GST@2

The road ahead

Foreword

GST, the most radical tax reform in India, has completed two years.

For industry as well as the Government, the first year was more about transitioning into the new regime and dealing with initial teething issues.

For the Government, the second year has been about bringing stability and simplicity in laws, while augmenting its efforts to expand the tax base, primarily through more efficient use of technology.

Industry, on the other hand, has started settling in the new environment while exploring the benefits GST has to offer. There is a general consensus that GST has reduced the overall tax incidence in most cases and also brought in efficiencies in supply chains. However, there is a feeling that compliance-related requirements, particularly reconciliation between vendors' filings and businesses' own records, have consumed inordinate time and effort. Extension of the tenure of the anti-profiteering authority without provision of clarity on the methodology to be adopted has been another area of concern for industry.

As we move into the third year of GST, the Government is looking forward to increasing its revenues by using robust data analytics, a new compliance framework with inbuilt checks to reduce misuse of input credits and initiatives such as e-invoicing. Industry is looking forward to further simplification of laws, rationalisation of the rate structure, strengthening of the dispute-resolution mechanism and implementation of definitive guidelines for audits and scrutiny. This process has already begun.

This report has attempted to capture the key changes in the second year of GST, the important issues that still need consideration and what we can reasonably expect over the next one year or so. It also includes some bold ideas that require wider deliberation among the stakeholders as India tries to align its tax policies with global best practices.

I hope you find our report useful and informative.

We look forward to your feedback.

Kind regards,
Pratik Jain
Partner & National Leader – Indirect Tax

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Introduction

The Goods and Services Tax (GST), the biggest and most transformational economic reform in Indian history, completed two years on 30 June 2019.

Publicised as the ‘one nation one tax’, GST brought with it expectations of a simple, stable and transparent tax regime, which would result in an overall reduction in the prices of goods and services and facilitate barrier-free movement of goods across India.

The Government has walked a tight rope in terms of its meeting the expectations of end consumers and industry as well as ensuring buoyancy in revenue collections and tax administration.

With a view to sneak peek into the process of evolution of GST in the initial phase of its implementation, PwC released a report in February 2018, **Over 200 days of GST: the road ahead.** The report captured the experience of the initial days of GST, specifically the challenges faced by industry, and the Government’s proactive approach to addressing the teething issues that surfaced. It also captured topics including discussions in board rooms and the road ahead for GST.

The Government’s focus in the first year was aimed at resolving issues faced by businesses to ensure a smooth transition to the GST regime. Once industry was familiar with compliance-related requirements and the overall concept of GST, the Government shifted its focus to bringing in relevant legislative reforms on the basis of its learning in the first year of implementation of the tax.

PwC then released a follow-up to the report, **365 days of GST: a historic journey**. The publication delved into the magnitude of the changes brought in by the Government, the industry’s experience and emerging challenges in the GST regime. It also included an analysis of the socio-economic impact of GST on India Inc.

In the second year of GST, responding to representations from various industries, the Government gave an assurance that there would be significant rationalisation of rates in goods and services. At the same time, it provided much needed clarity on issues relating to specific sectors such as real estate, hospitality and the solar industry, among others.

Although still in its infancy, over the last two years, GST has proven to be a positive tax reform and has significantly boosted India’s industrial growth. It has enabled standardisation and simplification of processes and reduced India Inc.’s interface with the tax authorities.

The credit for stabilisation of the GST regime in only two years is largely due to the Government’s pro-active measures and industry’s continuous participation to make it a ‘Good and simple tax’.

Now, with the GST completing its second year, we are pleased to present our new report, **GST@2: The road ahead**. This report encapsulates the experience of two years of GST, the key related developments (both in terms of legislative developments and judicial pronouncements) and the Government’s ‘focus sectors’. It also provides insights into emerging controversies pertaining to GST and expectations during the coming year.

The journey so far

Rolling out of GST across the states was smoother than expected. Despite it being far from perfect, it was considered to be largely successful. Industry supported it, consumers were confident that it would lead to a reduction in prices and the Government expected buoyancy in revenue collections.

During the first year of its implementation, the Government's focus was on resolving issues faced by businesses to ensure a smooth transition to the GST regime. Once industry was familiar with compliance-related requirements and the overall concept of GST, the Government shifted its focus to the legislative and judicial aspects of the regime over the past one year.

Although it is still at its nascent stage, in its second year GST has substantially facilitated ease of doing business. Furthermore, the Government has simplified processes and proactively provided clarifications on provisions that were seen as ambiguous.

Having completed two years of a momentous journey, expectations from the regime are rather high. These include economic growth being given a boost, augmented revenue collections, significant increase in the tax base and inclusion of non-GST products such as petroleum goods, real estate and possibly alcohol under the GST net. At the same time, meeting industry's expectations of further rationalisation of rates, especially for products pegged under the 28% category.

With this background, we have captured some of the broad highlights of the GST journey so far in this section.

A. Economic impact

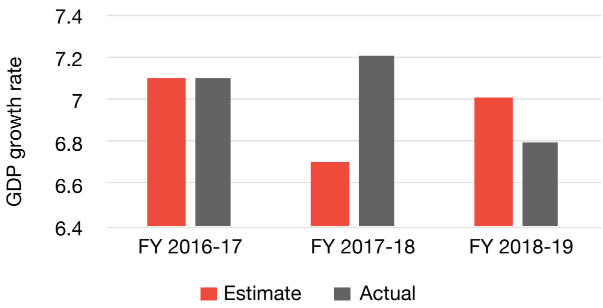
GST was implemented to realise the Government's goal of 'one nation, one market, one tax'. It marks a fundamental resetting of India's economy. It redefines the way business is done (with increased formalisation), expands the market for goods and services (replacing many small and fragmented markets with a single common one) and completely overhauls the Indian Indirect Taxation landscape. In view of all these benefits, its macro-economic impact cannot be anything but good.

Let us now look at three macroeconomic fundamentals that can be expected to be positively affected by India moving to the GST regime—GDP growth, inflation and the fiscal deficit.

Impact on GDP growth

One of the focus areas of the Government is to assess the impact of GST on India's economy. All the stakeholders in the taxpayer value chain have high hopes that GST will be instrumental in reducing economic distortion and give the necessary impetus to the country's economic growth. Initially, the economy witnessed a slight dip in the GDP on implementation of GST. This was expected in view of the scale of changes it brought about in business and tax administration. However, GDP growth picked up gradually within the first year of implementation of GST.

The GDP growth rate for FY2018-19 was 6.8% as against the anticipated growth rate of 7%. While the growth rate in the first two quarters of FY2018-19 crossed the estimate and recorded an average GDP growth rate of 7.5%, it had slumped to its record low at 5.8% in the last quarter (i.e. quarter January-March 2019).



Source: Ministry of Finance, Press Information Bureau

The dip is however expected to be shortlived, as the Government is likely to implement effective measures to revive economic growth and consumers' demands. Reports from financial institutions also indicate that GDP growth is expected to recover to around 7-7.5% in 2019-20.

Impact on CPI

GST could have caused a spike in inflation by raising the tax rates on goods and services. However, a large number of products in the Consumer Price Index (CPI) basket being exempt from GST compensated for the rise in the tax rates on other items. Furthermore, Government has rationalised the GST rates on items of daily use by common people from time to time.

While there is no evidence that GST has postively or negatively affected inflation, the CPI, which was at a low of 2.4% in July 2017 moved up in the early months of implementation of GST and gradually came down to 2.92% in April 2019.

With the Government now deliberating on including products outside the ambit of GST in its fold. It is imperative to keep the GST rate of such products lower or closer to the rate structure (as on date) to keep a check on inflation.

Impact on revenue collections and fiscal deficit

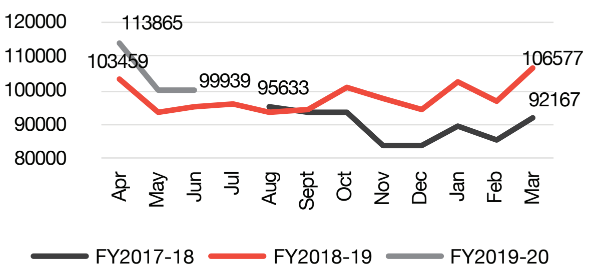
The Government expected a sharp increase in revenue collections after the smooth rollout of GST. However, there was a substantial dip in collections in the first quarter of its implementation. This was largely due to processing of transitional credit claims and the reduction in tax rates for several mass consumption goods.

Average monthly collections from GST for FY2017-18 fell short of the expected INR90,000 crore mark, making the Government's Budget estimate for FY2018-19 seem overly ambitious. However, average monthly collections of revenue from GST amounted to INR98,114 crore in FY2018-19. This was 9.2% higher than in FY2017-18.

The year 2018-19 witnessed a spurt in GST revenue collections in March 2019. This was the highest since the introduction of GST and marked a growth of 15.6% over revenue collected in March 2018.

The chart below indicates the positive trend seen in GST collections in FY2019-20 (as in June 2019) and FY2018-19, compared to FY2017-18.

Trends in GST collection



Source: Ministry of Finance, Press Information Bureau

Collections depicted in the figure above are for the period August 2017 to June 2019, after settlement of the relevant IGST between the CGST and SGST component.

GST collections helped the Government contain its fiscal deficit at 3.4% (compared to its target of 3.3% in FY2018-19). This trend is an indication of positive results in future collections as well as for the Government's fiscal goal for FY2019-20.

B. GST tax structure

The initial proposal was to keep a single GST rate for goods and services in India. However, the GST rate structure that was finally implemented had multiple tiers of tax rates for goods and services, without there being an explicit roadmap for eventual unification of GST rates.

> **Today, the GST system has been established to a large extent and we are working towards a position where 99% of products and services will attract GST at the rate of 18% or less.**
>
> – Narendra Modi
> Prime Minister India

Source: Press Information Bureau

Goods and services are mainly classified under four rate brackets — 5%, 12%, 18% and 28%. The multiple rate structure has led to complications in the taxation system and disputes pertaining to classification during the initial period after implementation of GST. These issues are gradually being resolved admist various clarifications provided by the IT Department and advance rulings sought by businesses.

