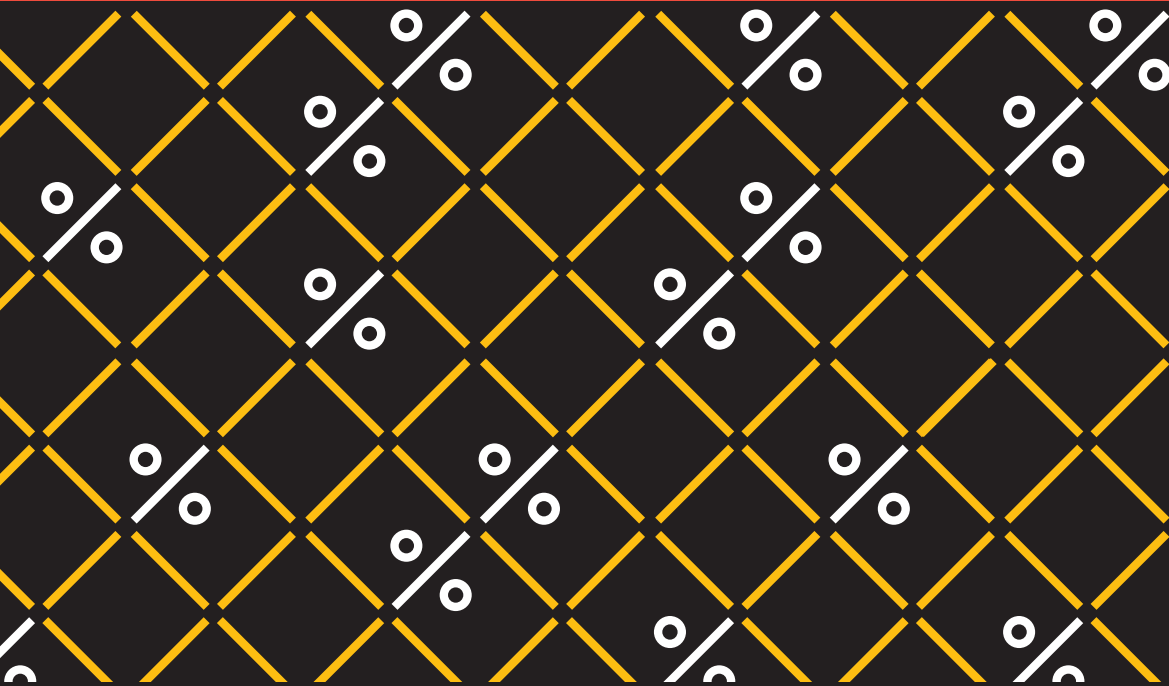


# Reimagining GST@3



# Foreword

It's been a little over three years since India embarked upon the most radical tax reform – the implementation of GST. While GST ushered in several benefits, particularly in terms of reducing the overall tax incidence and smoothening the supply chain, it has also encountered several challenges. But none of those have been anywhere close to the turbulence it faces at present. The twin onslaughts of the COVID-19 pandemic and economic slowdown have severely impacted GST collections. The steep decline in revenue collections, especially of the GST Compensation Cess, have also impacted the constitutionally mandated compensation to states. For the industry, especially the micro, small and medium enterprises (MSME) sector, the initial tax reliefs and stimulus package unveiled by the Government of India provided some solace, but the industry hopes for further relief measures to revitalise the economy.

This report is a sequel to three earlier PwC reports on GST, the last one being **GST@2: The road ahead**. The current report looks closely at what has transpired in year 3, including the Government's efforts to simplify the legal and procedural aspects of GST and address the industry's concerns. Yet, several critical matters such as transitional credit and the restrictive nature of the input tax credit scheme remain unresolved. Going forward, the industry anticipates that its voice will continue to be heard so that these issues are quickly addressed. The report also explores the areas that the industry needs to focus on as we move into the fourth year of GST and beyond, particularly in the wake of several technological changes that are being proposed, including e-invoicing and a new GST return mechanism.

As Rahm Emanuel, former Mayor of Chicago, once said, "You never let a serious crisis go to waste." Indeed, in the wake of the present crisis, the GST Council has a golden opportunity to undertake necessary reforms in GST. Accordingly, this report also outlines some innovative tax design changes and administrative reforms for a reimagined and robust GST system in India.

We hope that you will find this report to be a useful read. We look forward to your feedback and suggestions.

Kind regards,

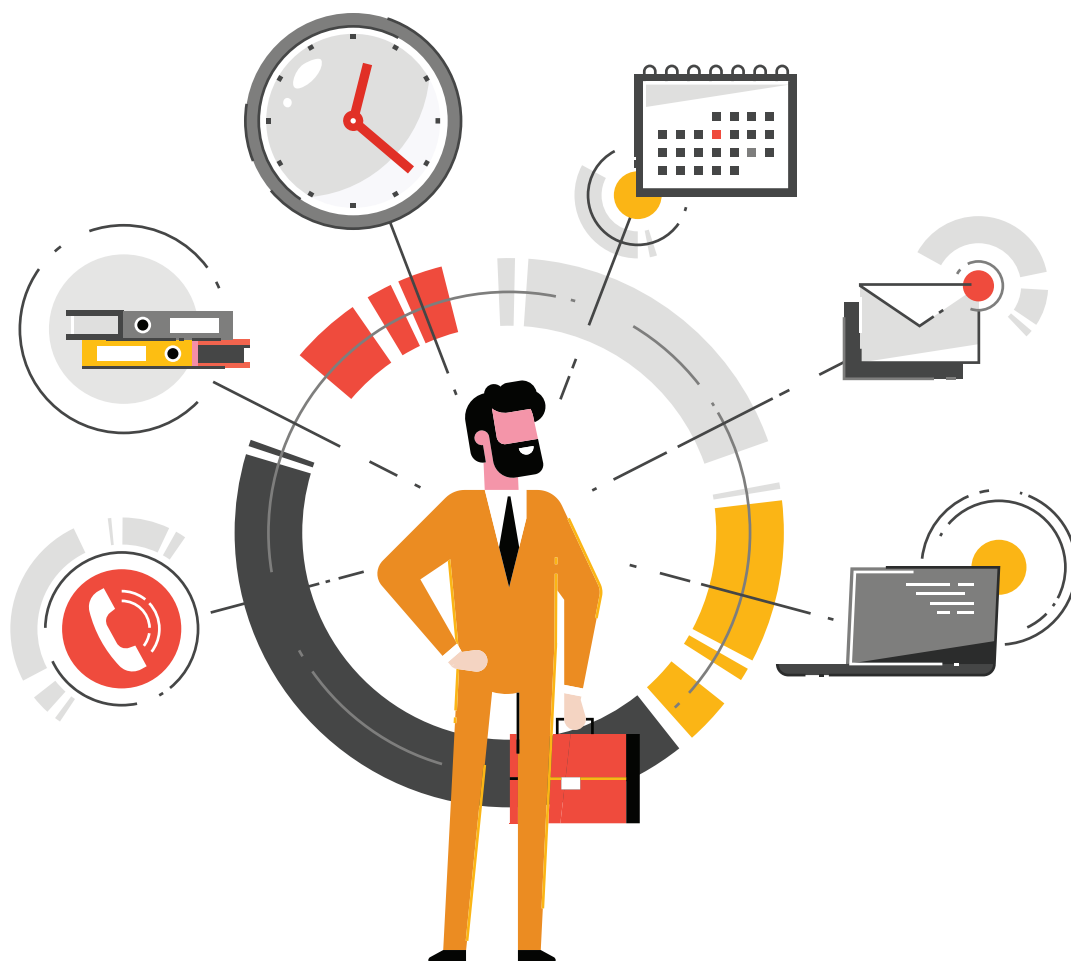
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Partner and National Leader – Indirect Tax



# Table of contents

1.	Introduction .....	4
2.	The journey so far .....	5
3.	Evolution in the third year .....	10
4.	COVID-19: Impact on GST and relief measures .....	16
5.	Emerging trends and the road ahead .....	20
6.	Reimagining the future of GST .....	25



# Introduction

The Goods and Services Tax (GST), hailed as the biggest economic reform in Indian history, completed three years on 30 June 2020.

Acclaimed 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.

During the first year of GST, the Government focused on resolving issues faced by businesses to ensure a smooth transition to the GST regime. This allowed the industry to quickly move to a new ecosystem with completely revamped compliance requirements. PwC released two reports in the first year of GST, offering a sneak peek into the experience and learnings of the Government and businesses during the early stages of this regime. The first report, titled **Over 200 days of GST: The road ahead**,<sup>1</sup> was released in February 2018. The report captured the experience of the initial days of GST, challenges faced by the industry, the Government's proactive approach to addressing issues and the road ahead. PwC's second report, titled **365 days of GST: A historic journey**,<sup>2</sup> captured the changes brought in by the Government in the GST law and procedures, the industry's experience, emerging challenges and the socio-economic impact of GST on India Inc.

In the second year of GST, both the enforcement agencies and the industry were largely acclimatised to the new taxation landscape. The Government focused on rationalising tax rates, resolving sector-specific issues, de-complicating the rulebook and simplifying compliances. To encapsulate the second year of the journey, PwC released the report **GST@2: The road ahead**,<sup>3</sup> which outlined the legislative, procedural as well as jurisprudential developments during the year, emerging controversies and taxpayers' expectations.

The Government's focus in the third year of GST is largely on further simplifying processes, facilitating administration and addressing industry concerns. Taking a clue from the global best practices, the Government decided to implement an e-invoicing mechanism with the objective of automating compliance procedures and curbing tax evasion. The Government has also worked towards bringing stability in the ecosystem and collaborating with various stakeholders to make GST a 'good and simple tax'.

Towards the end of the fiscal year, the world economy was gripped by an unprecedented crisis. Faced with the challenges of the COVID-19 pandemic, both the Central as well state governments in India have strived to provide the necessary support. On the GST front too, the Government has announced policy relaxations such as easing of input tax credits restrictions and waiver of late fee on filing periodical returns, extension of timelines for compliances.<sup>4</sup> Furthermore, to address the issue of economic de-growth amidst the pandemic and negative global economic outlook, the Government released a stimulus package of INR 20 lakh crore (equivalent to 10% of India's GDP) under the Aatma Nirbhar Bharat Abhiyaan. The package aimed at boosting domestic manufacturing and includes various initiatives to empower the poor, labourers and migrants who are adversely affected by the current crisis.

