

## GST Round up

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## Point of View

After the GST Council failed to decide on the crucial issue of administrative control over the tax payers under the turnover threshold of INR 15 Million (INR 10 Mn for tax payers in the Specified North Eastern and Hilly States) in its last meeting, the date for nation wide implementation of the new levy has been again brought back into sharp focus. Everyone is asking the same question now – If not from 1 April 2017, then from what date will GST be implemented in India? Also, in the same breath, another question is “What happens if GST is not implemented by 16 September 2017 (the effective date from which the constitutional power conferred on the centre and the states to levy current indirect taxes lapses)?

We will deal with the first question in more detail in this issue and leave the analysis on the second one to the Constitutional experts.

At a practical level, any Government would want to give its business community at least 3 to 6 months to prepare for the implementation of the new regime in terms of understanding the change required in –

- the business strategies
- business operations
- tax positions
- the IT systems of the organization; and
- the compliances to be undertaken and related resource planning

Had the Central Government been successful in introducing the CGST Bill, the IGST Bill and the Bill for GST Compensation in the Parliament and also in getting these Bills passed before the winter session of the 2016 drew to a close, that 3 – 6 month time frame mentioned above would have been still available to businesses to plan for a seamless transition to GST from 1<sup>st</sup> April 2017.

However, the actual scenario is dramatically different. Even if the GST Council is able to reach an agreement on the administrative control for small assesseees in its next meeting on 22 & 23 December 2016, there are a number of other issues that are required to be addressed in detail. A few of these are mentioned below –

- a. Rate structure for services – whether single rate or multiple rates?
- b. Administrative control over service providers – whether Centre should control for the initial couple of years/
- c. Centralised registration for service providers – whether the GSTN portal is equipped to track all intra-state transactions and allocate SGST share to respective states even if registration is centralized?
- d. Dispensation for E-Commerce companies, Aggregators and On-line market places – Whether the compliance burden proposed under the model law, being onerous, will be reduced?

With so many issues still in search of sustainable solutions, there is no way that the legislation can be introduced in the Parliament in the next few days. In all likelihood, a final decision on open issues could be reached only by end of January 2017. That would leave the businesses with only a few weeks to prepare for the new law. Unless the Centre and the State Governments are ready to deal with a plethora of writ petitions that could be potentially filed to push back the date of GST implementation, the Government would likely defer the implementation to 1<sup>st</sup> July 2017. This will still leave a large gap between the implementation of the new levy and the expiry date for the old levies, 16<sup>th</sup> September 2017. Thus, in all fairness, any date between 1<sup>st</sup> July 2017 to 1<sup>st</sup> September 2017 looks likely to be the date for GST implementation in India. This would allow businesses about 6 months to plan for the transition.

## News Headlines

### **GST Bills have to wait for next session of Parliament**

THE GST Council meeting on Sunday could not again clear the Bills and they will have to wait for the next session of Parliament in January making the April 1 target almost impossible. Finance Minister Jaitley says the Constitution does not allow the luxury of time and the last date for GST to come into effect is 16th September 2017.

What will happen if GST cannot be brought in by that date? With the States and the Centre not ready to relent on the control issue, that seems to be a stark reality staring at us. Technically, no more indirect taxes from that date. But is there no way out? It seems there is. As per Section 20 of the Constitution (One Hundred and First Amendment) Act, 2016, the President seems to have the power to solve this issue

If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty.

(Source: <http://www.taxindiaonline.com> dated 13 December 2016)

### **Relief for e-commerce firms? Govt. mulls central registration under GST**

Some e-commerce, telecom, and insurance entities might escape the complex prerequisite of separate registration in each state under the proposed goods and services tax (GST) regime, with a leeway or scope for special provisions in the draft law.

According to government officials in the GST Council, the demand of service providers, including e-commerce players, for a central registration might be met in the GST rules after discussion with states.

"We have provided for an enabling provision under the draft law to provide certain companies with centralised registration. There is basically a section for special procedure for certain companies which want to undergo simplified compliance and registration procedure. The categories will have to be negotiated with the states," said an official. These will be part of the GST rules.

(Source: <http://www.business-standard.com> dated - 8 December 2016)



## **Exercise of putting goods in GST slabs has begun: CBEC**

Confident of the rollout of Goods and Services Tax from April 1, 2017, despite a logjam in the Council on the issue of dual control, the Central Board of Excise and Customs (CBEC) on Thursday said it has started the exercise of putting the goods in the four tax slabs.

*"We have started the exercise of putting goods into various tax slabs. It will be shared with the (GST) Council,"* CBEC Chairman Najib Shah said here at the National Conference on GST organised by the Associated Chambers of Commerce and Industry of India (Assocham).