In the first year of implementation of GST, the Government reduced the tax rates on various commonly used items and kept most items of daily use in the 0% or 5% tax rate slab. The purpose of doing this was to ensure that the burden of increased tax rates would not affect consumers adversely in the form of increased prices.

After the GST system was by and large settled and revenues had stabilised, the Government pruned GST rates to relieve the burden on people, especially for goods and services under the 28% tax bracket and for specific industry sectors. For instance, to give a boost to the real estate sector, it reduced the rate for under-construction properties from 8% to 1% (for affordable housing projects) and to 5% from 12% (for others), however, with the restriction of input tax credit. Similarly, the entertainment industry also had its share of joy with rate cuts on movie tickets (12% GST on tickets costing up to INR100 and 18% for tickets costing more than INR100) from the earlier GST rate of 18% and 28%, respectively. Apart from the above, the Government also provided relief (in terms of the GST rate structure) to handicrafts, education, agriculture and consumer durables.

Around 28 items still remain in the 28% tax bracket and are classified as 'luxury or sin goods'. However, it is debatable whether products such as cement and automobile parts merit classification as luxury goods and warrant a higher GST rate. It is about time the policy-makers revisit their thinking on the scope of 'luxury items', considering contempory standards of living.

Industry is hopeful that the Government will rationalise rates further on some more mass consumption products, such as air conditioners, dishwashers, automobile parts and cement, to boost their domestic demand.

PwC's take

It is about time policy-makers revisited their perception of the scope of 'luxury items' and focused on further rationalisation of more goods under the 28% category.

In the third year of the GST, India Inc. expects fewer rate slabs and a mean rate in the range of 14-16% by merging the 12% and 18% tax brackets to make it more reasonable.

Technology-driven compliance

Automation of compliance-related procedures is imperative for successful functioning of GST. The Government had endeavoured to set up an automated and robotic compliance system, which enables ease of functioning and complete automation of various processes.

After initial performance-related issues faced on the portal, the Government constituted a committee to look into and address these issues and resolve IT glitches in a phased manner.

Furthermore, to support taxpayers on a real time basis, the Government has set up a dedicated IT grievance redressal portal with a helpdesk. Its objective is to resolve the difficulties faced by taxpayers due to technical glitches on the GST portal in its routine functioning and ease the process of downloading the details of inward supplies in GSTR 2A from the portal. Over a period of time, the Government has developed a system linking the GSTN portal with the E-Way Bill portal to transpose E-Way Bill-related data into GSTR 1 (GST outward returns).

On the other hand, the Government has kept implementation of certain processes, such as online matching of suppliers' and buyers' invoices, returns for inward supplies and the facility to issue a single credit note for multiple invoices, in abeyance.

Relevant technology has been upgraded in the past year to accommodate multi-level requirements under GST and make the portal more interactive. The Government seems to be on the right track in achieving its goal of easing automated compliance-related processes, and is now diving into deeper waters with its implementation of the E-Invoicing system and revamping of the compliance process, which rely heavily on the bandwidth of the GSTN portal to take on huge data loads and their processing on a real time basis.

PwC's take

Technology is the backbone of compliance under the GST regime. The Government is on the right track in building artificial intelligence and robust processes such as E-Way Bills and e-invoicing to curb tax evasion.

The new compliance framework, e-invoicing, linkage of E-Way bills with GSTR 1, etc., are some of the areas to watch for in the third year of GST.

C. E-Way Bill

The E-Way Bill (EWB) system under the GST regime replaces Way Bills (commonly known as entry or exit permits) that were required for movement of goods in many states under the erstwhile VAT regime.

The main objective of implementation of the EWB system is to curb leakage of revenue. The Government has already initiated the functionality of auto-popualting EWB related data for preparation of the details of outward supplies in GSTR 1. It is anticipated that taxpayers may eventually be required to match this data with the outward supplies they have reported in GSTR-1 and provide the necessary reconciliations for any differences in data between the two.

This is a significant step forward and will help tax authorities track differences and question businesses in the event of significant discrepancies at frequent intervals, especially if the value of E-Way Bills generated is more than outward supplies reported in GSTR 1.

Under the erstwhile VAT regime, officers had to manually check Way Bill-related information with tax returns filed by taxpayers. Furthermore, this exercise was limited to the state level. With the introduction of GST, which unifies India into a single market, this exercise is expected to take place on a pan-India level as a matter of routine compared to the year end exercise pravelent under the esrtwhile tax regime.

The EWB has also been a major help to officials for reconciliation of data. Data related to movement of goods (outward and inward) in EWBs is being used for reconciliation with GST returns and many businesses have already received notices if any substantial differences have have detected. So it is imperative for the industry to ensure implementation of adequate internal process controls so that EWB data is in sync with transactions reported in GST returns.

The Government's proactive approach in addressing the challenges faced by businesses was evident during implementation of the E-Way Bill system. Some of its clarifications that provided the industry much needed relief include:

- Requirements in the case of bill-to ship-to-transactions
- The process to be adopted in the event of a single consignment being moved in multiple lorries
- The procedure for detention, release and confiscation of goods and conveyances

Furthermore, the Government has issued a detailed user manual that details processes pertaining to the E-Way Bill system and replies to various FAQs relating to these processes.

The Government has also made several improvements in the E-Way Bill system for auto calculation of distance based on PIN codes, extension of the E-Way Bill if a consignment is in transit, a list of E-Way Bills that will expire soon, etc.

After interruptions during the initial phase of implementation, the Government has made every possible effort to effectively (and in time) handle multifarious requests relating to generation of E-Way Bills. According to government statistics, more than 550 million E-Way Bills were generated in FY 2018-19.

While the E-Way Bill process at the GSTN has been stabilised, businesses need to ascertain whether they need technological interventions to manage their compliance with E-Way Bill-related processes, especially those with multiple GST registrations and several users.

PwC's take

The E-Way Bill system serves a twin purpose: It helps the Government to curb revenue leakages. Furthermore, it supports India Inc. in keeping a close watch on movement of goods from one location to another.

In this dynamic environment, it is imperative for companies with a multi-state presence to set up a centralised monitoring function to track movement of their goods in transit, for efficient planning of their inventory holding period and to address queries raised by state GST authorities on probable mismatches between GSTR 1 and E-Way Bills they have generated at a given point in time.

D. Transitional credit

The transition from one tax regime to another is always a difficult process, especially when a complex and multi-layered tax system is subsumed into a single-tax system across a country.

With the implementation of the GST regime, the Government allowed transition of all input tax credits in books of accounts to the new regime, and taxpayers were required to file declarations of such credits in Form TRAN 1 by 27 December 2017.

The steps taken by the Government were well appreciated by the industry. However, complexities relating to the eligibility of certain credits were not attended to with adequate effectiveness. The manufacturing sector that has a large chunk of transitional credit on account of the Krishi Kalyan Cess (KKC) was uncertain about its transition to the GST regime. However, an advance ruling held that such credit was not eligible and could not be transitioned to the GST regime. The legality of this ruling is still to pass the test of judicial review. Subsequently, vide retrospective amendment in the law, the Government has clarified that the term 'eligible duties and taxes' for the purpose of transitional credit will not include 'cesses' not specifically covered under the two explanations appended to the relevant provision.

Revenue collections during the initial months of implementation of GST saw a downward trend. To check any fraudulent claims, dealers who claimed transitional credit beyond certain limits were served notices to verify the correctness of their credit claims. Moreover, in certain cases credits were denied due to venial procedural gaps in compliance such as deficiency in invoices and failure to maintain proper records. Industry was left with no choice but to litigate denial of its genuine claims. Moreover, there were no provisions to allow input tax credit of erstwhile duties and taxes paid under the erstwhile tax regime.

Apart from the above, there were other issues relating to transitional credit, e.g. in some cases, credits transitioned not being reflected on the GST portal. Furthermore, in certain cases, IGST credit was captured as SGST or CGST credit due to technical glitches. In other cases, dealers inadvertently failed to report a part of their eligible credit. In these scenarios, there was no respite for dealers as far as their otherwise eligible claims were considered.

Some dealers were not able to file Form TRAN 1 by the due date due to IT-related challenges they faced when they tried to file it.

The Government was fairly proactive in addressing these concerns and set up an IT grievance redressal committee to take up such matters. In addition, it issued a circular extending the timeline for filing TRAN 1 for dealers who had attempted to file TRAN 1 by 27 December 2017, but were unable to do so due to valid reasons.

However, no respite has so far been offered in situations where dealers have failed to report their eligible credit due to their own inadvertent errors or where incorrect amounts have been transitioned at the portal.

Many Writ Petitions have been filed on the points mentioned above and those relating to restrictions on claims of actual and deemed input tax credit beyond the stipulated timeline. Several favourable decisions have been issued in cases where dealers have failed to file TRAN 1 due to bonafide reasons, including IT-related challenges.

PwC's take

The Government should bring in a provision for admissibility of credit of erstwhile duties (Excise Duty, Service Tax or VAT) paid under the old law.

There is also a need to add a suitable provision to allow credit of GST deposited under protest for a litigated matter if it is decided in favour of the assessee after the prescribed time frame for availing credit.

E. Other key changes

In addition to rationalising tax rates on goods and services, and legislative changes, the GST Council has taken several other measures to ease compliance-related requirements. Some of these are discussed below:

- The threshold for requirement of GST registration in the case of a supplier dealing in goods has been increased from INR20 lakhs to INR40 lakhs in a financial year, and in the case of some North Eastern and other states, it has been raised from INR10 lakhs to INR20 lakhs.
- A concessional rate scheme (akin to the composition scheme) has been introduced for suppliers of services with an aggregate turnover of INR50 lakhs in the preceding financial year.
- In Union Budget 2019, the Government proposed an alternative composition scheme for suppliers of services or mixed suppliers (i.e. suppliers supplying both goods and services). This scheme will apply to taxpayers with an aggregate annual turnover of up to INR50 lakhs in the preceding financial year.
- In this year's Union Budget, the Government proposed that the Central Government should be the nodal agency for disbursement of refunds pertaining to state taxes to expedite processing of refunds.
- The late fee for filing returns from July 2017 to September 2018 was waived if these returns were filed by 31 March 2019. Furthermore, the late fee amount has been reduced substantially.
- Input tax credit for invoices issued in FY2017-18 was extended from September 2018 to the due date for returns in March 2019.
- The E-Wallet Scheme for exporters has been approved by the Government.