With all these steps already taken, there still remains ground to be covered. In view of the rising fiscal deficit and India Inc.'s expectations of more fiscal and tax relief measures, the Government would need to walk a tightrope. The drop in revenue collections during the three-month nationwide lockdown also poses a huge challenge.

Now, with GST having completed its third year, we are pleased to present our latest report, **Reimagining GST@3**. This report presents a recap of the GST journey in the last one year, key legislative and procedural developments introduced by the Government, the impact of COVID-19 on key sectors in India, emerging trends and the road ahead – a reimagining of GST for the future.



1. <https://www.pwc.in/assets/pdfs/publications/2018/over-200-days-of-gst-the-road-ahead.pdf>

2. <https://www.pwc.in/assets/pdfs/india-services/indirect-tax/365-days-of-the-gst-a-historic-journey/a-historic-journey.pdf>

3. <https://www.pwc.in/assets/pdfs/gst-at-2-years/gst-at-2-years.pdf>

4. Notification no. 30/2020 – Central Tax dated 3 April 2020 to Notification no. 36/2020 – Central Tax dated 3 April 2020

# The journey so far

India's biggest indirect tax reform, GST, has entered the fourth year of its journey. In the first year of its implementation, the Government's focus was on resolving teething issues faced by businesses and ensuring a smooth transition to the GST regime. Once the industry was familiar with the compliance-related requirements and the overall concept of GST, the Government shifted its focus to legislative aspects and provided clarifications on provisions that were ambiguous.

Although it is still at a nascent stage, GST has substantially facilitated ease of doing business. Unlike the second year, there were no frequent changes in the GST rates in the third year. The changes in rates were few and most of them were largely in line with a stated objective of correcting an inverted duty structure.

Towards the end of FY 2019–2020, with the economic wheel having come to a standstill due to the outbreak of COVID-19, the Government took some bold measures in line with those announced globally to facilitate trade and industry during the crisis.

These are testing times for the Government where, on the one hand, it is committed to compensating states for their losses due to the economic burden and, on the other hand, it has to provide relief measures to trade and industry in order to help them get back on track.

One of the key concern areas for states is the delay by the Centre in releasing the agreed compensation in the last couple of years. This concern has deepened in the third year of GST implementation due to the economic slowdown caused by the pandemic. Given the current circumstances, the Centre and states may need to work together to renegotiate the terms of compensation and strike a balance between the expected revenues and states' requirements to meet their respective expenditure.

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

## A.

### Impact on revenue collections

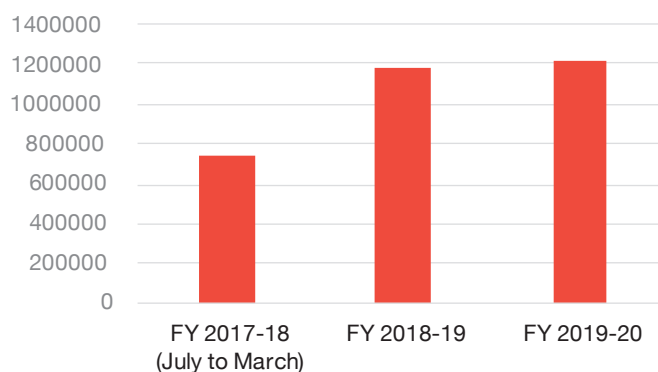


GST was implemented to realise the Government's goal of 'one nation one tax'. It redefines the way businesses operate, expands the market for goods and services (replacing many small and fragmented markets with a single common one) and completely overhauls the Indian indirect taxation landscape. In view of all these benefits, its macroeconomic impact cannot be anything but good.

The Government expected a substantial increase in revenue collections after it successfully resolved most of the teething issues faced by the industry in the first two years of GST. However, due to the slowdown in the global economy and the impact on the Indian economy, revenue collections failed to gain momentum.

Despite the global slowdown, in FY 2019–20, revenue collections witnessed steady growth and GST revenue increased by approximately 4% in FY 2019–20 as compared to FY 2018–19 (see figure below).

#### Revenue collections (in INR crore)

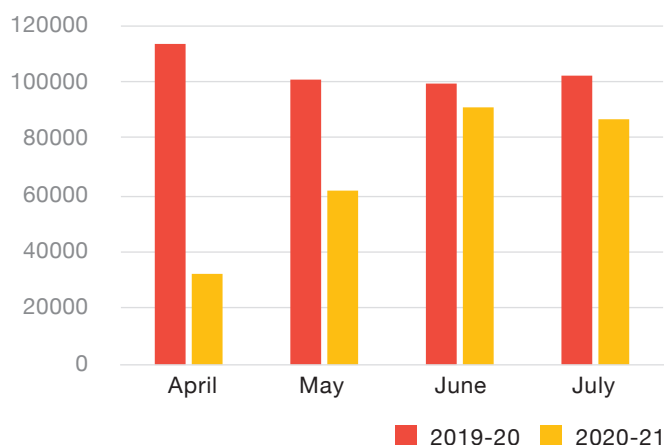


Source: GST Council Secretariat Newsletter

However, if one were to look at the revenue collection numbers of March 2020 on a standalone basis, the effect of the lockdown is evident, as they have dropped by more than 9% as compared to the corresponding collections for March 2019. The trend of lower revenue collections continued in the first few months of FY 2020–21.

The dip in revenue collections in the period of April–July 2020 vis-à-vis the corresponding period in 2019–20 is shown below.

**Revenue collections (in INR crore)**



Source: GST Council Secretariat Newsletter

Revenue collections dropped by 72% and 38% in the month of April and May 2020 respectively in comparison to the revenue collections of April and May 2019. The dip in revenue collections coupled with other factors has widened the fiscal deficit to 4.6% (compared to the target of 3.4% set in FY 2018–19). This increase is largely due to the current pandemic and its impact on the economy.

However, based on the number of e-way bills generated in July 2020 (4.83 crore) as compared to July 2019 (5.21 crore), revenue collections in June and July 2020 as well as economic activity appear to have started picking up. This is a positive sign of economic recovery.

**Let us now look** at some of the legislative and procedural developments that have taken place in the last one year.

The GST journey thus far has been focused on bridging gaps in legislative provisions and making IT systems more robust to avoid downtime before the due dates for compliances. The Government has issued several clarifications, orders and notifications on provisions that were ambiguous to the industry. The Government's efforts have yielded positive results, and it is expected to bring more clarity and stability into the system in the future.

## B.

### Key legislative changes in the last one year



#### a) Re-introduction of matching concept for availment of ITC

At the time of introduction of GST, the Government proposed a matching concept to claim input tax credit (ITC), which formed the backbone of online tax compliances. The matching concept required 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. However, due to technical challenges, the matching concept could not take off and dealers could avail credits as per their records. The matching concept for availment of ITC was kept in abeyance due to technical issues with the GSTN portal.

In October 2019, the Government re-introduced this mechanism with slight modifications. The revised ITC mechanism allowed dealers to claim ITC to the extent of matched invoices plus an additional provisional credit up to 20% of the matched invoices. This provision was further amended to restrict the provisional credit up to 10% of the matched invoices from January 2020.

However, in the wake of the current crisis, the Government has deferred this ITC matching mechanism for the months of February 2020 to August 2020. Accordingly, dealers can avail ITC as per their records for the time being and they need to undertake reconciliation on a cumulative basis while filing the return for the month of September 2020 and reverse the excess credit availed beyond 10% of the matched credit on an overall basis.

#### PwC's take

The re-introduction of the matching concept is an important shift away from traditional compliance methods to the effective use of technology-based tools for seamless real-time reconciliations. India Inc. should undertake these reconciliations on a real-time basis (using technology tools) to avoid any disputes in future which could lead to interest or penal exposure during assessments and audits.

## b) Date of issuance of debit note delinked from underlying invoice date for availing ITC

Section 16 of the CGST Act, which deals with ITC, provides that ITC in respect of any invoice or invoice related to such debit note can be claimed till the date of furnishing of return for the month of September following the end of the financial year or furnishing of annual return, whichever is earlier. This has led to a debate on whether the ITC relating to a debit note can be claimed based on the date of the original invoice or from the date of such debit note.

To clarify the tax position, the Government amended section 16 of the CGST Act vide the Finance Act, 2020, wherein the words 'invoice related to such' have been omitted. As a result of this amendment, the date of issuance of a debit note will be delinked from the date of the original invoice and ITC can be claimed based on the date of such debit note. However, the amendment is yet to be made effective.

## c) Special requirement for companies under the Insolvency and Bankruptcy Code, 2016

In case a company defaults on the payment of an amount that is above the specified threshold, the Corporate Insolvency Resolution Process (CIRP), as provided under the Insolvency and Bankruptcy Code, 2016, gets triggered. The management of such an entity – which is termed as a corporate debtor – and its assets vests with the interim resolution professional (IRP) or resolution professional (RP), who would be responsible for running the business of the entity as a going concern till the insolvency proceedings are over and an order is passed by the National Company Law Tribunal. In order to address various issues being faced by companies, which are undergoing this process, the Government has issued a clarification on the legal and procedural requirements relating to registration, availment of ITC and other aspects for corporate debtors during the period of CIRP.

### PwC's take

The amendment brings respite to India Inc. as year-end pricing adjustments are not uncommon. The Government should also clarify aspects relating to levy of interest, if any, on such year-end pricing adjustments in different business scenarios.

### PwC's take

The amendment provides much-needed clarity on the liquidation process and the way stressed companies need to undertake GST compliances during their restructuring phase.





## Other legislative changes



In addition to the above, the Government has further implemented the following key legislative changes in the last one year:

### a) Restrictions imposed on dealers under the composition scheme for supply of services which are:

- either not taxable or
- supplied on an inter-state basis or
- supplied through an e-commerce platform.

This amendment has been introduced to bring parity with those composite dealers who are engaged in the supply of goods. This amendment is yet to be made effective.

### b) Retrospective amendment to section 140 of the CGST Act dealing with transitional credits:

The law has been amended with retrospective effect from 1 July 2017 to limit claims on transitional credits under various subheads to the timeframe laid down by the Government. This amendment overrides the recent Delhi High Court rulings which allowed the taxpayer to file revised TRAN-1 till 30 June 2020 to avail GST credit of those eligible taxes under the erstwhile tax regime which could not be transitioned to the GST regime due to any technical difficulty.