*"I think the deadline of April 1, 2017, will still be met. These (dual control) are issues that are getting addressed and will get resolved,"* Shah said.

**(Source:** <http://www.business-standard.com> dated 8 December 2016)

## **States' demand of sole control in GST disempowers Centre: CBEC**

Days ahead of the crucial meeting of the GST Council on who would administer which assessee, CBEC chairperson Najib Shah today said the demand for giving states the sole control on tax payers with turnover of less than Rs 1.5 crore will disempower the Centre. Lack of consensus on the issue of how the new tax, having central and state elements, would be collected and administered is holding up the supporting legislations on the Goods and Service Tax (GST), government is keen on introducing from April 1 next year.

Stating that both the Centre and states are committed to ensuring that a taxpayer is assessed only once in the hands of one tax administration, Shah said GST was conceived as a dual structure and the government does not want to convert that into "dual" assessment.

**(Source:**

<http://economictimes.indiatimes.com> dated 8 December 2016)

## **Centre comes up with hybrid model to break the GST logjam**

Even as the stalemate between the Centre and states continue over dual control, or cross-empowerment, on who will exercise control over goods and services tax (GST) assesses, the government has come up with a new hybrid model hoping to break the logjam. States want full control over tax assesses having up to Rs.1.5 crore turnover to which the Centre is not agreeing.

*"As per the new proposal, there will be a cap of 5% for the Centre. It's only up to this 5% that the Centre will have audit and scrutiny powers over tax assesses falling in the up to Rs.1.5 crore turnover category. Another proposal is this 5% be further split into 60:40 ratio with 60% going to the states and the remaining 40% to the Centre. Of the 40%, Centre will audit 20% small units and 80% large units,"* said a finance ministry official requesting anonymity.

When asked if this proposal could be the clincher, the official said, *"The officials are in agreement but it depends on the state finance ministers. So far Karnataka seems to be fine with the proposal. The hybrid model was mentioned in the last meeting."*

**(Source:** <http://www.infracircle.in> dated 8 December 2016)

## IT Round up

While on one hand the top management across organisations in India is trying to comprehend and come to terms with the nature and extent of changes required to a wide range of functions, including operations, supply chain, accounts & finance, legal, among others, there is unanimity that the Information Technology Systems & Software (IT systems) will require the most significant changes, amongst all the organizational functions. In this section, we try to update the readers on the latest developments in the IT systems landscape from a GST perspective.

In the current issue, we bring the latest news on the initiatives being undertaken by two of the leading names in the IT systems industry in India, namely SAP Labs and Tally Solutions.

The first article is an extract of the interview given recently in the print media by two of the business heads of SAP Labs on the changes that the company is introducing to help Indian businesses to transition to GST and the second news report discusses the mobile application for GST implementation that Tally Solutions has recently introduced for smart phones.



### **GST will help India Inc go digital: SAP Lab's Neeraj Athalye and Arun Subramanian**

Two key executives from German enterprise software maker, SAP—Neeraj Athalye, Head of SAP S/4HANA-ERP version, Indian subcontinent and Arun Subramanian, Vice President, Globalisation Services, SAP India—speak to Sudhir Chowdhary on the transition challenges and road map for implementation during this digital transformation. Excerpts:

- **What are some of the major challenges for the industry while adopting GST?**

Neeraj Athalye: There are two basic challenges. The first is getting clarity on GST, which is an ongoing challenge and is expected to be addressed as we progress towards a successful transition. The second challenge is making the businesses GST compliant. As a technology organisation, it is important to know where businesses stand. Businesses need help on the road map to move to GST compliant systems. As SAP's solutions cut across 26 industries, we understand that each company has different needs depending on the industry it belongs to.

- **How can IT companies such as SAP support India Inc, especially SMEs, to be prepared to move onto the new GST regime?**

Athalye: SMEs have always been a very strategic customer base for SAP. We have launched various solutions to meet their requirements and have multiple solutions depending on their size and scale. For GST, it is critical for us to help them through this journey towards achieving compliance. We have recently announced a knowledge platform available at [sap.com/India/Simple GST](http://sap.com/India/Simple GST), with Assocham as industry partner,



where all the GST related information is available to businesses, irrespective of their size. Large enterprises have access to a whole bunch of consultants, advisors and others for getting requisite information on GST. Since SMEs may not have the same kind of access, we have taken a three-pronged approach—connect, engage and transform to enable them for this.

**Connect:** We connect through digital media as well as through a lot of pan-India forums.

**Engage:** For engaging or reaching out to enterprises across the country, we have a large set of partners that we work with across diverse industries. We enable the partners to take the message and process forward to businesses. Additionally, we are available on a 24x7 SAP support line.

**Transform:** We have various tools today that help businesses with their transformation journey. Be it the S/4HANA digital core road map or how companies go about adopting it, all such information is available through blogs/white papers/e-learning sessions. We conduct wide web learning/ training sessions and seminars as well.