Furthermore, a group of ministers has recommended promotion of digital payments, and to allow cashback where payment is made through E-Wallets such as BHIM or the Rupay card. This proposal is currently being examined and work is in progress to build infrastructure for implementation of the scheme on a pilot basis.

F. Statistical information

In its two years' journey, the Government has taken several steps to make GST an effective and simple tax. On one hand, it has made proactive efforts to streamline the GST compliance portal. Compliance-related processes, including return filing, online tax payments, registrations and generation of E-Way Bills, have been automated and are now generally functioning smoothly.

On the other hand, the Government has clarified ambiguities in legislative provisions via notifications, circulars and orders.

We have provided below statistical data on the processes that have been largely established in the last two years as well as provisions that have been clarified during this period. It is expected that in coming years, the Government will continue to scrutinise the key statistical results and implement measures to curb non-compliance.

Key statistical data

35/ 1064
GST Council meetings & decisions – As at June 2019
The GST Council has conducted 35 meetings so far, in which more than 1064 decisions have been taken.

16.53 Lakhs Crores
GST payments (excluding IGST on imports)
As at June 2019

100/ 73
Appeals before Advance Ruling Appellate Authority - As at April 2019
There are 100 appeals which have been filed against the advance ruling orders. Out of which 73 have been disposed of.

1.22 Crores
GST registrants
As at June 2019

884/ 480
Advance Rulings – As at April 2019
The Authority of advance rulings across states have received 884 applications. Out of which 480 have been disposed of.

29.24 Crores
GST returns filed
As at June 2019

274/ 217/ 17
Notifications, Circulars & orders – As at June2019
The Government has so far issued 274 CGST notifications, 217 Circulars and 17 orders.

70.14 Crores
E-way bills generated
As at June 2019

Source: GST Council newsletter & publications

Evolution in the second year

The GST journey in the last one year has been focused on bridging gaps in legislative provisions and making IT systems more robust to avoid downtime before the due dates for compliance. The judicial system also witnessed a surge in GST-related matters with 800+ advance rulings and 100+ writ petitions in various courts across India.

The Government issued several clarifications, orders and notifications to provide clarity on some provisions that were ambiguous for many people. The headway made by the Government in its endeavours have been positive so far, and as it progresses further, it is expected to bring in more clarity and stability in the system.

The Government has taken several steps for the first time in the Indian taxation system. These include inviting the active participation of industry and policy-makers in making GST a success, organising public outreach programmes conducted by the implementers of GST (using technology-based solutions) and the Centre and the states adopting an approach of cooperative federalism to address industry's grievances. These novel initiatives were instrumental in developing faith and confidence in the Government.

In the global arena, India has clearly emerged as one of the most preferred investment destinations in the last couple of years. The reasons are multi-fold, e.g. China losing its steam, the United States curtailing benefits under various multilateral and/or bilateral free trade agreements (with a view to control unemployment) and Europe grappling with Brexit. In contrast, India has had a stable government, the states are competing among themselves to boost their socio-economic development and thereby offering various concessions and benefits to industries to set up manufacturing bases. In addition to this, the Government has run its flagship programmes, 'Make in India' and 'Digital India', and enabled single window clearance, etc. These initiatives have significantly eased the process of doing business in India.

Furthermore, over a period of time, the industry has undeniably benefitted from the Government's clarifications on some ambiguous tax provisions. On the other hand, although unexpectedly, India Inc.'s proactive approach to seek advance rulings has proved detrimental with most of the rulings going against industry and demonstrating the pro-revenue mind-set of this forum. Some such rulings are contrary in nature and add to the pains faced by industry.

In this section, we have captured some key developments during the last one year. These are categorised in two sub-sections– key legislative changes and judicial pronouncements.

A. Key legislative changes

The following are the key legislative amendments introduced in the last one year that merit mention because some of these may have a bearing on the tax positions adopted by India Inc. at the time GST was implemented:

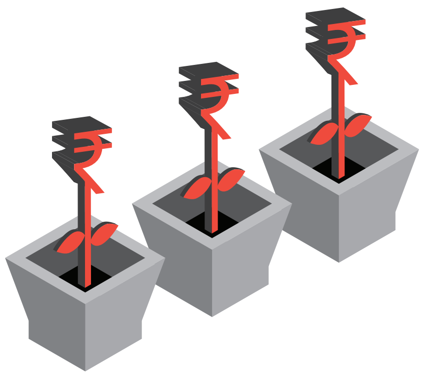
Definition of supply

Schedule II of CGST Act contains a list of transactions that are to be treated as goods or services. Earlier, the transactions covered under Schedule II were, by definition, included under the ambit of supply. This had led to a debate on whether transactions covered under Schedule II are to be treated as 'deemed supply'?

With the amended definition of supply, it has been clarified that the purpose of Schedule II is only to provide guidance on whether a transaction is to be categorised as 'supply of goods' or 'supply of services'. Such activities or transactions do not ipso facto qualify to be deemed as supply of goods or services.

Transactions such as high sea sales, merchant trade or sale of goods in bonded warehouses were earlier considered as transactions that were covered under GST as an exempt supply, which entailed the need to reverse common input tax credit.

From 1 February 2019, the Government has categorised these transactions under Schedule III, which deals with activities that are neither supply of goods nor of services. It has done this to do away with the Input Tax credit reversal requirement.



Reverse charge liability on purchase from unregistered dealers

Implementation of the reverse charge liability on procurement of goods from unregistered vendors is a novel concept that was introduced under the GST regime to keep a check on the unregulated sector. However, maintaining separate records of such transactions and the discharging reverse charge liability thereon was a huge procedural and compliance-related challenge for India Inc. Taking cognisance of this, the Government suspended this statutory requirement with effect from 13 October 2017.

From 1 February 2019, the provision has been amended to restrict its applicability to specified goods and services procured from a specified class of persons. In this regard, so far, only the real estate sector has been notified that the reverse charge mechanism on procurements from the unregistered sector will apply to it.

Substantive changes with respect to Input Tax credit provisions

One of the greatest value propositions of the GST system is that it allows seamless flow of credits across the supply chain and thereby eliminates the cascading effect of taxes prevalent under the erstwhile regime. However, GST legislation provides for a specific list of inward supplies on which credit is ineligible. This negative list is again subject to certain exceptions, i.e. specific cases wherein credit on such inward supplies is allowed. This negative list and the exceptions thereto led to an ambiguity in eligibility of credits under certain circumstances and ultimately resulted in divergent rulings. This created further confusion in industry.

The Government has now widened the scope of Input Tax Credit through suitable amendments and provided clarity on several issues. The scope of input tax credit has been expanded to allow credit of inwards supplies such as outdoor catering and life or general insurance services, where it is the statutory obligation of an employer to provide these services to its employees.

Other key legislative changes

The Government has also introduced the following key legislative changes in the last one year:

- The place of supply of services (which determines the taxability of a transaction) for transportation of goods from a place in India to one outside it will be the place of destination of such goods.
- Export refunds will be allowed in the case of receipt of consideration for export of services in INR (as permitted by RBI), such as in the case of exports to Nepal and Bhutan.
- Import of services by any person (registered or unregistered) from an overseas related party or establishment will be liable to tax in the hands of such person if such services are used in the course or furtherance of business of such person.

Procedural changes

The Government has introduced certain procedural amendments in GST legislation, which have received a mixed response from industry. The following are the notable ones:

- Taxpayers have been allowed to issue single credit or debit notes against multiple invoices they have raised in a financial year. This will substantially reduce the paperwork and compliance burden on India Inc. Players, especially in the automotive, consumer durables, FMCG and pharma industries, are the major beneficiaries of this amendment, since post-supply price adjustments in these industries are huge. The government portal has, however, not been upgraded to support this procedural simplification till date.
- The offsetting mechanism under different heads (IGST, CGST and SGST) has been changed. Earlier, liability for IGST, CGST and SGST first needed to be offset against input credit balance of the same heads, and thereafter, with the other heads (except for cross-utilisation between CGST and SGST, which was not permissible). With the new mechanism, liability of IGST, CGST and SGST has to be first offset against the credit balance under the IGST account, and once the IGST balance is fully exhausted, CGST and SGST input balances can be used to offset the liability under their respective heads. This new pecking order for offsetting input tax credits, however, also maintained the over-arching principle of non-fungibility of CGST and SGST credits. It is interesting to note that the change (mentioned above) in the offset mechanism has been effective from 1 February 2019, but the online functionality at the GSTN portal has been made operational for returns to be filed for the month of June 2019 onwards.
- In Union Budget 2019, the Government proposed to allow inter-head transfer (IGST, CGST and SGST) of cash ledger balances for tax, interest, penalty and fees for offsetting the liability. This will help industry effectively manage funds in the electronic cash ledger.
- The relevant date for refund of unutilised credit arising out of an inverted duty structure has been notified as the due date for furnishing periodical returns for the period during which such claims for refund arose.

B. Judicial pronouncements

Since the implementation of GST, India Inc. has been grappling with unclear or complex provisions. Some key areas of confusion include taxability of intra-company supplies, eligibility of credit, determination of place of supply and classification of activities falling under mixed and composite supply. Industry has resorted to the Advance Ruling mechanism, expecting this to be a faster approach for clarification of interpretational issues and to avoid the possibility of litigation at a later stage.

The GST law provides for an Advance Ruling process, which enables taxpayers to seek clarity on aspects such as determination of liability to pay GST, admissibility of credit, and the time and place of supply. The Authority for Advance Ruling (AAR) has been set up in multiple state jurisdictions across India. An order issued by the AAR is binding on taxpayers and their jurisdictional GST officers.