### c) Rationalisation of penal provisions in specified cases:

Penal provisions have been rationalised equivalent to the tax evaded or ITC availed or passed on in case of the following activities:

- supply made without issue of any invoice or issue of incorrect or false invoice
- issue of invoice without supply in violation of the provisions of the act
- availment or utilisation of ITC without actual receipt of goods or services
- availment or distribution of ITC in contravention of the provisions contained under section 20 of the CGST Act (distribution of credit by the Input Service Distributor [ISD]).

The above amendments are yet to be made effective.



## Key procedural changes



Apart from the above legislative changes, the Government has taken several measures to ease compliance-related requirements. Certain procedural changes introduced during the year have received a positive response from the industry. The following are the notable changes:

- Effective April 2020, the Government has notified Form GST PMT-09 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 the industry to effectively manage funds in the electronic cash ledger.
- The Government has authorised the jurisdictional GST officer (before whom the refund application is filed) to sanction refund claims under different tax heads. Earlier, refund claims were sanctioned after the completion of the verification process by both CGST and SGST officers for their respective shares in the refund claims. This change has eased the process and resulted in faster processing of refund claims.
- The annual return (GSTR 9) and audit report (GSTR 9C) requirements have been relaxed to simplify the filing process. Some of the mandatory requirements which are relaxed are listed below:
  - Outward supplies can be reported net of debit/credit notes.
  - No requirement for expense-wise reporting of ITC or reconciliation of outward and inward supplies with books of accounts.
- In a bid to make compliances easier, dealers who do not have any inward or outward supplies in a particular month can file nil GST returns in GSTR-1 and Form GSTR-3B through their mobile phones using SMS facility.
- During the nationwide lockdown, the Government allowed filing of GSTR-1 and Form GSTR-3B using electronic verification code (EVC) instead of digital signature till September 2020. This will help taxpayers who are operating from home to file their returns on time.
- The Government has allowed refund of excess balance lying in the electronic cash ledger in case the taxpayer does not foresee any outward liability. Also, the Government has allowed refund of advance tax paid on orders which subsequently got cancelled.

## PwC's take

The key procedural changes such as facility to allow transfer of inter-head GST ledger balances for netting of the GST liability and single window clearance for refunds under different GST heads will place more funds at the disposal of taxpayers and ensure optimum usage of working capital.

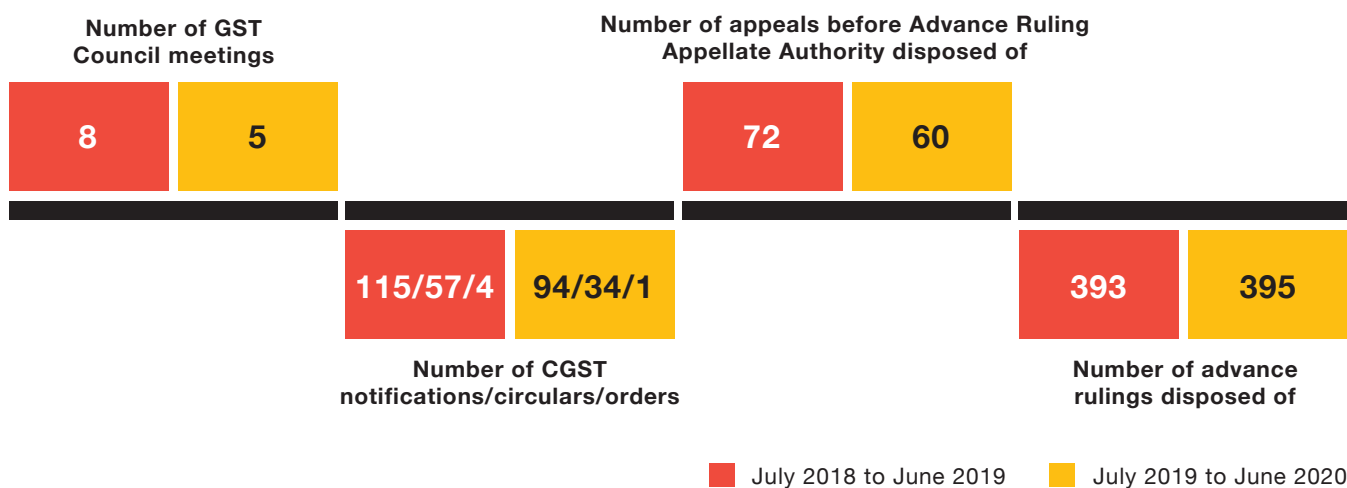


## Statistical information



In the third year of the GST journey, the Government has taken several steps to make GST an effective and simple tax. The Government has also clarified ambiguities in some of the provisions via notifications, circulars and orders.

We have provided below some statistical data on the processes that were largely established in the last one year along with a comparison of the previous year. It is expected that in the coming years, the Government will focus on implementing more technology-driven measures to curb revenue leakages.



Source: GST Council website



# Evolution in the third year

As GST entered its third year, the Government shifted its focus from compliances to simplifying the processes and addressing industry concerns. During the year, the Government issued several clarifications and notifications on the simplification of tax administration and easing of compliances for taxpayers. The Government's efforts have had positive results, and it is expected to bring in more clarity and stability in the system in the future.

On the other hand, it was noticed that India Inc.'s proactive approach of seeking advance rulings has not been effective, with most of the rulings going against the industry. One limitation of the advance ruling process is that the Authorities for Advance Rulings (AARs) function at the state level. This leaves room for contrary rulings being delivered on identical issues by two different AARs.

In order to avoid such situations, in Union Budget 2019, the Government proposed the setting up of a Centralised Appellate Authority for Advance Rulings to consider appeals against contradictory orders passed by the AARs of different states. However, the authority is yet to start functioning.

As an alternative, the industry has been filing writ petitions at several High Courts to get a clear direction on transactions where they believe their legal rights have been infringed, or a provision of law is ultra vires.

The following are some of the key industry issues under GST and relevant rulings delivered by AARs/Appellate Authorities for Advance Rulings (AAARs) and High Courts:

## A.

### Taxability under GST



As indicated, in the year gone by, the Government has taken several measures to simplify the processes and clarify various contentious issues for taxpayers. However, negative or contrary rulings have been pronounced on some interpretative issues relating to the provisions of the GST law. India Inc. hopes that the Government will take up the following issues on a priority basis and clarify the correct tax position in order to prevent litigation in the long run.

#### a) Merchanting sales/drop shipments

As a concept, merchanting sales are sales made by an Indian trader that involve shipment of goods from Country A to Country B (both other than India). In this type of sale, while the goods do not enter Indian territory, the same is accounted for as a 'purchase' and 'sales' by the Indian trader. In a recent ruling by the Gujarat AAR,<sup>5</sup> the authority has ruled as follows:

- **On the purchase leg of the transaction:** Import GST is not applicable in the absence of physical movement of goods into India.
- **On the sales leg of the transaction:** GST is leviable under the IGST Act. Furthermore, the taxpayer cannot avail the benefit of zero-rated supply on export of goods as these goods do not physically move from India to a place outside India.

The Gujarat AAR, while addressing the issue, has not taken into account Entry 7 of Schedule III of the CGST Act, which states that supply of goods from a place in non-taxable territory to another place in non-taxable territory does not constitute supply of goods or services, and hence is outside the purview of GST.

In a contrary ruling by the Kerala AAR,<sup>6</sup> it was held that the taxpayer is neither liable to GST on the inward supply of goods nor on the outward supply of goods as the goods are not imported into or exported from India at any point in time.

#### b) Director's remuneration

Levy of GST on director's remuneration has been a matter of debate under the GST regime as well as under the earlier service tax regime. The issue, however, caught the attention of the industry when the Rajasthan AAR<sup>7</sup> held that consideration paid to the directors (in the form of salary) by a company would be subject to GST under the reverse charge mechanism (RCM). This ruling reignited the debate in the industry on the taxability of director's remuneration. Further, in just a couple of months, the Karnataka AAR issued another ruling on the levy of GST on director's remuneration,<sup>8</sup> which was contrary to the Rajasthan AAR. In this ruling, it was held that salary paid to full-time directors in the course of their employment shall not be liable to GST.

5. Sterlite Technologies Limited [2020-TIOL-124-AAR-GST]

6. Synthite Industries Ltd., Ernakulam [2018-TIOL-02-AAR-GST]

7. Clay Crafts India Pvt. Ltd. [2020-TIOL-64-AAR-GST]

8. Anil Kumar Agrawal [2020-TIOL-95-AAR-GST]

It is pertinent to mention here that Schedule III of the CGST Act covers services provided by an employee to the employer in the course of employment. As per the law, employee services qualify as neither supply of goods nor supply of services. A full-time director is undeniably an employee of a company and the consideration is paid to her/him for her/his routine services is in the course of employment and hence should not be liable to GST under the RCM. That said, it is relevant to note that remuneration paid to independent directors (not on the payroll of a company) should be subject to GST under the RCM.

To put an end to the debate created by two divergent rulings, the Government issued a circular<sup>9</sup> clarifying various aspects related to levy of GST on remuneration paid by a company to independent and full-time directors. The circular clarified that no GST will apply on remuneration paid to a full-time director since it is accounted as 'salary' in the books of accounts of a company and is subject to salary TDS. On the other hand, GST will apply on remuneration paid to independent directors.

## B.

### ITC under GST



One of the key objectives of GST was to ensure the seamless flow of credits across the national geography. Keeping this in view, it was expected that the Government would take measures to facilitate the liberalisation of credit and that limitations under the erstwhile system of indirect taxation leading to credit blockages in the supply chain would also be done away with. However, thus far, the Government has only been able to achieve this objective partially. The following are some of the key transactions related to availment of ITC under GST which have been a matter of debate in the last one year:

#### a) Eligibility of ITC on corporate social responsibility (CSR) activities

Under the erstwhile tax regime, various courts have ruled that CSR is not in the nature of charity and has a direct bearing on the business. CSR activities have been made obligatory and companies need to invest part of their profits in areas such as education, poverty eradication and gender equality. Unless CSR expenses are treated as input service in respect of activities relating to business under the law, there will be no encouragement for companies to make such investments on a voluntary basis. Hence, the courts have allowed Central Value Added Tax (CENVAT) credit on CSR activities and consistent with the overall intent of bringing in GST, the ITC provisions under the GST law are evidently more liberal in comparison to the erstwhile CENVAT credit provisions.

However, in one of the contrary rulings under GST, the Kerala AAR<sup>10</sup> has denied ITC on electrical goods that were distributed free of cost to flood-affected people in Kerala as part of its CSR obligations.