Arun Subramanian: We started this journey of reaching out to businesses and the ecosystem sometime back in December 2014, when the white paper for GST was ready. In addition to webinars and regular sessions, industry work groups, we are also going to put our solution proposal on the knowledge platform along with sound bytes from senior executives, consulting notes and other prerequisites. Additionally, SAP is reaching out not just to businesses, but partners as well. We want to give as much information as possible to ensure that everyone is crossing the line on April 1,

2017, because if even one company misses the deadline, the chain will break.

- **GST is not just a taxation exercise. Isn't there a huge amount of IT technology infusion that is going into the whole business landscape?**

Subramanian: Absolutely. First, the tax follows the goods because it is a tax on supply. Second, look at how the government has announced the law. It says upload all your supply invoices electronically onto the GSTN system. So, if everyone with a tax base of INR 20 lakh is going to upload their supplies, this will include any business that makes R6,500 earning per day, which could be a pav bhaji vendor or panwalla as well. That is how wide the tax base is going to be. They are saying every supply invoice has to be in the system.

The GSTN is not just going to hoard data, it is going to act as a clearing house mechanism. Interstate supply will do the transfer of SGST (State GST) from state A to state B where the goods are moving. That's how the tax is moved with them electronically. If you look at it, everything is getting tagged into the system. So IT enablement is going to be pivotal as everyone is going live. Everyone is going to have to learn and then take it forward from there. We will be going paperless. IT is going to be a key driver.

- **GST may translate into processing of 300 to 500 crore (3-5 billion) invoices every month. How can the SAP system help to deal with the volumes?**

Subramanian: According to our understanding, about 4-5 billion invoices will be uploaded onto the GSTN system on a monthly basis. I can safely say 30-40% of this number would come from an SAP system. The question is on the line of

connectivity to GSTN. We are looking at building solutions with SAP HANA as the database to help even those businesses who probably are not on SAP S/4HANA or the digital core to process large volumes of data.

Each organization is estimated to process 50,000 to seven lakh invoices a month. With HANA as the database, our solutions will specifically be able to cater to each and every size and segment of the businesses that we support today. For those who cannot afford S/4HANA or those who are looking at S/4HANA a little later down the line, we have an interim solution as well. So from a compliance point of view, businesses will not be affected.

**(Source:** The Financial Express, 21st November 2016 - <http://gstindiaguide.com>)

## **Tally announces launch of GST mobile application**

Software product company Tally Solutions Private Limited today announced launch of its GST mobile application to ensure easy adoption of the technology led law.

The app will be a rich source of information on Goods and Services Tax for businesses and will help them in understanding GST and its nuances, company officials said.

They said its user friendly interface has been designed to cater to both sets of users- those who are adept with technology and those who are easing into the use of technology, for better understanding and automation of their accounting practices. This free enterprise application can be downloaded by Android and iOS users from their respective App stores.

"After a number of events that we have conducted with our partners in the ecosystem, across the nation, we realised the need to develop an easy to use yet

comprehensive tool that would ensure businesses transition smoothly to GST in the coming year. It is to deliver this solution to the businesses that we have invested in the Tally for GST App," Tally Solutions Executive Director Tejas Goenka said.

Speaking to reporters here, he said, "right now, we have it in two languages, English and Hindi. Very soon we will be launching it in four southern languages."

Stating that Tally has constantly been making efforts to equip small businesses and traders with the right information to train and prepare themselves for the tax reform, the company said it recently qualified as a GST Suvidha Provider (GSP) by the GSTN Network.

Tally has also collaborated with the Confederation of All India Traders (CAIT) to train and educate the trading community on GST. It has also been conducting events across the country with various partners for GST awareness and training of small businesses.

**(Source:** The Economic Times dated 14 December 2016 -

<http://economictimes.indiatimes.com/tech/internet/tally-announces-launch-of-gst-mobile-application/articleshow/55980525.cms>)



## Helpdesk

### Question:

- We are a firm of Management Consultants established in 1980 at Pune. We have branches in all metro cities like Mumbai, Ahmedabad, Chennai and Gurgaon. We have separate service tax registration for each of these locations.
- Many a times, our client engages us for risk management and advisory services, the Engagement Letter (EL) for which is executed at Pune, being our Head Office and the invoices in this regard are also issued from our Pune office. One such case, the client's factory is located at Chakan, Maharashtra and depots/branch offices at Delhi and Karnataka State. In such case we internally decide and co-ordinate with our other branches for allocation of resources and execute part of the assignment through the branch nearest to the location of the client.
- Presently, we are not raising any invoice for inter branch services availed by the Head Office but from the time sheet filed by the respective team member(s) we can identify the cost incurred at each location. We have been advised that going forward, in the GST regime, even inter branch services will have to be valued and shall be subject to GST. In the light of above, please clarify whether-
  - Respective branch will be required to raise an invoice on the Head Office for the service provided to HO and charge GST on the same?
  - Head Office shall be eligible to take ITC on the basis of invoices raised by the respective branches?