A marked improvement over the erstwhile regime, Advance Ruling provisions under GST allow applicants to file applications for both existing and proposed business transactions. Furthermore, the extended scope of Advance Ruling provisions has encouraged companies to seek clarification, even on relatively less complex points, so that they can adopt litigation-free tax positions. Consequently, in the last two years, more than 800 applications have been filed before various Advance Ruling authorities across the country. AAR has also been fairly quick in disposing of more than 450 rulings so far.

One of the limiting factors in the Advance Ruling process is that the AAR functions at the state level. This leaves room for contrary rulings being delivered on identical issues by two different AARs. This was recently noticed in a matter relating to the rate of tax applicable on solar power projects, i.e. whether these were taxable at a concessional rate or the standard one. In this case, it was the Maharashtra and Karnataka AARs that delivered contrary rulings.

In order to avoid such complications, in Union Budget 2019, the Government has proposed setting up of a National Appellate Authority for Advance Ruling to consider appeals against contradictory orders passed by the AARs of different states in the case of distinct persons defined under the GST Act.

As mentioned earlier, the AARs have been fairly proactive in disposing of the applications expeditiously. Consequently, numerous rulings have been passed that have provided clarity on a wide range of debated issues under GST. This has enabled taxpayers to align their tax positions with the rulings. This is expected to reduce future litigation.

The following are some of the key rulings delivered by state AARs on contentious issues in this last one year:

- **Liquidated damages:** Damages received for delayed supply under a contract qualify as agreement with the obligation to tolerate an act or situation, and therefore, is liable to be taxed as supply of services.
- **Input tax credit eligibility of Krishi Kalyan Cess (KKC):** KKC cannot be carried forward as input credit under GST. The rationale given by the AAR in arriving at this conclusion is that under the erstwhile regime, credit of KKC could only be utilised to make payment for it. As there is no such tax leviable under the GST regime, KKC cannot be carried forward as transitional credit.
- **Recovery of expenses from employees:** Recovery of expenses on food from employees for canteen services provided by a company qualifies as supply, and is therefore chargeable to GST. In another ruling, partial recovery of insurance premium was held to be not liable to GST.
- **Branded and unbranded goods:** The names and addresses of manufacturers printed on the packaging of goods qualify as products 'bearing a brand name' even if such branding is done as a statutory requirement. The rationale given by the AAR in its ruling was that customers associate the names of manufacturers with a certain level of trust and quality.

- **Transfer of business as a going concern:** Transfer of a business along with all its assets and liabilities qualifies as sale of a business as a going concern, which has been specifically exempted under GST.
- **Ocean freight:** Importers are required to pay IGST on ocean freight under the reverse charge mechanism, notwithstanding the fact that they have already paid IGST under the Customs law on the Cost, Insurance and Freight (CIF) value of imported goods.
- **Cross-charge of cost among distinct entities:** Common activities performed by employees at the corporate office of a company for its branches in different states are within the scope of supply, and hence, need to be cross-charged to its other establishments by the corporate office. In valuation of services that need to be cross-charged to its other establishments, the corporate office should take into account all costs, including employee costs.
- **Credit in relation to select business denied:** Input tax credit for expenditure relating to residential accommodation provided to key managerial personnel for business visits are denied. Similarly, credit of GST paid on insurance premiums for the parents of employees has been held as ineligible, notwithstanding recovery of such premiums from the employees, since they are not conducting insurance business.
- **Indivisible contracts for supply of goods and services:** Agreements involving bundled supply of goods and services relating to erection, commissioning and civil work have been held as indivisible agreements for supply of services that are in the nature of works contract services. The common rate of tax of 18% has been applied on supply of goods and services as a composite works contract.
- **Intermediary services:** Services such as back office support and recruitment-related services provided to students in foreign universities have been considered an intermediary service for the purpose of levy of GST.

Most advance rulings have been decided in favour of the Revenue–leading to the perception of the AARs having a ‘pro-revenue approach’. This has led taxpayers to pull back from actively approaching the AAR, even for the matters with a high degree of risk and uncertainty. But despite the fact that most of the rulings are against the taxpayers, the AAR route continues to be the fastest channel to reach a certainty at the court level, instead of following the regular dispute-resolution channel. Moreover, the orders of the AAR being appealable offer an opportunity to taxpayers to pre-empt litigation on contentious matters.

Another trend in the litigation space was approaching high courts via Writ Petitions. This route is adopted when taxpayers have reasons to believe that their legal rights have been infringed or any provision in law defeats the very intent of the introduction of the GST levy or is ultra vires the Articles 301 and 304(a) of the Constitution of India, and therefore needs to be scrapped.

Provided below are some areas where the constitutionality of certain GST provisions has been challenged before high courts via the Writ Petition route:

- **Filing of transitional credit claims in TRAN-1:** The time limit for filing transitional credit in TRAN-1 was 27 December 2017. However, due to technical glitches on the GSTN portal, many taxpayers were not able to file their TRAN-1 on time, which led to denial of credit. In several matters, the courts issued directions to the GST authorities to re-open the portal for filing TRAN-1, claiming transitional credit to be a substantive right.
- **Eligibility of Input Tax credit on construction services:** Claim of input tax credit on goods and services used in construction activities resulting in immovable property has been restricted. However, the vires of this provision were challenged on the plea that the credit should be allowed when such immovable property is used to generate taxable revenue. The petitioner raised this contention in view of credit-related provisions that permit a builder to claim such credit when a property is sold before the completion certificate is given. In this case, while upholding the constitutional validity of the provision restricting the credit, the court ruled that benefit of the credit is allowed in a limited number of cases where the immovable property is a ‘mall’, which is let out and the revenue from rental income is offered to tax.

- **Sale of merchandise from Duty Free shops:** The court has held that no tax will be levied on sale of goods at Duty Free shops to inbound and outbound passengers because such goods never cross Customs borders and passengers carry the items as their personal belonging.
- **Composite supply:** The scope of composite supply has been decided in a matter related to transmission and distribution of electricity. The court held that the activity of transmission (which is the principle supply) is exempt under GST. Consequently, no tax is leviable on activities involving transmission and distribution of electricity (which constitute bundled services).
- **Inverted duty structure—issue with formula for claiming refunds:** Credit for 'input services' for the purpose of claiming refund of input credit under an inverted duty structure has been excluded in GST law. This provision has been challenged as ultra vires before a high court and a Writ Petition filed has been admitted.
- **Ocean freight:** The Court has provided interim relief to taxpayers and exempted them from the need to pay tax under the reverse charge mechanism on the value of ocean freight paid on import of goods.

  The taxpayers have contended that the notification mandates payment of tax on ocean freight as ultra vires in the case of CIF contracts.
- **Interest on gross or net liability:** The court has held that interest liability needs to be discharged on the gross value of output liability without providing for input credit adjustment. It has also observed that tax only becomes an Input Tax credit when a claim is made in the returns filed as self-assessed. Taking cognizance of the hardship faced by taxpayers, in Union Budget 2019 the Government has proposed to levy interest on the net cash tax liability as against the gross tax liability. The interest on the net tax liability will be applicable in all cases except where taxpayers file their returns after initiation of proceedings under the GST Act.
- **No penalty if taxes are duly paid:** A human error cannot be capitalised on to impose a penalty. Goods cannot be detained if the assessee has paid IGST, in accordance with the value shown on the tax invoice.
- **Availment of Input Tax credit for FY2017-18 beyond March 2019:** The Court has set aside the press release issued by the Government prescribing the last date for claiming Input Tax credit for the period FY2017-18 before the due date of filing return for the month of March 2019 in Form GSTR 3B. It is of the view that form GSTR 3B is not a return.

GST has set off on its second innings, with industry facing audits and assessments in coming years. This means that the Indian judiciary is expected to play a pivotal role in determining tax positions and keeping litigations under control.

PwC's take

Approaching audits and assessments under GST will necessitate strengthening of the dispute resolution system.

The Government has proposed to set-up a National Appellate Authority for Advance Ruling (NAAAR) to closely monitor rulings delivered by states and avoid contrary rulings on identical issues. However, it seems that the NAAAR will have limited focus on contrary rulings passed in the case of distinct persons only.

It may not take into consideration the contrary rulings passed in the case of two different taxpayers.

Hits and misses

Despite initial teething problems, the move towards the GST regime is seen as a catalyst in achieving the Government's stated agenda of bringing in ease of doing business in India.

In realising this over-arching goal, the collective efforts of the Central and state governments in learning from the international GST experience and putting this into practice deserve applause.

Moreover, recent simplifications in GST compliance and reporting related requirements and rationalisation of tax rate structures on a wide range of products and services corroborate the pro-business mind-set of the Indian polity at this juncture.

As the GST enters its third year, it is relevant to take stock of matters to determine whether its objectives have been fulfilled and what else needs to be done.

Given below is a summary of some of GST's hits and misses during the last one year:

Hits		Misses	
Parameter	**Comments**	**Parameter**	**Comments**
Co-operative federalism between Centre and states	Any decision under the GST, whether related to reduction or increase in rate of tax, exemptions, valuation or any other key aspects, are being taken up by the GST Council, which is a body of members, comprising equitable representation from the Centre and states, leading to cooperative federalism between the two.	Lack of guidelines for Anti-profiteering regulation	Despite having extended the tenure of the anti-profiteering body, GST authorities have still not prescribed guidelines and methodology to test anti-profiteering compliance by the industry. Lack of clarity about this aspect has been a major area of concern for the industry, which has been left clueless regarding the risks underlying their pricing decisions.
Rationalisation of GST rates	The Government has time and again communicated its objective to rationalise tax rates for majority of items, except for luxury goods, and keep most of them at tax brackets of 18% or less. While the GST rate has been rationalised for several items, the process of further reduction is expected to be continued to prune the list of items further, especially from the 28% tax bracket.	Potential surge in litigation	With the advent of GST, various petitions seeking release of detained goods and hardships faced due to technical glitches have been filed. Moreover, the constitutional validity of several GST provisions have been contested before the courts. It can't be denied that AAR authorities have helped to clarify several controversial issues. However, contradictory rulings on identical matters issued by various AARs and pro-Revenue outcomes in most cases have become breeding grounds for future litigation in GST.
Resolution of industry-specific issues	During the year, targeted business sector-specific measures were adopted by the tax authorities in an attempt to achieve an equilibrium between the industry's expectations and the interest of the Revenue. Measures have been taken to provide clarity on various issues, with several provisions being eased and GST rates reduced.	Fraudulent transactions	GST was expected to bring in an anti-evasive tax regime. However, numerous cases have been reported for bogus billings, tax evasion, input claims through fake invoices, etc. Tax evasion detected in such cases runs in hundreds of crores of rupees. GST has in its present form, and although has reduced the number of such cases, it has failed to completely curb fraudulent transactions resulting in tax evasion.