During the current pandemic, many corporates have come forward to support the Government through free distribution of essentials, medical equipment like oximeters and oxygen cylinders, and personal protection kits like masks, gloves and sanitisers. These expenses are incurred by corporates as part of their CSR initiatives. Under the present unprecedented situation, it is important for the Government to issue a suitable clarification allowing ITC on expenses incurred on CSR initiatives. This will not only reduce the litigation around the issue but also encourage companies to come forward and support the nation in the fight against the pandemic.

#### b) Eligibility of ITC on fixtures and fittings

ITC on goods and services used in the construction of immovable property has been restricted under the GST law. Clarity on the distinction between movable and immovable property for levy of taxes and availability of ITC has been a persistent struggle for the industry over several decades.

Over the years, the courts, through various judicial pronouncements, have primarily laid down two basic tests for categorisation of a property into movable or immovable. These tests are:

- A. Functionality test, i.e. how the functionality of goods gets affected when not attached to a fixed structure
- B. Permanency test, i.e. whether for shifting of goods from one place to another, it results in substantial damage to the structure to which said goods are attached

Basis these tests, the courts have further looked upon the following aspects while categorising goods as movable or immovable:

- 1) intention of parties to the contract
- 2) purpose of attachment to earth
- 3) nature of the subject matter.

In a recent ruling the Karnataka AAAR<sup>11</sup> has allowed the ITC on detachable sliding and stackable glasses used for making partition in co-working spaces. The AAAR observed that the sliding and glasses are annexed to the building through nuts and bolts only for their beneficial enjoyment. Hence, the restriction provided under the GST law relating to non-availability of ITC of GST paid on construction of immovable property does not apply to detachable sliding and stackable glasses, which are used for making partition in co-working spaces. The ruling is in line with the principles laid down in the judgements in the erstwhile regime, and it would be interesting to see how the GST authorities are going to interpret and apply the ruling during the assessments and audits.

9. Circular no. 140/10/2020-GST dated 10 June 2020

10. M/s. Polycab Wires Pvt. Ltd. [2019-TIOL-107-AAR-GST]

11. M/s Wework India Management Private Limited [2020-TIOL-26-AAAR-GST]

## C.

### Transitional credits under GST



At the time of implementation of GST, the Government allowed transition of ITC (subject to a few restrictions) from erstwhile tax regime to the new regime. In order to do so, the taxpayers were required to file declarations of such credits in Form TRAN-1 by 27 December 2017.

Ever since the implementation of GST, availment of transitional credits has been a matter of debate for taxpayers who could not claim their vested right due to human error or technical glitches faced while filing their claims. The following are some of the key topics of debate around transitional credits:

#### a) Failure to upload Form TRAN-1 within the timelines due to technical glitches on the portal

One of the major areas of concern for India Inc. since the implementation of GST was the functioning of the online compliance portal. For the benefit of taxpayers who failed to file their transitional credit claim application due to some technical glitch on the GSTN portal, the Government proactively issued a circular extending the timelines for filing TRAN-1.

However, the relaxation of timeline was allowed only for taxpayers who had on record proof of the technical glitch faced while filing TRAN-1. No respite was offered to taxpayers who did not have such evidence. Such taxpayers proceeded to approach the courts in order to protect their claims.

Several writ petitions were filed at different High Courts across the country, and in most cases, the courts took a considerate view towards the taxpayers and allowed filing of transitional credit form electronically or manually even without any proof of their having failed to lodge their claims due to issues with the GSTN portal.

#### b) Failure to transition genuine credits while filing Form TRAN-1 due to inadvertent errors at the taxpayer's end

Another category of taxpayers includes those who were able to file Form TRAN-1 on time but failed to report the correct values of credits due to human error. As a result, genuine credits were not transitioned. The taxpayers approached the High Courts on the premise that transition of eligible credit is their vested right and the timelines prescribed under the GST law cannot impede the taxpayers from claiming their bona fide credits.

The courts were divided in their views on this matter. Notably, the Delhi High Court<sup>12</sup> allowed dealers to file the revised Form TRAN-1 manually with their jurisdictional GST officers. The court took the view that the timeline prescribed to file TRAN-1 under the GST law is directory and not mandatory. The High Court permitted taxpayers to correct even non-technical errors and bona fide clerical mistakes while filing the revised Form TRAN-1 by 30 June 2020. The Government recently amended the provisions of section 140 of the CGST Act with retrospective effect from 1 July 2017, whereby the extended time limit of 30 June 2020, as provided by Delhi High Court for filing of revised Form TRAN-1, is nullified. In parallel, the revenue authorities have challenged the order of the Delhi High Court in the Supreme Court. With the Apex Court having stayed the Delhi High Court ruling, the industry is keeping a close watch on its final decision.

#### c) Ambiguity in transition of credits related to cesses under the former regime

Another area of concern for taxpayers has been the transition of accumulated credit of cesses from the former regime to the GST regime. At the time of introduction of GST, section 140 of the CGST Act provided for transition of all eligible duties and taxes. Subsequently, vide a retrospective amendment in the law, the Government clarified that the term 'eligible duties and taxes' for the purpose of transitional credit will not include 'cesses'. Aggrieved by the retrospective amendment to the law, taxpayers approached the High Courts in different states based on the principles of vested rights and several courts allowed the transition of credit of cesses to the GST regime. However, a few matters have been stayed by the courts, and it would be interesting to see the final verdict on the matter as it would have an industry-wide impact.

## D.

### Provisions leading to dual tax



One of the shortcomings of the former tax regime was multiple statutes resulting in double taxation. While GST provisions largely seek to address this concern, there remain some provisions which are leading to dual taxation. These are as under:

#### a) Levy of GST on ocean freight on import of goods on CIF basis

The GST law provides for payment of GST on ocean freight under the RCM as import of service even for import shipments that are on cost, insurance, and freight (CIF) basis. Notably, in the case of CIF import shipments, the freight value is included in the customs valuation for payment of customs duties (including IGST on import of goods).

12. Brand Equity Treaties Ltd Vs The Union of India & Ors. [2020-TIOL-900-HC-DEL-GST]

The taxability of ocean freight was challenged at an advance ruling level mainly on the ground that the service provider (i.e. shipping line) as well as service recipient (i.e. exporter) are located outside India and therefore, the transaction cannot attract GST in India. The court, however, ruled in favour of the revenue authorities, with the levy being upheld and the applicant's contention of extra-territorial jurisdiction being bypassed.

The matter was subsequently taken up by the Gujarat High Court<sup>13</sup> in a writ petition. The court held that no tax is leviable on ocean freight for services provided by a person located in non-taxable territory by way of transportation of goods from a place outside India up to the customs station of clearance in India. The court further held that deeming the importer as the person liable to pay tax is unconstitutional. Also, the levy of import IGST leads to double taxation –as import of services and import GST as part of the assessable value of imported goods. While the ruling has held that levy of GST on ocean freight under the RCM as unconstitutional, it is interesting to see whether India Inc. will be allowed refund of taxes already deposited on freight value in the Government treasury before levy was declared ultra vires by the Gujarat High Court.

#### b) Levy of GST on supply of goods from bonded warehouses

When GST was implemented, there was ambiguity regarding taxability on supply of goods from bonded warehouses. The Government clarified that when goods are supplied from a bonded warehouse, GST is payable at two stages:

- **Transaction between the importer and domestic customer:** IGST is payable on the transaction value.
- **Clearance of goods for home consumption:** Import IGST is payable by the importer.

The clarification issued by the Government led to dual taxation. Based on representations filed by the industry, the Government issued another circular<sup>14</sup> to clarify that GST is payable only once at the time of clearance of goods for home consumption. No GST is payable on the supply of such goods lying in the customs bonded warehouse prior to their clearance.

Though this circular clarified most of the nuances for supply of goods from a bonded warehouse, there was still ambiguity about whether such supply qualifies to be exempt supply and, consequently, whether ITC attributable to such supply is liable to be reversed.

To avoid multiple clarifications, the Government amended the law and inserted an entry in Schedule III to include supply of warehoused goods before clearance for home consumption to be treated as neither supply of goods nor supply of services and thus outside the ambit of GST. This amendment has finally settled the discussion around supply before clearance from a bonded warehouse.

## E.

### Improving cash liquidity



Below are the relevant rulings, which have helped taxpayers improve their cash liquidity:

#### a) Rectification of GSTR-3B

At the time of introduction of GST, three returns were prescribed with the requirement to match credits on a monthly basis. However, due to technical glitches on the Government portal, the original plan of three returns could not be implemented. As an interim measure, the Government introduced the summary return GSTR-3B along with the outward supply return in form GSTR-1. Also, the matching concept of credits was temporarily put on hold. Further, the Government issued a circular to clarify the procedure for rectification in transactions reported in the monthly GSTR-3B. As per the circular, any rectification of errors can be done concurrently in the month in which the errors are discovered, and not in the month to which the transaction relates.

Recently, a writ petition was filed before the Delhi High Court<sup>15</sup> challenging the relevant rule and circular as ultra vires to the extent that they do not provide for modification of the information in the return period to which the transaction relates. The High Court held that the circular (which clarifies that rectification of errors can be done concurrently in the month in which the errors are known, and not in the month to which the transaction relates) is arbitrary and contrary to the provisions of the CGST Act. The court further held that the company has a substantive right to rectify/adjust the input tax credit in the period to which it relates, and is therefore eligible to claim refund of the taxes paid in cash.

Recently, the GST department challenged the High Court ruling and the focus has now shifted to the final outcome in the matter. The ruling has been a matter of discussion amongst the industry and the final judgement is keenly awaited.



13. Mohit Minerals Pvt Ltd Vs Union of India [2020-TIOL-164-HC-AHM-GST]

14. Circular No. 3/1/2018-IGST dated 25th May 2018

15. Bharti Airtel Ltd Vs Union of India And Others [2020-TIOL-901-HC-DEL-GST]



## F.

### Key industry issues



In the three years of GST implementation, the Government and the judiciary have been proactively addressing the issues faced by India Inc. Below are some of the key issues which require the immediate attention of the Government before taxpayers get entangled in long-drawn litigation:

#### a) Eligibility of ITC on expired stock

Section 16 of the CGST Act provides for availment of ITC on goods and services used in the course or furtherance of business. Further, section 17 of the CGST Act restricts the ITC in respect of goods lost, stolen, destroyed or written off. The question which needs to be addressed is whether a manufacturer is liable to reverse the ITC on inputs used in the manufacture of finished goods which are expired and returned by the retailer. The Government issued a circular in the context of the pharma sector, clarifying that ITC attributable to the manufacture of goods is required to be reversed by the manufacturer when the retailer returns the expired goods via a credit note.

