
- State Surcharges and Cesses relating to supply of goods and services

Goods proposed to be kept outside the GST

The Bill proposes to keep the following goods outside the levy of the GST:

- Petroleum crude
- High speed diesel
- Motor spirit (commonly known as petrol)
- Natural gas
- Aviation turbine fuel
- Alcoholic liquor for human consumption

The following levies are proposed to be outside the ambit of the GST:

- Entertainment tax levied by local bodies
- Entry tax levied by local bodies

Conclusion

The introduction of the Bill in Parliament is a right step and is expected to generate a wide ranging debate on the GST. The arduous task now is to arrive at a consensus, so that the Bill is passed in both houses of Parliament with the requisite two thirds majority and then ratified by at least fifty percent of the State assemblies, for the GST to be implemented in the earliest possible time.

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