Hits		Misses	
Parameter	**Comments**	**Parameter**	**Comments**
Facilitating GST compliances	The Government has time and again co-operated by easing timelines for various GST-related compliances such as filing of GSTR 1, Annual Returns and Audit reports. Correspondingly, the tax authorities have also rendered support to taxpayers by issuing press releases on various operational issues faced by them and to ease compliance-related procedures.	Challenges for the exporters	Processing of GST refunds to exporters of goods and services has been an area of concern since introduction of GST. And while the Government has taken several initiatives for speedy processing of refunds, the benefit does not seem to effectively and adequately percolate to India Inc. at the ground level.
Equitable growth in Indian states	In the pre-GST era, tax revenue was mainly generated by the industrialised states through state levies. GST, being a consumption-based destination tax, allocates revenue to the states on their consumption of goods and services. This leads to more ensured equitable growth of states across country.	State-level cesses	The core theme of the 'one nation one tax' slogan seems to be diluted with the introduction of state-level cesses. Recently, Kerala has introduced a 'Kerala Flood cess at the rate of up to 1% on intra-state supplies to end customers, effective 1 August 2019. This has been done to compensate the state for the loss suffered by it in the recent floods.
Technologically driven compliance mechanism	The new GST system runs under a canopy of strong technological support and tax authorities are working in the direction for digitalising most GST services. This has largely reduced the dependence of MSMEs on professional support and personal interface with the tax authorities as compared to the earlier regime.		

PwC's take

As a step forward, the Government should simplify and streamline processes and remove the ambiguity around taxability by the following means:

- Rationalising GST rates for select commodities
- Creating a forum to address industry-specific issues in a timely manner
- Ensuring AARs' consistency on tax positions on similar issues
- Issuing comprehensive guidelines for anti-profiteering provisions
- Implementing effective mechanisms for reduction of fraudulent transactions

Moreover, it is imperative for India Inc. to quickly adopt to the changing dynamics in the country and support the Government in making GST a success story.

The road ahead

The GST journey has been nothing short of a roller coaster ride. The Government has been working proactively since its implementation, to remove ambiguities, provide necessary clarifications on sector-specific issues, and most importantly, reduce the tax rates of goods and services in order to make the Indian market competitive in the global arena.

With the Government coming back to power with a thumping majority, all possible efforts are likely to be made to simplify current complex processes, automate processes, and inter-link central and state revenue departments to curb leakages. These measures should boost the confidence of international players and encourage them to look at the country as an emerging favoured investment destination.

As GST embarks on its journey into the third year, the GST Council is set to revamp the GST return mechanism, generation of e-invoicing, inter-linkage of the Customs portal and the GST portal, etc. These steps are in line with the Government's stated agenda of bringing in ease of doing business in India and curbing black money.

The following are some areas on which the Government is expected to focus in the next couple of years. This will not only ease business processes, but also generate higher revenue for the Government.

A. New landscape of compliances and documentation

1. Revamping GST returns

At the time GST was introduced, three returns were designed: return for outward supplies (GSTR 1), inward supplies (GSTR 2) and a consolidated summary return for payment of taxes (GSTR 3).

A vital part of the GST model was linking of buyers' and seller's invoices for determination of the outward tax liability of the supplier and the eligibility of input tax credit for the recipient. The idea was well-intended, but its implementation on a real-time basis proved a challenge for the Government due to IT-related issues.

Therefore, as an interim measure, the Government introduced a summary return, GSTR 3B, which was to be filed with the return for outward supplies (GSTR 1), and GSTR 2 and GSTR 3 returns were put on hold.

In order to simplify the return-filing process, the Government is working to replace existing processes with a single monthly return, which involves real-time uploading of outward invoices, and will form the basis for a recipient to avail Input Tax credit.

The proposed compliance system is expected to be first run on a pilot mode to provide adequate preparation time to industry. The Government has rolled out a transition plan for the new GST returns, which provides that the annexure for outward supplies in Form GST ANX 1 will be made compulsory from October 2019 and will replace the existing returns for outward supplies in GSTR 1.

However, large taxpayers with an aggregate turnover of more than INR5 crore in the previous financial year will have to continue filing summary returns in Form 3B for the period October 2019 and November 2019 to discharge their GST liability. The first new return (GST RET 01) will be filed for the month of December 2019 by 20 January 2020. Small taxpayers with an aggregate turnover of up to INR5 crore in the previous financial year will need to file an annexure for outward invoices in Form GST ANX 1 and GST RET 01 from quarter starting October 2019 onwards. Accordingly, small taxpayers will not be required to file Form 3B from this period onwards.

This will phase out returns for outward supplies in GSTR 1 and Form 3B from October 2019 and January 2020 completely.

The proposed system, besides being simple, will serve a twin purpose. Firstly, it will allow India Inc. to track its credits on a real time basis. Secondly, it will help the Government to identify habitual defaulters. This will aid the tax authorities in curbing tax evasion and identifying fraudulent transactions.

2. Matching concept

At the time of roll out of GST, the Government had introduced a 'matching concept' for claiming Input Tax credit. This was meant to form the backbone of online tax compliance. This concept is unique to India, compared to other countries that have implemented GST.

The matching concept requires a buyer to reconcile its tax payments with the tax collected, deposited and reported by the supplier on the government portal (against its outward supplies) on a month-on-month basis, in order to claim credits. Any incorrect or unmatched transactions filed by the supplier leads to denial of credit to the buyer. The concept undoubtedly has merits and is meant to serve multiple objectives, i.e. to ensure a seamless flow of credits through the value chain, encourage a high compliance environment and curb tax fraud.

Now, with the implementation of the new simplified return formats, the Government intends to re-introduce the matching concept, wherein the details of Input Tax credit available to a taxpayer will be auto-populated on the basis of details of transactions uploaded by the suppliers.

The Government has named the process 'UPLOAD-LOCK-PAY', wherein the recipient will need to take action on the invoices reflecting in the inward annexure, i.e. 'Accept', 'Reject' or 'Keep pending'.

A taxpayer needs to perform the reconciliation between its purchase register and invoices reported by its suppliers on a real time basis instead of undertaking this activity at the year-end. The new-system will allow uploading of missing invoices within the following two tax periods only. This could require business to upgrade their accounting processes.

3. Electronic invoicing (e-invoicing)

The Government is set to shortly implement an electronic invoicing system under the GST regime, which will radically transform administration of indirect tax and the way businesses are conducted in India.

The new e-invoicing system will require the suppliers to generate a unique invoice reference number (IRN) from the Government portal or through a pre-defined algorithm. The IRN will need to be mentioned on invoices. The requirement for generation of the IRN may be initially limited to B2B invoices, beyond a specified amount. A committee of Central and state government officials has been constituted with the following objectives:

- To study and examine the electronic invoice systems of other countries, such as South Korea and Latin America
- To scrutinise target taxpayers and their threshold limit for generating e–invoices
- To assess the bandwidth of the GST portal to determine the volume of invoices it can support

Some developed countries such as South Korea and several European countries have implemented electronic invoicing systems to administer tax compliance. Provided below are some of the upsides and potential downsides of the e-invoicing system experienced in these countries:

Upsides

- Reduction in revenue leakages resulting in overall increase in tax collections
- Limited risk of error and a strong internal control system
- Overall reduction in processing costs and timely claiming of credits
- Improved compliance
- Boosting of the organised sector
- Curbing of parallel economy

Potential downsides

- Increase in technology costs due to need to overhaul ERP systems and requirement of frequent upgrade of patches
- Shift of business from small suppliers (with manual processes) to large business houses
- Delay in issuance of invoice due to technology-related issues (largely in the B2C segment)

The Government intends to implement the proposed system in a phased manner, effective 1 January 2020 and plans to integrate it with auto population of the annexure for outward supplies (Form GST ANX 1). It also plans to provide multiple channels for generation of IRN, e.g. a central portal, an ERP or Application Service Providers (ASP) system, an offline utility and an SMS mobile application. The success of the e-invoicing system in the India will depend on several factors such as:

- The ability of the government portal to validate invoices on a real time basis
- Implementation of the system in a phased manner – beginning with large business houses with robust IT systems
- Provision of system facilitated by the Government for small businesses
- Exemption from E-Way Bill-related requirements for taxpayers that need to follow an e-invoicing system, since both largely serve the same purpose
- Implementation of an expedient and effective troubleshooting system on the Government portal

PwC's take

The Government is implementing a new returns system along with matching of credits with suppliers' compliances on a real time basis.

Taxpayers will have to follow up with their vendors and perform these reconciliations proactively. Taxpayers still following manual reconciliation processes will need to change gear and use IT intervention for these processes.

The Government has already released prototype returns, e-invoicing framework and its implementation plans. The industry needs to quickly adopt the requisite IT customisations to minimise disruption of business.

B. Expansion of tax base

The key reason for implementation of GST was to levy a single tax on all goods and services, resulting in free-flowing credit in the country. However, at present, certain items such as petroleum products (including petrol, diesel, ATF and natural gas) and alcohol are outside the GST net.

To provide comfort to the states regarding protection of their fiscal autonomy, the Government had initially decided to keep petroleum products, which form a major part of states' revenue, outside the ambit of GST till revenue collections stabilise.

However, it is notable that due to the inward supplies of these sectors being subject to GST and the output supplies being beyond the scope of GST levy, the tax incidence in these sectors is significantly high. Moreover, their compliance-related requirements have become fairly complicated. This is to some extent defeating the Government's purpose in implementing the new tax regime.