The Maharashtra AAR, in an advance ruling,<sup>16</sup> has clarified that no ITC is required to be reversed on finished goods that are destroyed during testing. The rationale adopted by the AAR is that the restriction applies on availment of ITC on goods destroyed. The inputs that are consumed in manufacturing finished products get completely changed in form and characteristics and are no longer in existence. ITC on such inputs is not restricted under section 17(5) of the CGST Act. Also, on finished goods which get destroyed during testing per se, no ITC is availed to entail any reversal requirement.

Given the above conflicting positions emerging from the Government's circular and the above advance rulings, the industry expects the Government to issue a suitable clarification on whether no reversal is required on inputs if the finished goods are consumed during testing or are disposed of due to expiry.



#### b) Intermediary services

The term 'intermediary' has been defined under the GST law as broker, an agent or any other person by whatever name called who arranges or facilitates the supply of goods or services or both or securities between two or more person but does not include a person who supplies such goods or services or both or securities on his own account.

Thus, an intermediary is a person who merely arranges or facilitates supply of goods or services or both, belonging to another person. An intermediary cannot alter the nature or value of supply. The intermediary generally receives consideration in the form of commission or brokerage in respect of the services rendered by them. However, the person who supplies goods or services or both on his own account (on principal to principal basis) is not an intermediary. The concept of intermediary has been borrowed from the former service tax regime and so are the controversies around its taxability. India Inc. was hopeful that with the implementation of GST, the lingering issues around taxability of intermediary services would be resolved. However, on the contrary, the advance rulings issued under the GST regime to determine its coverage have not supported the taxpayers' position. Notably, the Maharashtra AAR<sup>17</sup> has held that the back-office support services provided to foreign clients qualify as intermediary services as the applicant is arranging or facilitating the supply of goods between the overseas client and its customers. This ruling was subsequently upheld by the Appellate Authority. The ruling created much upheaval in the industry and in order to clarify the correct position of law, the Government issued a circular elaborating the scope and implications of information technology enabled services under different scenarios. However, the Government chose to withdraw the circular in less than six months of its release which has left the industry mired in doubt. The Government deliberated on the issue during the 37th GST Council meeting and was expected to issue suitable and comprehensive guidelines around the taxability of intermediary services. The said circular is still awaited by the industry.

#### PwC's take

The Government should consider issuing clear guidelines, keeping in mind the evolving international taxation principles and business models on classification of services as intermediary services at the earliest. There has been litigation across the industry on this matter, which is leading to pending refund claims. Cash liquidity is essential for India Inc. in the current times, and early clarity will bring much-needed relief to the industry.

16. General Manager Ordnance Factory Bhandara [2019-TIOL-166-AAR-GST]

17. V Serv Global Pvt Ltd [2018-TIOL-263-AAR-GST]

### c) Taxability of discount schemes

Schemes and offers such as buy-one-get-one, target-based schemes and free products are common ways of passing discounts in the FMCG and retail sectors. Discount schemes offered to promote sales largely fall under two buckets: primary discounts and secondary discounts. Primary discounts are offered on the face of the invoice at the time of original supply of goods or services. On the other hand, secondary discounts are offered when the goods are already in the supply chain (either with the distributor or with the retailer). Secondary discount schemes are often given in the entire supply chain through credit notes. There are a series of advance rulings on taxability of discount schemes with contrary views. Likewise, with reference to secondary discounts offered in the supply chain via credit notes, the Government issued a circular according to which post-sale discounts offered to dealers to sell products at a special price in order to augment sales are in the nature of a subsidy provided by the manufacturer to the retailer. Accordingly, the same shall be liable to GST in the hands of the manufacturer and are liable to be taxed in the hands of the person receiving the discount. This circular was subsequently withdrawn owing to representations from India Inc.

#### PwC's take

The circular led to wider debate amongst industry players on the concept of subsidy, and the Government withdrew it. The industry is awaiting suitable clarification from the Government on the taxability of secondary discounts.





# COVID-19: Impact on GST and relief measures

Several challenges affected economies worldwide in 2020, especially the developing ones, and these challenges intensified with the outbreak of the COVID-19 pandemic. The World Health Organisation (WHO) declared the COVID-19 outbreak a pandemic in March 2020. Consequently, most countries imposed strict lockdowns to prevent further spread of the virus. Measures such as lockdowns and practising social distancing have further adversely impacted global economic growth and triggered a worldwide recession.

The COVID-19 crisis has severely affected the tourism, hospitality, automobile and real estate sectors. On the other hand, sectors such as IT, pharmaceuticals, fast-moving consumer goods (FMCG) and telecom have shown some resilience and are gradually recovering as countries begin to ease lockdown-related restrictions.

Though the first quarter of FY 2020–21 was unproductive for many sectors, economies worldwide are gradually resuming commercial and industrial activities. The demand for essential as well as luxury items is slowly picking up.

Due to the economic downturn, a lot of multinational companies (MNCs) operating across geographies have suspended their expansion and diversification plans to focus on revival strategies.

The COVID-19 pandemic is set to bring about a paradigm shift in the way businesses operate. This is going to have a significant impact on the key facets of businesses like supply chain modalities, import dependencies, delivery patterns (window-shopping to direct-to-home shopping experience) and consumer behaviour/spending.

This section discusses the measures taken by India and select global economies, and includes some suggestions from an indirect tax point of view to help India Inc. deal with the impact of COVID-19 on select sectors.

## Relief measures implemented by other countries

Several countries were quick to implement measures such as lockdown and social distancing to control the spread of the COVID-19 pandemic. The effect of such social measures led to the disruption of supply chains and resulted in contracted production, dwindling revenues, tight financial conditions, growing unemployment and inflation.

Many countries have started to lift the restrictions in a phased manner and economic activities have gradually resumed. Governments and policymakers have been proactive in planning and implementing several fiscal, monetary and tax measures in the form of interest rate cuts, fiscal stimulus packages, tax concessions and cash infusions to combat the economic fallout of the COVID-19 pandemic.

Developed economies have offered fiscal support packages to uplift per capita income, increase healthcare spend and provide insurance support to the frontline COVID-19 workers (doctors, paramedics, police personnel, etc.). On the other hand, developing economies have largely focused on improving their healthcare systems to expand COVID-19 testing and hospital capacities, providing stimulus package to businesses through access to credit and loan guarantees, and extending cash support to lower-income households.

Central banks and governments worldwide also implemented a wide range of measures to ease the financial burden on businesses. In order to ensure cash liquidity and credit support to businesses, they relaxed lending norms and offered cash liquidity through various other measures like announcing moratoriums on loan repayments and reducing repo rates to resolve the issues of credit crunch for businesses as well as individuals.

The Government of India (GoI) has announced a slew of fiscal and cash liquidity measures that have largely focused on the micro, small and medium enterprise (MSME) sector. Apart from these, several tax relief measures have also been announced. The table below highlights the key tax relief measures offered by India and other select countries.

## Tax relief measures in India and other nations

Relief measures	Select countries			
	US	European Union	China	India
Procedural relaxations	✓	✓	X	✓
Extension of timelines to file periodical returns	✓	✓	✓	✓
Reduction in tax rates	X	X	✓	X
Extension/deferment in payment of taxes	✓	✓	X	✓
Exemption from payment of duty	✓	✓	✓	✓
Refund of taxes in relation to COVID-19 supplies	X	X	✓	X
Exemption from levy of interest/late fee in filing of periodical returns	X	X	X	✓

Source: International Monetary Fund, Internal Revenue Service and Central Board of Indirect Taxes and Customs websites

## Suggestions to overcome the current crisis under the Gol's Phase II plan

To deal with the current crisis, cash liquidity support schemes, which advance business continuity, are the need of the hour. The Gol has announced a timely budgetary support scheme in line with the relief packages of various developed nations. Despite all these steps, a lot of ground remains to be covered. In these trying times, the Gol would need to walk a tightrope as the industry expects further fiscal and tax relief measures. Some measures that the Gol could consider while formalising its support strategy for India Inc. in the next phase are detailed below:

**A.**

### Facility to deposit GST to the government treasury on cash basis



Taxpayers are required to discharge tax on their outward supplies as per the time of supply provisions prescribed under the GST law. Generally, the time of supply is the earlier of the following – date of issue of invoice or date on which the payment is received. There has been big decline in supply revenues across industries during the lockdown. The Gol provided temporary relief to taxpayers by allowing them to delay the filing of GSTR-3B without payment of any interest for February–May 2020. The complete shutdown of economic operations for nearly two months also impacted the cash reserves of India Inc. Most companies are facing continuity challenges due to the huge fixed operational costs of running their businesses. At this stage, a suitable amendment in the GST law to shift the time of supply from the date of raising the invoice to the date of receipt of consideration will boost industry sentiments and help them manage the cash flows better.

**B.**

### Suspension of GST payments for select sectors during the crisis



Considering the impact on the economy, the Gol provided relief to the industry by extending deadlines for payment of taxes. Businesses were allowed to delay their tax payments for 15 days without incurring interest. However, several sectors such as hospitality, automobile and real estate have been severely impacted and the Government should consider suspending the GST payments of these sectors for at least six months. This measure will provide much-needed cash liquidity to these sectors and ensure their business continuity.

## C.

### Non-reversal of credit on expired stock during the crisis



The GST law provides for seamless flow of credits across the supply chain and has eliminated the cascading effect of taxes prevalent under the erstwhile tax regime. Further, a specific list of business transactions is provided under the provisions of the CGST Act, for which ITC is restricted. One of the items covered in this list is ITC on damaged goods, i.e. ITC cannot be availed on goods which get damaged.

The lockdown has impacted supply chains of businesses to such an extent that the entire ecosystem across manufacturing and trading has come to a halt. On the other hand, demand has witnessed a sharp fall during the lockdown. Products that have a short shelf life or are required to be kept in controlled temperature were damaged or expired during the lockdown. Given the unprecedented nature of the crisis, the Government should consider lifting the ITC restriction on damaged/destroyed goods during the lockdown period as a one-time measure.



## Impact on select sectors in India

### Real estate



The Government reduced GST rates for the sector (without input credit) from April 2019, but the relief was short-lived as the COVID-19 crisis intensified.

The COVID-19 crisis has posed a few significant challenges such as halting of construction activities, reduced demand for commercial and residential spaces, lack of labour force, pressure on rentals and corporates shifting to work from home (WFH) models to vacate office spaces.