### Answer:

- Your attention is invited to Entry No. 2 of Schedule 'I' – "Matters to be treated as supply even if made without consideration" under the revised MGST law released by the GST council on 25 November 2016. It specifically provides that supply of goods or services between related person or between distinct persons as specified in section 10, shall be liable to GST when supply is in the course of or furtherance of business.
- Section 2(18) of the draft IGST Act, 2016, lists down the criteria for determining the appropriate office of the service provider for the purpose of taxation of services provided by a person. In case of services provided by various branches of a taxable person, it states that the office most directly concerned in the provision of service shall be the location of the service provider. In the revised MGST law, there is nothing to suggest how to determine the office most directly concerned with the provision of service.



- The concept of location of supplier is borrowed from the existing Place of Provision of Services Rules, 2012 (POPS Rules). Taking recourse to CBEC's Education Guide issued in the year 2012, it can be interpreted that –
  - The criteria given for determining the location of the supplier of service is to be applied sequentially.
  - In case of multiple establishments, it will be the establishment that actually provides or receives a service would be treated as the establishment 'directly concerned' with the provision of service, notwithstanding the contractual position, or invoicing, or payment.
- In case of advisory services, the advice has to be seen holistically, taking all factors into account. Given this, though execution of a service may take at various places, it is the office that issues the final report that may be considered as the location of the supplier of service ie Head Office in the present case.
- Further, in our view, since the branches are also providing service to the Head Office, the services provided by it shall be valued and GST charged at appropriate rate on such services.
- Section 16 (2) of revised Model Goods and Service Tax law (MGST) specifies the conditions, based on which ITC can be claimed by the registered taxable person. In one of the condition, it is specified that *'where a recipient fails to pay to the supplier of services, the amount towards the value of supply of services along with tax payable thereon within a period of 3 months from the date of invoice by the supplier, the amount of ITC availed by the recipient shall be added to his output tax liability along with interest'*. Thus, for availing ITC, the recipient should

have to make payment within 3 months from the date of supplier's invoice.

In case of inter branch transactions, settlement is generally carried out through Head Office account no identifiable payment is made against specific invoices. Given this, the condition laid down for availment of ITC fails in such a situation. A suitable change in the Model GST law is expected to address such events.



## Question:

- I am a marketing manager of a leading pharmaceutical Company. Our in house Research and Development Department ('R&D' Department) develops products basis research conducted by the R&D Department. With a view to ascertain market acceptance of the newly developed products, we generally distribute it as a free sample to our distributors and medical practitioners. I am given to understand that on the goods distributed as free samples, we will be required to reverse Input Tax Credit (ITC) on raw materials and other services (herein after refer as 'input' and 'input services') used in the production of such newly developed product. Also, we will have to pay GST on the goods distributed by our company as free samples.

- As a layman, I feel there will be a double taxation on goods distributed as free samples i.e. by way of denial of ITC on inputs and input services used in the manufacture of goods on the one hand and again by way of levying GST on such free sample on the other hand. Please advise.

## Answer:

- Section 17 of revised MGST law deals with cases where ITC is restricted or ineligible. As per Section 17(4)(g), registered taxable person shall not be entitled to claim ITC on goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample. Thus, your company will be required to reverse ITC, if any, availed on inputs and input services used in the manufacture of goods distributed as free samples.
- As per Entry No. 2 of Schedule 'I' to the revised MGST law dealing with "Matters to be treated as supply even if made without consideration", supply of goods/ services without consideration shall be liable to GST. Given this, goods distributed as free samples will be required to be valued as per the valuation principles laid down in the revised MGST Law and GST will have to be paid thereon at appropriate rate.
- Thus, as per the revised MGST law as it stands today, there will be indeed a GST levy on free samples distributed by the business entities. One needs to wait for the final draft of the GST bills to be introduced in parliament to ascertain the true nature and extent of implications.

## About JMP Advisors Pvt. Ltd.

JMP Advisors is a leading professional services firm that offers advisory, tax and regulatory services. The vision of JMP Advisors is to be "The Most Admired Professional Services Firm in India". It aims to be the best as measured by the quality of its people and service to clients.

The firm has a merit based culture and operates to the highest standards of professionalism, ethics and integrity.

We have a team of qualified professionals with wide-ranging experience across various functions. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent high quality service, reliability & ease of doing business. JMP Advisors has been recognized again as a leading Tax firm in the ITR World Tax 2017 Guide.

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