Representations are being made to bring industrial fuel, including natural gas and Aviation Turbine Fuel (ATF), under the GST net. Bringing the petroleum sector within GST net requires more consensus building. However, in the absence of constitutional limitations, it is only a matter of time this shift takes place when the states are assured that they can maintain their levels of tax revenues.

PwC's take

Inclusion of non-GST products has been on the Government's agenda for quite some time. It is time it takes proactive measures to build necessary consensus among the states to bring these products under the GST net, in order to make GST as 'one nation one tax' a reality. To start with, the Government may consider bringing ATF and natural gas within the GST net.

C. Rationalisation of tax rates

Currently, there are four rate brackets — 5%, 12%, 18% and 28%, apart from the specific rates assigned to select categories of goods and services. The standard rate, under which the bulk of goods and services fall, is 18%, while ‘luxury’ or ‘sin’ goods and services are levied 28% GST.

This has been one of the key areas of debate in last two years after implementation of GST. The Government has been receptive and addressed the concerns raised by India Inc., and GST rates have been slashed on many goods and services that were a part of a higher tax slab. In a GST Council meeting held in January 2019, the Government slashed the GST rate further on various white goods such as TVs, digital cameras, power banks and key service sectors, including entertainment & media, real estate and hospitality.

There is an ongoing discussion about a possible merger of the 12% and 18% rates to form a single standard rate in the range of 14%-16%. It should also consider reducing the highest tax slab of 28% to 22% once revenue collections have stabilised.

PwC’s take

The Government has come a long way in rationalising GST rates for goods and services since implementation of the tax. It should now focus taking another look at its criteria for classifying goods under the 28% bracket and merging the two brackets (12% and 18%) to a single tax bracket in the range of 14%-16% in line with global standards.

D. Anti-profiteering

The Central Government had constituted the National Anti-Profiteering Authority (NAPA) to verify whether companies are complying with the anti-profiteering provision under GST by passing on incremental Input Tax credits availed or benefits drived due to reduction in the tax rate to their recipients in the form of a commensurate reduction in the prices of goods or services (or both) supplied by them.

The Authority, since it was constituted, has investigated various companies. The major industry sectors investigated so far include FMCG, consumer durables, automobile, restaurant, real estate and e-commerce. While most of its rulings are in favour of the Revenue, it has also taken cognisance of cases where companies have not passed on benefits due to a substantive increase in input costs.

As is evident, these regulations prevent entities from making excessive profits due to GST. The thumb rule is ‘profit is fine, profiteering is not’. However, despite sound international experience, implementation of these regulations have been a significant challenge for India.

One of the major challenges faced in complying with the anti-profiteering provision has been the lack of guidelines and methodology for determining commensurate price reduction.

However, the following key principles have emerged through the various orders passed by NAPA:

- The difference in the base sale price is the reference point for determining whether the supplier has engaged in profiteering
- Prices need to be reduced on each product or stock keeping unit (SKU). A benefit for one product cannot be passed on to customers via another product or SKU
- Compliance with anti-profiteering provisions needs to be established by all the suppliers in the value chain (not just original manufacturers or importers)
- A commensurate increase in grammage of goods instead of a reduction in prices could be adopted as a one-time method to pass on a benefit to consumers
- A supplier, while computing benefits under GST, could also consider increase in its procurement costs
- Compliance with anti-profiteering provisions is based on fact-specific analyses. Depending on economic factors and market realities, applicable tests may vary from industry to industry.

According to industry, while the Government's intention cannot be questioned, it is difficult for businesses to take complex pricing decisions immediately after there is a change in tax rates. Furthermore, industry has been anxious about being investigated, even if businesses increase prices due to business or economic reasons.

Aimed at protecting consumers' interest under GST, the NAPA was initially meant to be operational for a period of two years till November 2019. However, considering the large number of complaints received by it and the Government's intention of rationalising rates further, this timeline has been extended for a further two years by the GST Council. Furthermore, in Union Budget 2019, the Government proposed to levy a penalty of 10% of the amount profiteered if this is not deposited within 30 days of the order being passed.

Since the inception of the Authority, industry has been demanding a framework with clear instructions on how a required reduction in prices should be computed. With the Government increasing the tenure of the Authority, businesses are waiting to see whether such instructions are provided to address their doubts and apprehensions.

PwC's take

Extension of the tenure of NAPA for another two years shows the Government's intent to focus on complaints pertaining to profiteering.

However, in the absence of clear guidelines to determine such issues, it remains a challenge for industry to consider price increases due to genuine business and commercial reasons.

The Government therefore needs to come up with guidelines to address industry players' doubts and apprehensions. The Government may want to consider limiting the provisions to actual complaints filed by customers and not by authorities themselves.

E. GST audits

With completion of two years of GST, industry is now focusing on year-end activities such as input and output reconciliations, preparation and filing of annual returns and GST audit certification. All these compliances will form an important basis for the Government to undertake assessments under GST law.

The law prescribes multiple audits, which are conducted by the authorities and through the self-audit process by taxpayers. Given below are the three types of audits prescribed under GST laws:

Types	Responsibility	Criteria
Audit by businesses	Chartered Accountant appointed by the taxpayer	If the aggregate turnover of the tax payer exceeds INR2 crore
General audit	Commissioner of CGST or SGST or any officer authorised by the person	On order of Commissioner of CGST/SGST
Special audit	A chartered accountant or cost accountant, nominated by the Commissioner	On order of the Deputy or Assistant Commissioner with the prior approval of the Commissioner

Audit by business

A taxpayer is required to file a GST audit report if its aggregate turnover exceeds Rs.2 crores in a financial year. The due date for filing of the annual return and audit report is nine months from the end of a financial year. However, due to non-availability of the functionality to file the returns at the GSTN portal and considering the time required by the industry to undertake several reconciliations, Government extended the due date for filing the annual return and audit report for the period 2017-18 earlier till 30th June 2019 and now recently further extended till 31st August 2019.

The key activities to be undertaken by the companies for filing the annual return and audit report are:

- Reconciliations of output and input tax as per returns with the books of accounts
- Review of the tax positions adopted by businesses
- Review of ineligible credits
- Applicability of other provisions including free of cost services or goods, valuation and cross-charges between related persons or distinct persons

This being the first year when businesses are filing their GST audit and annual reports, they need to be particular in carrying out the reconciliations and validating their tax positions, since some of the tax positions taken may have undergone change due to amendments in tax laws and clarifications issued on interpretational issues.

The online dashboard, modules and offline filing tool for GST annual returns and audit reports is provided on the GST portal to support business houses in undertaking such compliances. In its attempt to assist companies in reconciliations and preparation of annual and audit reports, the Government has provided a facility for generation of a draft return on the portal, which is auto-populated on the basis of the GSTR 1 and GSTR 3B filed for the period.

Audit by GST authorities

Departmental audit is the tool the Government has been using for a long time to unearth revenue leakages and augment its revenue. Once annual returns and audit reports are filed by taxpayers, it starts examining these reports in great detail to identify areas of non-compliance, excess credit claims, non-reporting of taxable transactions, incorrect distribution of credits across locations, etc. In the last two years after implementation of GST, industry has been deluged with notices across locations for verification of credits, reconciliation of mismatches in returns, etc. However, in view of the fact that annual returns and audit reports provide holistic information on taxpayers' business operations, the Government is likely to initiate departmental audits in upcoming months.

GST law provides for two types of audits being conducted by the Government—departmental audit, which is likely to be on similar lines as the audit it had been conducting under the earlier service tax or excise regime, and the other, special audit. Under the latter category, the Government is likely to take the help of independent chartered accountants and/or cost accountants. Valuation aspects and inter-establishment or inter-company deemed supplies may be areas on which the department is likely to focus in such audits.

During implementation of GST, the Government had envisaged division of assessees between the Centre and the states for audits and assessments. It will be interesting to see how such a system is implemented when audits are conducted, so that they are not only effective but less burdensome for industry.

The Directorate General of Audit released an audit plan on 25 June 2019. As per the plan, GST audit is likely to commence from 1 July 2019 for taxpayers who have already filed their annual returns.

The Directorate General has also developed a Risk Assessment programme to categorise dealers into three broad categories, large, medium and low, on the basis of their annual turnover. In addition, it has worked out the approximate number of audits to be conducted by each audit commissionerate. This calculation is based on the number of 'audit parties' available, the 'working strength of the officers' and the 'number of days required to conduct audits', which take between three to seven working days for small, medium and large taxpayers, respectively.

The Directorate General has recently released the GST Audit Manual 2019, which is on similar lines as the audit process prescribed under the erstwhile Central Excise and Service Tax Audit Manual 2015.

PwC's take

GST audit is an effective tool to identify mistakes and curb tax fraud in time and take corrective actions. Consequently, India Inc. expects the audit process to be transparent, meticulous and expeditious so that it does not cause any disruption in business.

Since taxpayers will be subject to a comprehensive audit by the GST authorities for the very first time and most concepts are relatively new (some ambiguous), it is imperative that auditors adopt a business-friendly approach. The focus needs to be more on enabling taxpayers to correct their bona-fide mistakes rather than on penalising them for gaps in their compliance and / or short tax payments they have made inadvertently. Moreover, audit needs to be completed in a time-bound manner.

Ideas for GST 3.0

GST law is fast evolving. However, in view of its far-reaching impact, the Government needs to adopt a structured approach in line with best practices around the world to ensure a world-class taxation system for India. Given below are some suggestions to substantially enhance the GST experience for taxpayers.

A. Consultation as an assessment procedure

Under Customs laws, a process has already been set up whereby the tax authorities issue notices to taxpayers for levy of additional tax only after consulting with them. They call the taxpayers for a meeting before issuing them notices and starting the proceedings. This gives taxpayers the opportunity to clarify their position on potential issues and enables the tax authorities to get a clear picture of the situation and the grounds on which they can either proceed with the assessment or drop it.

The practice of tax authorities holding consultations with taxpayers is a globally recognised practice. It also helps to achieve the Government's objective of enabling 'ease of doing business' in India by avoiding unwarranted litigation and providing clarity on issues to taxpayers as well as to the tax authorities.