The Government and the Reserve Bank of India (RBI) have announced several measures to tackle the crisis, such as lowering interest rates, reducing the cash reserve ratio and announcing a moratorium on loans repayments. The real estate sector expects the following measures to be undertaken for long-term recovery:

- reducing the rate of output tax and eligibility of ITC on construction activities to ensure seamless flow of credit
- increasing the threshold limit for units qualifying as affordable residential units
- removal of the condition to procure 80% of input and input services from registered persons and the liability to pay GST under the RCM in the event of failure to meet the 80% criteria
- treating taxability of development rights and long-term lease premium arrangements in the same way as sale of land and hence not subject to GST
- allowing the adjustment of taxes paid on bad debts in subsequent returns
- lowering the rate of GST on cement, which is a major input for the sector.

### E-commerce



Under the erstwhile tax regime, e-commerce transactions were liable to multiple levies from both the Central and the state governments. Further, due to the dynamic and complex business models in which e-commerce players operate, the taxability of e-commerce transactions was under the continuous scanner of policymakers. The GST regime has been beneficial for the sector as it provided for a single and unified tax system, and streamlined ITC compared to the erstwhile tax regime which faced legal and operational challenges due to its inherent complexities. This simplified tax regime has allowed the sector to expand its horizons, with innovation and technology being the two significant growth drivers.

The COVID-19 crisis impacted the sector and it witnessed a downward trend in its operations when commercial activities were completely halted initially. However, with the gradual recovery of supply chains and resumption of movement of goods, the sector is expected to recover.

Technology-enabled innovations like digital payments, better experience and analytics-driven customer engagement including digital marketing are going to be the core pillars of the sector's growth in the new normal.

Some of the GST-related expectations of the e-commerce sector are outlined below:

- allowing the benefit of threshold exemption for registration to e-commerce operators – currently, threshold exemption is not applicable to suppliers supplying goods or services through e-commerce operators, irrespective of the value of supply
- allowing the composition scheme for suppliers selling through e-commerce platforms
- facilitating centralised registration instead of the current requirement of state-wise registration to undertake tax collected at source (TCS) compliances
- doing away with the requirement of obtaining a separate registration for undertaking TCS compliances
- doing away with the requirement to add the e-commerce operator's warehouse in the registration of the seller when goods are stored in the e-commerce operator's warehouse by the seller.

## Auto and auto ancillary



The automobile industry underwent a difficult period in 2018 and 2019 due to the economic slowdown in India, leading to lower consumer spending and demand for automobiles. This was compounded by other industry-specific factors like crisis in the non-banking financial company (NBFC) sector, increased uncertainty due to the introduction of BS-6 emission norms, the introduction of new axle-loading norms for commercial vehicles and financial stress in the dealership sector, among others.

The ongoing slowdown in the automobile industry has been further exacerbated by the COVID-19 pandemic and the decline in demand has led to severe underutilisation of capacity in the automotive industry. Being a capital-intensive industry, the underutilisation of capacity has significantly impacted the financials of the automotive players, especially the component manufacturers, many of whom belong to the small and medium enterprises sector.

The Government gave relief to the passenger vehicle segment and reduced the compensation cess of transport vehicles designed for carrying 10–13 passengers to 1% (petrol vehicles) and 3% (diesel vehicles), as compared to the earlier 15%. This change was made effective from 1 October 2019.

The COVID-19 crisis has severely impacted the already ailing auto sector. The industry would need to think of strategies to drive sales by adapting to the changing consumer behaviour and devising flexible supply chain models.

Some of the GST-related expectations of the auto sector are outlined below:

- subsuming road tax or registration fees under GST as this continues to be an extra cost for end consumers
- providing clarity on additional discount given by the supplier of goods to a dealer in the form of post-sale discount (The Government released a circular clarifying the aspects, but it was later rescinded. The industry expects the Government to release a revised and comprehensive circular clarifying the tax position under different business scenarios.)
- providing clarity on the eligibility of credit on demo equipment
- providing clarity on the tax treatment of post-sale repairs and servicing due to the concept of composite supply.

## Solar industry



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

The solar sector has experienced huge growth over the past two decades. But the COVID-19 crisis has considerably disrupted the sector's growth momentum. The disruption in supply chains especially for import of solar equipment from China – which accounts for almost 80% of India's requirement of solar cells and modules – have delayed the implementation of most solar energy projects in India.

Overall, the solar industry is severely affected due to issues like unavailability of labour, challenges in recovery of overdue payments from distributors and supply chain disruptions. The sector now looks up to the Government to provide stimulus to limit the negative effects and turn the crisis into an opportunity for the sector and its stakeholders so that India's solar energy targets can be met.

One of the key relief measures expected by the solar sector is for the Government to review and provide much-needed clarity on the tax structure for solar power projects. A concessional GST rate of 5% applies on specified devices and equipment used to set up solar power plants. A turnkey contract for setting up solar power plants qualifies as a 'works contract' under the GST law and attracts GST at the rate of 18%. The effective rate of tax for the sector increased substantially, which made such projects commercially unviable.

The GST Council recommended a new valuation mechanism where 70% of the gross value will be deemed as the value of supply of goods and attract 5% GST. The remaining 30% of the aggregate value of an 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%. However, the sector is not satisfied with the arbitrary split and has approached the Delhi High Court. The court has asked the GST Council to relook at the valuation.

# Emerging trends and the road ahead

When Prime Minister Narendra Modi assumed his second term in office, he announced the target of making India a USD 5 trillion economy by 2024. To achieve the target, there is a need to implement solutions that not only curb revenue leakages but result in revenue augmentation. Policy measures such as simplification of tax laws, incentive packages for setting up of manufacturing facilities and digitalisation should be at the forefront to foster a self-reliant economy, as envisaged by the Government.

As GST enters the fourth year of its journey, the Government is set to revamp the GST return mechanism, implement e-invoicing, and set up of the centralised AAAR to put an end to divergent rulings. These steps are in line with the Government's stated agenda of building a digital India and improving the ease of doing business.

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

## E-invoicing – changing the IT landscape



The Government is set to implement an electronic invoicing (e-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 is proposed to be implemented from October 2020.

The e-invoicing requirement will apply to taxpayers whose aggregate turnover during any financial year following the introduction of GST exceeds INR 500 crore for business-to-business (B2B) supplies. Further, business-to-consumer (B2C) supplies where the aggregate turnover exceeds INR 500 crore will be required to have a self-generated dynamic QR code.

Apart from B2B and B2C supplies, e-invoicing system will also be applicable to supplies to SEZs, export invoices and deemed export invoices if the taxpayers' aggregate turnover exceeds INR 500 crore.

Some developed countries and several European countries have implemented e-invoicing systems to administer tax compliances. Some of the upsides and potential downsides of the e-invoicing system experienced in these countries are listed below:

### 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
- Probable delay in issuance of invoice due to technology-related issues (largely in the B2C segment)

The Government intends to integrate the e-invoicing system with the e-way bill and the GSTN portal for auto-population of information to avoid duplication of data upload for the taxpayer. It also plans to provide multiple channels for generation of IRN, e.g. a central portal, an application programming interface (API) based system, an offline utility and an SMS mobile application.

While the Government is upscaling its IT network to ensure sufficient bandwidth for handling huge data traffic, the industry would also need to make changes to their ERP systems to be ready for authenticating the invoices electronically. Some of the key changes in the IT functions of the industry would be to align internal systems to the e-invoicing standard to capture the mandatory information requirement, integration methodology for sending and receiving the response from the portal and revisiting billing systems, and processes to include the IRN and QR code on the invoice.

The success of the e-invoicing system will depend on several factors:

- the ability of the government portal to validate invoices on a real-time basis
- 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.



## Simplified compliance requirements and documentation – revamping of 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 sellers' invoices for determination of the outward tax liability of the supplier and the eligibility of input tax credit (ITC) for the recipient. The idea was well intended, but its implementation on a real-time basis proved a challenge at ground level.

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 which will then form the basis for a recipient to avail ITC. The new return system will also provide an option of filing an amendment return as against the current system of making any post-facto changes in the subsequent return.

The proposed compliance system has been enabled on a pilot mode for the industry to get accustomed with the new system and test their data in a live environment. The Government had earlier rolled out a transition plan for the new GST returns to be implemented from October 2019 onwards. However, the implementation date has been extended. The new compliance system is now set to replace the existing returns from October 2020.

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.



## Technology-led compliances



Under the erstwhile tax regime, technology was used for tax administration by authorities at the back end. With the introduction of GST, technology is playing a pivotal role in successful functioning of day-to-day operations and processes. The IT landscape under the GST regime has seen the introduction of two new type of players, application service providers (ASPs) and GST Suvidha Providers (GSPs). ASPs provide an end-to-end solution for GST compliances to taxpayers and GSPs act as a bridge between the ASP and the GSTN portal for the flow of information.

The GST law requires greater integration of tax knowledge and technology as compliances under GST have become paperless and data intensive. The solutions offered by ASPs do not merely support in tax compliances but also offer utilities, which are beyond routine tax filings. Below are some of the key features offered by an ASP:

- seamless integration with the ERP to automate data flows to the ASP solution
- multiple validation checks on the raw data to verify the correctness and accuracy
- data analytics and customised reports for management reporting
- reconciliation of GST reported data with financials, e-way bill data and outward supply of vendors
- audit trail of decisions taken and reporting which helps during statutory audit finalisation.

The changing business and regulatory environment requires organisations to proactively invest in their tax functions. A focused and concerted approach in improving tax functions will optimise costs and bring efficiencies in the long run. Companies need to access the compatibility of their ERP systems and based on the requirement, engage with the correct technology solution.

## Using artificial intelligence (AI) in tax administration



There has been significant activity around AI policies in tax administration and the development of an ecosystem to build the processes in core functions of the Government. Countries such as the US, China and Japan have conducted significant research on AI and adopted AI-led technology. The adoption of AI in India is at a nascent stage, though growing rapidly.

Tax authorities across the globe are adopting new technological skills and advanced analytics to improve tax administration, counter tax evasion and facilitate timely compliances by taxpayers.

AI has opened the doors of new opportunities for not only businesses but also policymakers, and transformed their day-to-day operations. The following are some of the key areas where AI can be beneficial to the Government in leveraging the current tax administration processes:

- **Effective management of assessment/appeal proceedings:** In India, the number of pending cases related to tax disputes is quite high. Further, but there have been constant concerns around the quality of adjudication and assessment orders being passed by the appellate and/or assessing authorities. The Government can consider deploying a digital platform using AI to ensure the following processes before any appellate/jurisdictional order is passed:
  - The concept of res judicata is adhered to, whereby the judgements of the higher forum, which are binding in nature, are duly observed.
  - Reference checks can be conducted across states departmental portals to ensure that no contrary judgements are passed on similar questions of law. In the case of differing opinions, the contrary rulings are duly considered while passing a speaking order.
  - Orders can be typed using voice commands with smart application of suggestive phrases.
  - Reference checks can be conducted about the compliance track record of taxpayers to give beneficial treatment to compliant taxpayers. The benefit can be in the form of reduced bank guarantees or no detention of goods for minor procedural defaults.

Implementation of AI for the above processes will surely help in speedy redressal of matters with minimal litigation at higher forums.

- **Effective use of data:** There is an abundance of granular data available with various tax authorities. AI applications that help to collaborate data and undertake data analytics are the key to plug the loopholes in the system. The Central Government and several state governments have started using AI to tackle tax evasion and track down evaders. However, there is a need to jointly undertake data analytics activity at a central level to avoid duplication of efforts and integrate Central and state requirements.
- **Forecasting and behavioural trends:** Large data sets available with the Government can be effectively used for judging the behaviour of individuals/companies for forecasting and developing patterns. This could help in focusing on specific areas for improvement, identifying sector-specific focus points and leveraging internal processes.

To adapt to the dynamic environment, India would need to upskill its workforce, build adequate infrastructure and centres of excellence to focus on core research and evolving areas for effective use of AI and data analytics.

On the other hand, the industry has started to use technology-based platforms for achieving automation and ending paper-based filing of information. AI has helped businesses gather enhanced insights into their operations by forecasting results and highlighting improvement areas.

AI is going to be an integral part of the tax function in the future, as advanced technologies and tax analytical tools are further deployed. Therefore, it would be imperative for both the Government as well as the industry to work in a collaborative manner to reap the benefits of technology.

## Expansion of tax base



One of the key reasons for the 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, aviation turbine fuel [ATF] and natural gas) and alcohol are outside the GST net.

To reassure states regarding protection of their fiscal autonomy, the Government had initially decided to keep petroleum products, which form a major part of state revenues, 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 of implementing the new tax regime.

Representations have been made to bring industrial fuel, including natural gas and ATF, under the GST net. Bringing the petroleum sector within the GST net requires more consensus building. However, in the absence of constitutional limitations, it is only a matter of time before this shift takes place and 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. With the overall intent of making India a manufacturing hub of the world, now is an opportune time to take the necessary steps in the direction of making GST a 'one nation one tax'.



## Departmental audits – types of audit, approach and strategy



The industry recently filed its first annual return and audit report under GST for the period 2017–18. These compliances will form an important basis for the Government to undertake assessments under the 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 the GST law:

Type of audit	Responsibility	Criteria
Audit by businesses	Chartered accountant appointed by the taxpayer	If the turnover exceeds INR 2 crore, the taxpayer has to get his/her accounts and records audited.
General audit	Commissioner of CGST/SGST or any officer authorised by the Commissioner	On order of Commissioner of SGST/CGST
Special audit	A chartered accountant or cost accountant nominated by the Commissioner	On order of the Deputy/Assistant Commissioner, with prior approval of the Commissioner

### Audit by business

A taxpayer is required to file a GST audit report if its aggregate turnover exceeds INR 2 crore 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.

After extending the due date for filing of the annual return and audit report for the period of 2017–18, the Government provided much-needed relief to the industry by making certain cumbersome information requirements such as bifurcation of expenses into subheads and revenue and ITC reconciliation optional. Businesses have now filed the annual return and audit report for the period of 2017–18 and the experience of doing so is helping them work on the same for FY 2018–19, the extended due date for which is 30 September 2020.

### 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 taxpayers file annual returns and audit reports, the Government examines these reports in 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 three years after implementation of GST, the 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 have been filed and have provided holistic information on taxpayers' business operations, the Government has started to initiate departmental audits in the last few months.

The GST law provides for two types of audits 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 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 a few areas on which the department is likely to focus in such audits.

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

The Directorate General of Audit in the Central Board of Indirect Taxes and Customs (CBIC) 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. Also, the Directorate General had released the GST Audit Manual 2019, which is similar to the audit process prescribed under the erstwhile Central Excise and Service Tax Audit Manual 2015.

### PwC's take

GST audit is an effective mechanism for identifying gaps in the law and correcting them in a timely manner. India Inc. expects GST audits to be transparent and largely faceless so that there is no cause for any business disruption. The objective of the audits must be to correct the errors of taxpayers rather than penalising them for their incorrect actions.

## 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 ITC availed or benefits derived 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 and has passed more than 60 orders in the last year. The major industry sectors investigated so far include FMCG, consumer durables, automobile, restaurant, real estate and e-commerce.

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 has 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 the 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.
- New SKUs and channel stores introduced after the date of change in tax rate can be excluded for passing on of benefit.
- 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 the industry, while the Government's intention cannot be questioned, it is difficult for businesses to take complex pricing decisions immediately after a change in tax rates. Furthermore, the industry has been anxious about being investigated, even if businesses increase prices due to 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, the GST Council has extended this timeline for another two years. Furthermore, the Government has notified a penalty of 10% of the amount profiteered if it is not deposited within 30 days of an order being passed.

In the wake of the current pandemic, businesses may be forced to recalibrate short-term and long-term measures to survive the liquidity crisis, including price changes. Given the changes in the business landscape in the last quarter, base price comparisons and restrictions on price change would be unfair and harsh on the industry. Therefore, businesses expect that any genuine price rise implemented to manage the loss suffered as well as additional costs incurred due to the lockdown will be viewed in the correct perspective and not as amount profiteered. Appropriate guidelines may be considered by the Government to address such issues faced by the industry



# Reimagining the future of GST

## Lessons from the past

As we enter into the fourth year of GST, it is time to reflect on the important lessons learnt from the GST experience so far.

### Sustaining cooperative fiscal federalism



Ever since the launch of GST, a consensus-driven approach has been the guiding factor for the GST Council – except for a rare instance – during the last 40 meetings. There has been a conscious effort to encourage free and informed discussions during the council's sessions to ensure optimal outcomes that are in the national interest. Transparency and accountability have been enhanced with the publishing of the council's deliberations. Going by the past trend, sustaining the spirit of cooperative fiscal federalism would be a necessity in the years ahead.

### Overcoming the tax reform fatigue



Given the colossal scale and size of the reforms ushered by GST, it has been a steep learning curve for taxpayers as well as the administration. In its efforts to ease the complications in the system, the GST Council undertook numerous changes in the first two years. The frequent changes in legal provisions, procedures, rates and the IT platform, though largely beneficial, increased the compliance burden of taxpayers. Realising this, the GST Council has slowed down the pace of amendments. Stability and consistency in the GST ecosystem will surely give time to trade and industry to gear up for compliance.

### Robust dispute resolution mechanism



GST, being a nascent law in India, faces several disputes at different levels. However, the conflicting approaches by various state and Central tax authorities on the same issues need resolution at the hands of the GST Tribunal, which is yet to be formed. Litigation in High Courts has increased in the absence of the tribunal. The GST Council may initiate steps to functionalise the tribunals to provide an effective and robust dispute resolution mechanism to taxpayers.

### Seeking the digital opportunity amidst a crisis



The COVID-19 pandemic and the resultant lockdown have provided a huge opportunity to embrace digital tools like video conferencing and email for interaction with the tax administration, tribunals and the judiciary. The GST Council may take this concerted digital drive to its logical end by enabling a facility for digital interface in GST adjudication/audit/appeal/advance ruling/anti-profiteering procedures, akin to faceless assessments in customs/income tax. The Government may consider introducing a scheme similar to the one introduced under the direct tax laws – 'Transparent Taxation: Honouring the Honest'. These schemes not only boost the morale of honest taxpayers but also build trust and confidence in the taxation system of the country.



# Tax redesign and policy reforms for a resilient GST ecosystem

An ideal GST ecosystem is built on the bedrock of the principles of neutrality, simplicity, predictability, convenience and fairness. In reality, the exclusion of the petroleum sector, land and other items from the tax base, the multiple rate structure, a host of exemptions, numerous ITC restrictions and the complex statutory provisions are indicators of non-adherence to these core principles. The GST Council may consider implementing long-term tax redesign and policy reforms to build a more resilient GST ecosystem. Some indicative pointers are discussed below.

## Measures to enhance cash liquidity



Over the past three years, the Government has worked along with the industry and has covered significant ground to simplify the GST law and include suggestions given by India Inc. In the current scenario, the requirement of cash reserves is imperative and business continuity is the primary focus of the industry. Therefore, the Government would need to consider tangible measures to boost cash liquidity. The Government can consider the following recommendations on changes to GST provisions:

### a) Provisions relating to discharging reverse charge liability

Under the GST law, there are certain provisions, which are resulting in cash blockages without yielding any incremental revenue to the exchequer. For instance, on import of services, taxpayers are required to deposit GST under the reverse charge mechanism. They must pay this tax in cash and then avail the ITC for this. The mandatory payment in cash leads to blockage of cash funds for taxpayers. The Government should consider allowing taxpayers to use their ITC balance for payment of GST under reverse charge.

### b) Expanding the ambit of refund under GST

Accumulation of ITC happens when tax paid on inputs is more than the output tax liability. The GST law permits the refund of unutilised ITC in two scenarios – if credit accumulation is on account of export of goods or services or on account of inverted duty structure.

The refund of accumulated ITC under the inverted duty structure is granted where the rate of tax on inputs is higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). However, this refund is limited to the tax

paid on inputs and refund for input services is not allowed. This leads to blockage of credit under the input service category, despite the refund being granted on account of inputs. Recently, the Gujarat High Court allowed refund of ITC availed on input services under the inverted duty structure. Therefore, the Government should consider amending the GST legislation to include the refund of input services under the ambit of the inverted duty structure refund.

The tax paid on capital goods should also be included while computing the amount of refund under GST. This has been a long-standing demand of the industry, especially by exporters who pay a huge amount of tax on procurement of capital goods and the refund for this segment is blocked.

### c) One single central GST account at the national level for companies having multi-state operations

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 ITC under GST to be an 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 GST (CGST and SGST). There is certainly a case for the Government to allow the CGST balance to be maintained at a national level for companies having multi-state operations. This can then be available to offset the CGST liability of one or more states.