This procedure, with appropriate modifications (as required), can be implemented in the GST regime to strengthen the assessment mechanism. It will simplify the cumbersome assessment procedure and eliminate arbitrary tax demands that frequently lead to litigation.

B. Measures to strengthen cash flow management for taxpayers

Cash flow-related requirements for businesses has increased substantially under GST. In order to ensure effective utilisation of taxpayers' money, the Government should explore introducing a well-integrated model for collection of Central levies of direct and indirect taxes. One possible measure is to allow the amount of tax paid in excess or Input Tax credit under GST to be offset against the liability of tax for other tax statutes such as Income Tax.

At present, businesses need to maintain state-level balances for both the components of the GST (CGST and SGST). There is certainly a case for the Government to allow the CGST balance at a national level. This can then be available to offset the CGST liability of one or more states.

This sort of mechanism will facilitate the taxpayers in making optimum utilisation of their cash or credit balances. At the same time it will help the government to significantly reduce their own operational cost involved in management of taxes (including collection of taxes, refunds, rebates, payments under protests etc.) under different statutes.

Under GST Law, there are certain provisions that are complex and result in cash blockages without yielding incremental revenue to the exchequer. For instance, on import of services, taxpayers are required to deposit GST under the reverse charge mechanism. They have to pay this tax in cash and then avail the Input Tax credit for this. The mandatory payment in cash leads to blockage of cash funds for taxpayers. The Government should consider allowing payment of GST under the reverse charge payment by taxpayers using their Input Tax credit balance. Alternatively, it can consider doing away with the requirement for taxpayers to pay GST under the reverse charge mechanism for businesses with taxable supplies only.

Similarly, there are provisions that mandate payment of GST on inter-branch supply of services (e.g. common services performed between a head office and its branch offices). If a branch office is able to claim full credit, payment of GST by the head office and the subsequent claim of credit by the branch office entails additional working capital-related requirements for the business. The Government should consider doing away with this provision as it can only lead to challenges faced due to the complexity of compliance-related requirements, reconciliation, etc. The Government continuing with the present system will lead to an increase in tax disputes without augmentation of revenue.

C. Incentivising end consumers to create a more compliant eco-system

GST is a transaction tax, the ultimate burden of which falls on end consumers in the form of the overall prices of goods and services.

End consumers cannot reclaim the GST they pay for their purchases, and consequently, have no incentive to ask for a GST invoice. At the same time, non-issuance of GST invoices enables retailers to avoid reporting GST on their supplies. This also opens avenues for them to avoid paying Income Tax on their income.

Almost every country in the world is struggling with this kind of tax evasion. In order to curb it and encourage enforcement of an invoicing system, some European countries such as Belgium and Italy had come up with a sanction (a sort of penalty) for end customers who failed to ask for tax receipts for their purchases. However, this solution was difficult to implement and was ultimately dropped as it did not yield any cogent results.

Conversely, the governments of various developed countries have come up with various innovative incentive schemes to encourage end customers to ask for tax receipts for their purchases.

Taiwan was a pioneer in this field and in last decade several such schemes were launched by China, the Czech Republic, Romania and some other countries.

The 'Tax lottery incentive scheme' is one such example. The rationale for such schemes is the belief that consumers want to participate in lotteries to win prizes, and therefore, are willing to ask for business receipts, using which they can participate in these lotteries.

The interest of governments and policymakers in tax lotteries is due to the belief these schemes are cost-effective and easy to implement policy tool.

The idea of a receipt-lottery scheme is to give customers an incentive to ask for receipts, and thereby ensure that sales are duly recorded and taxed. Receipts can be printed with a code and can then be submitted for a central draw. Such lotteries range from decent sums of money to cars and holidays. Seeing the success of receipt-lottery schemes, some countries have gone a step further to allow a refund of 20%-30% of the Sales Tax paid by taxpayers in a year, in addition to the lottery claim.

In India, where the Government is putting in place various policy measures to curb tax evasion, e.g. e-invoicing, the E-Way Bill system and allowing ITC on the basis of the matching concept. Innovative schemes such as cashback on uploading of invoice details at a central server once a supplier's invoice is uploaded and mapped will augment the Government's revenue. At the same time it will encourage the common man to participate in the drive to curb black marketing.

D. Minimisation of tax-related disputes

The dispute-settlement system has not evolved significant so far in India. Under the erstwhile regime, several schemes were introduced by the Government, but industry has been rigid and resisted adopting such measures for various reasons. Various state governments had also launched several amnesty schemes under the VAT regime. Furthermore, to conclude pending matters, several state governments had announced schemes under their respective VAT laws after implementation of GST.

In Union Budget 2019, the Government proposed to roll out a Legacy Dispute Resolution Scheme to facilitate trade and industry in quick closure of pending disputes. The proposed scheme, the 'Sabka Vishwas (Legal Dispute Resolution) Scheme, 2019, will have the following key features:

- The scheme will cover tax disputes under the erstwhile tax regime, such as Central Excise, Service Tax and cesses
- All taxpayers except those who have been either convicted under the Act or have approached the Settlement Commission can avail this scheme
- The scheme offers relief that varies between 40% to 70% of tax dues, depending on the size of a tax dispute
- In addition, the scheme offers waiver of interest and penalty
- The applicant should make the necessary declaration electronically in the prescribed manner. This relief will be confirmed by issuance of a discharge certificate on due payment, as determined by the Committee.

It will be interesting to see how industry responds to such schemes to close past matters and move on under the new regime.

Another area on which the Government needs to focus is strengthening of the Advance Ruling process under GST to avoid unnecessary litigation. Divergent rulings by different state authorities on identical issues have left industry confused about the effectiveness of this alternative dispute-resolution mechanism.

In Union Budget 2019, the Government has proposed setting up of a National Appellate Authority for Advance Ruling (NAAAR) to consider appeals against contradictory orders passed by the AARs of different states in the case of distinct persons defined under the GST Act. It is the need of the hour that the NAAAR becomes functional with no further delay.

Additionally, in order to facilitate timely settlements, the Government needs to mandate that closure of disputes under GST should be undertaken in a time-bound manner.

And last, but certainly not the least, to ensure certainty on tax positions, it is important for the Government to bring in a sector-wise white paper providing clarity on various ambiguous provisions so as to put various contentious issues at rest.

E. Focus on administration

Another important policy matter on which the Government needs to focus is re-structuring of the tax administration. The process of issuance of notifications needs to be streamlined to give businesses adequate time to implement changes.

Issuance of unnecessary notices should be discouraged, and a reasonable amount of time should be given to taxpayers to respond to these.

In addition, measures should be taken to ensure consistency in the approach followed by tax officers across jurisdictions. The Government also needs to work proactively to make sure that the judicial members of tax tribunals maintain a balance in their technical and judicial evaluation of tax-related matters. This is critical for bolstering India Inc.'s trust in the independence of tax tribunals.

Annexure - Focus on select sectors

In the past one year, the Government has been focusing on various sectors that contribute vitally to India's GDP. While addressing the concerns of these sectors, the Government has tried to meet industry's expectations and at the same time safeguard its revenue.

The section below deals with the impact of changes under GST on key focus sectors.

Real estate sector

The real estate industry, which contributes 6%-8% of India's GDP, is one of the most important pillars of the Indian economy. The industry, which was bogged down with sluggish growth, heaved a sigh of relief when the GST Council reduced GST rates on output supplies in the sector in its 33rd meeting on 24 February 2019. Under the new scheme of taxation for the sector, developers have the option to pay GST at the rate of 1% on affordable housing properties and 5% on other residential properties.

A residential house or flat with a carpet area of up to 90 sqm in non-metropolitan cities and towns and 60 sqm in metropolitan cities with a value of up to INR45 lakh (metropolitan and non-metropolitan cities) has been categorised as affordable housing. The metropolitan cities are Bengaluru, Chennai, Delhi NCR (Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon and Faridabad), Hyderabad, Kolkata and Mumbai (the whole of MMR).

The reduced GST rates have been made applicable effective 1 April 2019, subject to the following conditions:

- A builder will not be eligible to claim input tax credit. A proportionate credit reduction is required for under construction properties as on the date of transition to the new scheme.
- Builders will have to purchase 80% of input and input services from registered persons. If procurement of input and input services falls short of 80% of the total procurements, the builder will be liable to discharge GST on such shortfall under the reverse charge mechanism. The GST rate on the reverse charge liability will be (a) at the rate of 28% on cement, (b) at applicable rates on capital goods and (c) at the rate of 18% on other procurements.

While the intent of the Government to reduce the tax rate is appreciated by the sector, execution of this intent at the ground level involves proportionate reversal of Input Tax credit, the need for procurement of 80% of input and input services from registered persons and liability to pay GST under reverse charge mechanism in the event of failure to meet the 80% criteria is going to be a challenging task. Reversal of Input Tax credit on a proportionate basis would result in significant computational issues for builders undertaking multiple projects that are at various stages of construction, particularly since every project may have different pre and post completion sale patterns.

In the real estate industry, it is a common practice for landowners and developers to come together for the development of a property. In such cases, the landowner's contribution is his or her land, and the developer uses its expertise to construct or develop a project. The development rights are transferred by the landowner to the developer for construction of the property. To acquire development rights, the developer pays the landowner either in cash or transfers to him or her some of the units constructed under the project. Such arrangements may be executed by way of Transfer of Development Right (TDR) by the landowner to the developer or through a Joint Development Agreements (JDA).

There has been ambiguity on the taxability of TDR under the GST regime as well as the erstwhile Service Tax regime. The Government has issued various notifications specifying various aspects related to taxation of TDR (such as taxability, time of supply and valuation). These notifications have been effective from 1 April 2019.

According to the notification issued by the Government, GST is not payable on services by way of TDR for residential projects commencing after 1 April 2019, where consideration has been received prior to issuance of completion certificate or before the date of first occupation, whichever is earlier. In the case of a project comprising of both residential and commercial apartments, exemption is to be computed on a pro-rata basis on the carpet area of the residential apartments.

This exemption is not available for an apartment that remain un-booked on the date the completion certificate is issued or before the date of first occupation, whichever is earlier. In this case, GST is payable by the promoter under the reverse charge mechanism and the time of supply is the date of issuance of the completion certificate or date of first occupation, whichever is earlier.