This sort of mechanism will help taxpayers with optimum utilisation of their cash or credit balances. At the same time, it will help the Government to significantly reduce its own operational cost involved in the management of taxes at the Central level (including collection of taxes, refunds, rebates and payments under protests) under different statutes.

### d) GST liability on inter-branch supply

The GST provisions mandate the payment of GST on inter-branch supply of services (e.g. common services provided by a head office to its branch offices). If a branch office can claim full credit, the 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, though the exchequer earns no net revenue. The Government should consider doing away with GST applicability on inter-branch supply of services where full credit is available. Alternatively, the requirement of cross charge can be made optional, as it does not entail any incremental revenue for the exchequer. Continuation of the ongoing debate on the inclusion of salary cost of employees for the purposes of valuing the cross charge for GST purposes will lead to an increase in tax disputes without augmentation of revenue.

### e) Option to convert accumulated ITC balance into tradable scrips

Under the foreign trade policy, duty credit scrips are offered to exporters in lieu of export of goods and services from India. These scrips can then be used for the payment of import duties. Also, these scrips can be sold in the open market.

A similar concept can be introduced under the GST regime whereby a GST registrant can have the option of converting its accumulated ITC balance into tradable scrips. The scrips can be used for discharge of GST liability in other states or can be supplied in the open market against a consideration. This mechanism will result in incremental cash liquidity at the disposal of taxpayers.

#### PwC's take

Given the current economic scenario, extending cash liquidity measures to support India Inc., especially for the MSME sector, in addition to fostering accountability and bringing in transparency, can be effective measures that will show results on ground.

### Widening the tax base

Given the declining trend in GST revenue collections, it is imperative to rethink the exclusion of sectors such as petroleum and petroleum products, land and electricity. Exclusion from GST not only imposes additional costs but also increases the compliance burden on these sectors. Widening the tax base could give an opportunity to recast the rate structure as well as augment revenue mobilisation.

### Rationalisation of rates

During the launch of GST, the rate structure was skewed towards the 18% and 28% rate brackets. This distortion was carefully recalibrated by the GST Council and brought to a more balanced level. Some concessional rates were extended for sectors such as textiles, real estate and hospitality, with several conditions attached. Given the current need to kick-start the economy, rationalisation of rates would provide the much-needed impetus to India Inc.

### Review of exemptions

Any new levy could hurt the vulnerable sectors of the economy in unpredictable ways. Therefore, exemptions/concessions from GST were consciously designed to provide necessary support to vulnerable sectors in the early days. However, there is a need to review and rationalise the current long list of exemptions after the GST rates are streamlined.

### Relaxations in the ITC regime

GST was launched with the avowed objective of reducing the cascading effect of taxes. Hence, a review of the current ITC provisions, which result in taxpayers incurring costs and add to their cash liquidity woes, would augur well for the future of this tax system. Genuine business expenses, including corporate social responsibility (CSR) related spend, may be looked at for relaxing the present regime. The statutory provisions and procedures may be suitably aligned with the global practice of deduction of input taxes.

### Simplification of procedures

While digitisation and uniformity in procedures across India have vastly enhanced the ease of doing business for taxpayers, there is still scope for further procedural simplification. With the introduction of e-invoicing, more real-time data would flow into the GSTN system. Efforts may be taken to ease the compliance burden by enabling pre-filled GST returns and pre-filled refund claims. E-audit may be introduced to make GST audit less intrusive.

### Consistency and uniformity in application of law and procedures

Consistency and predictability in GST laws are of paramount importance to taxpayers and action taken to ensure the same would help improve the ease of doing business. The GST Council has proposed setting up a centralised AAAR to resolve the divergent views of the advance ruling authorities. However, there have been conflicting approaches by the Central and the state tax administrations at times, leaving taxpayers confused and without appropriate remedies. The GST Council may need to step in to ensure harmonious and uniform application of laws and procedures across India.



## Technological innovation for GST

It is necessary to take the digitisation journey of GST to the next level, for both the tax administration as well as trade and industry. In this context, some suggestions that the Government can consider for GST 4.0 are given below:

### Adoption of blockchain technology



The GST Council could look into the adoption of blockchain technology not only for e-invoicing but also for e-registration, e-payments, e-filing, e-assessment and e-audit. Technological innovation using blockchain applications could thus ensure the sanctity of the ITC chain, provide automatic factoring and insurance benefits for compliant taxpayers, and improve the overall integrity of the logistics supply chain. Using advanced data analytics, the tax administration can also provide more focused and better taxpayer services. Blockchain applications can also enhance the tax administration's capacity to detect and deter fraudulent firms, unearth fake invoices and tackle tax evasion. On their part, trade and industry should embrace technological innovation to improve compliance.

### Leveraging the big data bank



The tax administration can leverage the insights obtained from the huge volume of data it collects to provide better taxpayer services, as well as enable informed decision making by policymakers. The GST administration can also use the big data bank to help 'nudge' taxpayer behaviour towards better compliance. In view of data-sharing protocols between various Government departments and other agencies, India Inc. should ensure a high level of internal and external data coherence. Tax, finance and IT teams in the corporate world need to work closely to harmonise their tax, commercial and logistics supply chain systems. AI-based applications can be deployed by businesses to integrate with their ERP systems and help automate the reconciliation of data sets from the diverse internal and vendor systems.

## Adoption of global best practices

Moving ahead with the rapidly changing global tax landscape, India would do well to adopt some of the global best practices.

### Adoption of user experience (UX)



Special GST focus groups with industry experts and tax practitioners can be formed to collaborate, co-design and co-create an IT interface to provide the taxpayer with a better experience. Even formalised beta testing of IT changes can be done with the help of these focus groups so that potential glitches or roll back can be avoided post launch.

### Incorporating the principles of design thinking in GST processes



Legal provisions, procedures and forms related to GST are at times complex for taxpayers to understand. A typical example is the requirement of reversal of ITC towards exempted goods and services under Rules 42 and 43 of the CGST Rules, 2017. The GST administration can incorporate the principles of design thinking to ensure that the impact of policies and procedures for all segments of trade and industry, especially MSMEs, is fully understood and factored in before any major changes are undertaken. The adoption of a design thinking approach would help in creating a user-centric design and simplify complicated rules and procedures.

### Segmented taxpayer facilitation



It is globally acknowledged that each taxpayer segment has unique needs and hence support is to be customised to optimise benefits. For instance, the MSME sector faces a huge compliance burden in the wake of digitisation of the GST regime. To ease this burden, a special customer support tech toolkit can be gifted to every newly registered MSME taxpayer to enable handholding and smoother adoption of technology for GST compliances ranging from registration, e-invoicing and payment to refund, return filing and audit.

# Revamping the tax administration for the future

Tax administrations across the globe have realised the need for a robust taxpayer-centred approach. Whether it is reforms in tax policy or design changes in the technology platform, a long-term strategic user-centred approach is required. For revamping the tax administration for the future, the Government may consider, inter alia, the following suggestions:

## Long-term strategy for GST



Tax reform of the magnitude of GST has not been seen in India's recent history. Therefore, it is imperative that the GST Council brings out a long-term consensus-based strategy paper for GST, with a clear vision for at least the next five years. The strategy paper should cover important aspects such as GST rate rationalisation, tax base expansion, ease of doing business, adoption of technological tools for advanced analytics and measures to strengthen coordination among stakeholders in the GST ecosystem.

## Taxpayers' charter for GST



Union Finance Minister Nirmala Sitharaman, in her 2020 Union Budget speech, announced the adoption of a taxpayers' charter for direct taxes. Recently, Prime Minister Narendra Modi unveiled the proposal outlining the rights and responsibilities of both tax officers and taxpayers. In order to emphasise the trust and commitment of the Central Government and the state governments, the GST Council may wish to enshrine the rights of the taxpayer on similar lines. The charter should be implemented in both letter and spirit for better taxpayer engagement in the revenue mobilisation process.



## Reviving GST sectoral committees



Several GST sectoral committees were formed during the launch of GST. They collaborated extensively with the industry sectors to fine-tune the law and related procedures. Sector-specific FAQs were also published for taxpayers to understand the legal provisions better. These sectoral committees may be revived to strengthen the collaboration with the industry verticals for resolving ongoing sector-specific issues.

## Greater Centre-state coordination



With GST audit now picking up at a faster pace, taxpayers with registrations across India will be required to contend with state-wise audit parties (belonging to either the Central or state tax authorities), often simultaneously, to resolve their audit observations. The GST Council can mandate a common audit manual, publish a standardised audit checklist, form GST audit monitoring committees in states and ensure closer Centre-state coordination and uniformity in approach. This will, to a large extent, bring about consistency and predictability, reduce potential litigation and ease the burden of compliance on taxpayers.

## One-time dispute settlement scheme



In Union Budget 2019, the Government introduced the Legacy Dispute Resolution Scheme to facilitate quick closure of pending disputes under the Central indirect tax laws. The scheme received an overwhelming response from the industry, with a liability of more than INR 5,000 crore being declared across sectors.

The Government can consider introducing a similar scheme under the GST regime for voluntary disclosure of tax payments before the taxpayer undergoes GST audits. The GST law has evolved over the past three years and the Government has clarified several provisions after the introduction of GST. Therefore, a one-time scheme to clear past irregularities can be considered by the Government. This will help the industry in clearing past baggage and reduce litigation.



## Measures to minimise tax-related disputes



The Government can consider the following measures for reducing tax-related disputes:

- simplifying the GST law, especially for contentious provisions
- issuing codified circulars along with relevant FAQs to have a single source of guidelines, as done under the erstwhile service tax regime
- setting a higher threshold limit for filing appeals against adverse rulings
- developing a platform wherein taxpayers and tax officers can participate in identifying areas and issues where a settled view is required
- adopting alternative dispute resolution systems for specified cases of tax disputes without affecting the right to appeal on the disputed matter
- obtaining the approval of the jurisdictional authority at a very senior level (e.g. the Additional Commissioner or equivalent) before initiating penalty proceedings to ensure that penalties are levied only in appropriate cases.

## Reimagining GST for the future

GST is an evolving tax system. Even countries like Australia and New Zealand, which have had GST for several decades, continue to debate the merits of their tax systems in order to improve them. For India, the advent of GST signalled a paradigm shift from the earlier complicated system of indirect taxes. The spirit of cooperation among all stakeholders – taxpayers, the tax administration and the GST Council – has guided India's GST journey. A reimagined and redesigned GST regime would be a win-win situation for India and its taxpayers in the years ahead.



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