PwC's take

For new projects, there is no option to pay tax at a higher rate and avail ITC. It is mandatory to charge a concessional rate of tax and forego ITC.

Computation of transitional credit is complex and taxpayers need to make detailed calculations to compute the ITC reversible by them or to which they are eligible, including project-wise bifurcation of ITC.

Solar industry

Solar power is one of the fast developing industries in India. The country's solar installed capacity reached 28.18 GW on 31 March 2019. Statistics indicate that India has become the lowest cost producer of solar power in the world.

The Indian Government had an initial target of 20 GW capacity for 2022, which was achieved four years ahead of schedule. In 2015, the target was raised to 100 GW of solar capacity (including 40 GW from rooftop solar systems) by 2022, targeting an investment of US$100 billion.

The Government has taken various measures to promote green energy and has implemented various policies and regulations to boost generate solar power in the country. At this stage, the industry expects tax regulations to be favourable and contribute to its growth.

Under the GST regime, the solar power sector is beleaguered with different tax rates. This has resulted in an inverted duty structure, which is coupled with unclear and complicated tax provisions.

A concessional GST rate of 5% applies on specified devices and equipment used to set up solar power plants such as solar photovoltaic (PV) modules, solar heaters and other solar power-based devices such as solar cells and solar panels that account for 55%-60% of the overall project cost. Components such as module mounting structures, cables, inverters, batteries, and transformers are charged a higher GST rate. Compared to the tax structure under the GST regime, the effective duty incidence under the erstwhile tax regime was approximately 2% to 3%. This was largely due to exemptions available to solar power-generating systems, solar PV modules and other solar energy devices in various states.

A turnkey contract for setting up solar power plants qualifies as a 'works contract' under GST laws and attracts GST at the rate of 18%, with no exception being made for solar power generation projects. There have been contradictory Advance Tax rulings pertaining to applicability of tax under the GST regime in cases where both goods and services were offered under a composite contract. Therefore, the effective rate of tax for the sector has increased substantially, which may make such projects commercially unviable.

To resolve this dispute, the GST Council has recommended a presumptive valuation mechanism in the case of composite supply of goods and services. The new valuation mechanism provides that in all such cases, 70% of the gross value will be deemed as the value of supply of goods and attract a 5% GST rate and the remaining 30% of the aggregate value of a Engineering, Procurement and Construction (EPC) contract will be deemed as the value of supply of a taxable service and attract the standard GST rate of 18%.

The deemed valuation concept given above provides much needed clarity on this issue. However, the industry is not really satisfied with this arbitrary split of 70:30 in valuation of goods and services and believes that in such contracts, over 90% of the total supplies constitute 'goods' and only the balance 10% or less constitute 'supply of services'.

In view of these controversies, with a significant number of projects coming to a standstill, the Delhi High Court has recently directed the GST Council to review the tax structure for solar power projects. This decision was in response to a Writ Petition filed by the Solar Power Development Association earlier this year, which challenged the new tax rates levied on solar power generating systems in the country. The Court has asked the GST Council to take a relook at the matter in consultation with the Central Board of Indirect Taxes and Customs and the Ministry of New and Renewable Energy. The High Court has directed the Government to respond to this in two months and has scheduled the next hearing in August 2019 to deliberate on the latter's comments.

In its recent meeting on 21 June 2019 the GST Council had sent its recommendations to the Fitment Committee to reconsider the mix of goods and services in a solar power generating project and arrive at a more reasonable valuation mechanism.

PwC's take

The solar industry expects the Government to specify 90% of the contract price as the deemed value towards supply of goods and 10% towards supply of services in the case of turnkey contracts for setting up solar power plants. This will bring the overall tax incidence equal to or less than that under the erstwhile tax regime.

Auto and auto ancillary

The automotive sector contributes more than 7% to India's GDP currently. Under the Automotive Mission Plan 2026, the Government aims to propel the Indian automotive industry to a position that ranks among the top three in the world in engineering, manufacture and exports of vehicles and components, growing in value to over 12% of India's GDP.

In the Union Budget 2019, the Government has laid special impetus on the use of clean energy and provision of affordable and environment-friendly public transportation options for the common man. The GST Council has sent a proposal to the Fitment Committee for reduction in the GST rate on electric vehicles from the present rate of 12% to 5%.

The auto sector comprises Automobile Manufacturers (OEMs), auto ancillaries engaged in supplying components to OEMs, dealers of OEMs involved in sale of final products to end customers and service providers involved in providing after-sales services for vehicles.

The auto sector's operations are somewhat complex from the tax angle. Under pre-GST provisions, the sector had a complicated tax structure, with multiple taxes that had diverse provisions, a multiplicity of classifications and rates, the cascading effect of intermediate taxes, valuation-related issues, etc.

The following are some of the key developments under the GST regime with respect to this sector:

- A number of taxes have been subsumed into a single GST levy, with uniformity of legal provisions across the states, a common tax base for both components of the GST (CGST and SGST), cascading of taxes being avoided and valuation methods such as MRP-based valuation for spare parts being done away with.
- On the other hand, Road Tax or registration fees have not been subsumed in the GST, despite strong recommendations from the auto industry. This continues to be an extra cost for end consumers.
- The concessional rate of tax for hybrid cars (other than those that meet the small car criteria) in the earlier tax regime has been withdrawn. Under the GST regime, they are subjected to tax at the rate of 43%, which is a major set-back for this upcoming segment.
- There is still ambiguity on the tax treatment of post-sale repairs and servicing due to the concept of 'composite supply'.

- The Government, vide a recent circular, has clarified that the additional discount given by a supplier of goods to a dealer is a post-sale incentive where the dealer needs to undertake activities such as special sales drives, advertisement campaigns and exhibitions. Such transactions then become independent ones and the additional discount is the consideration for the dealers undertaking such activities. The dealer, being the supplier of services, is required to charge GST on the value of the additional discount provided to customers.
- Another related aspect is the eligibility of credit on cars held for demonstration purposes. The authorities are of the view that credit is not eligible on such cars as these are not sold but are used for advertisement purposes. In a recent ruling, the Kerala AAR held that demo cars are an indispensable tool for sales promotion by providing trial runs to customers and enabling them to understand the features and functions of the vehicles. Therefore, despite there being an outright credit restriction on motor vehicles, cars used by dealers for demonstration purposes are eligible for a credit benefit, since they are the same as capital goods used in the course or furtherance of business.
- Another common practice in this sector is the practice of tools, dies, moulds, etc. being provided by OEMs to suppliers of components. Tax authorities have issued a clarification wherein it was provided that:
  - Where the contractual liability for providing moulds and dies is the OEM's and these are provided by OEM free of charge, their value does not need to be amortised.
  - Where the contractual liability for developing moulds and dies rests with the component manufacturer and are provided by OEMs free of charge, their amortised value needs to be included in the value of the supply.

In a recent ruling, the Karnataka AAR held that the amortised value of tools and dies needs to be included in the value of the goods for levy of GST, wherein the applicant received the order for manufacture of components, and tools and dies are specifically required for this. The ruling, being contrary to the valuation provisions under the GST Law, was subsequently overruled by the Karnataka AAAR.

PwC's take

The recent clarification issued on post-sales discounts could lead to litigations across this sector, especially where dealers are offered a discount in lieu of activities such as special sales drives or advertisement campaigns. The Government must take a relook into this circular and make suitable changes to avoid unnecessary litigations for auto companies, which are already deluged with notices relating to amortisation of tools and dies.

Hospitality sector

India's hospitality industry has emerged as one of the key contributors to the growth of the services sector. The tourism and hospitality sectors together contribute close to 7.5% of the country's GDP. India was ranked 7th among 184 countries in terms of its travel and tourism sector's total contribution to its GDP in 2017.

The hospitality sector encompasses a wide variety of activities within the services sector and is a major job provider, both direct and indirectly. The sector attracts the highest inflow of Foreign Direct Investment and is the most important net foreign exchange earner for India.

Sector players had to pay multiple taxes (VAT, Luxury Tax and Service Tax) under the erstwhile regime.

Under the GST regime, the hospitality sector stands to reap the benefits of standardised and uniform tax rates, and easy and enhanced utilisation of Input Tax credits.

GST law provides that accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places, meant for residential or lodging purposes, are subject to different tax rates ranging between Nil to 28%, depending on the purpose of and declared tariff for a unit of accommodation.

Similarly, supply of food and beverages in these hotels are liable to different GST rates, depending on the declared tariff of a unit of accommodation.

On the basis of representations filed by hotel associations, the Government removed the concept of declared tariff with respect to accommodation in hotels, inns, guest houses, etc. in July 2018. However, the rule continued to apply for food and beverages supplied in a restaurant located in the hotel premises. Now the GST rate for accommodation in a hotel is based on the transaction value and not the declared tariff rate.

The Government has clarified various aspects with respect to supplies made by a hotel by way of food and beverages or accommodation in it. Vide a recent circular, the Government has clarified that supply of food or beverages to the employees or guests of a SEZ unit will not be treated as supplies to a SEZ unit that is zero rated. Such supplies will attract GST because the place of supply in such cases is the place where the hotel is located.

Furthermore, in its 23rd meeting, the GST Council provided much-needed relief to the industry by slashing down the GST rate on restaurant services from 18% to 5%. However, restaurants are not able to avail the benefit of Input Tax Credit (ITC). Liquor continues to attract state levies including State Excise and VAT, since these are outside the GST regime and are liable to be taxed under the laws mentioned above. Outdoor catering will, however, continue to be taxed at 18% with ITC.

PwC's take

As India becomes an even bigger player in the global hospitality and tourism industry, we need tariffs for such services to be at par with global rates.

Our Asian counterparts such as Japan and Singapore have very low tax rates for their hospitality sector (8% and 7% respectively).

India is a global tourism hotspot, but it loses out on the back-packer crowd due to high tax costs in the sector.

In the third year of GST, the hospitality industry expects the Government to reconsider the GST structure for it to align with global tariffs. It is expected that this will attract many more tourists and enable Indian businesses to compete in the global market.

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Notes

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