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## GST – CHANGING PARADIGMS IN THE INDIAN TAXATION

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### ABSTRACT

**G**ST, one of the most awaited reform in the indirect taxes of India, will be in effect from 1st July, 2017. Rationale of GST was to have a single tax rate for all goods and services, charged by states and central governments, in tune with the developed nations. Final rates have been decided and different treatments have been assigned for different categories of goods. This paper attempts to analyse the impact of GST in the context of Anti profiteering and free supplies. The findings suggest that the sectors can benefit from GST if they are well prepared for the changes in the business environment.

**KEYWORDS:** Goods and Service tax, Taxation system, Anti profiteering, Free supplies .

### INTRODUCTION :

Goods and Services tax (GST) will be in effect from July 1, 2017. After years of deliberations this act is seeing the light of day. Recently the tax rates applicable to various categories of goods and services have been finalised. Internationally GST is levied in more than 160 countries with different models in place - National GST model, State GST model and a Concurrent Dual GST model,

GST aims to dismantle array of indirect taxes in prevalent in India like VAT, Excise duty, Service tax, Sales tax, custom duty, and local taxes etc. in order to curb corruption and tax evasion.

Previous studies have analysed various aspects of GST theoretically. Studies like Poddar& Ahmad (2009) relates to principles, issues, and procedures of GST implementation. Vasanthagopal (2011) highlights GST to be a crucial reform and improvement over the current indirect taxation system. Recently studies like Mawuli (2014), Kumar (2014), Pinki and Verma (2014), Sehrawat and Dhanda (2015), Chaurasia et al. (2016), Khurana& Sharma (2016), Rizwana (2016), Kumar (2016), Lourdunathan& Xavier (2017) discusses challenges in implementation of GST and identify prospects of GST that would benefit the producers and consumers.

In light of the limited work done relating to GST in the context of Anti Profiteering and the treatment of free supplies, the present study attempts to fill this research gap.

### ANTI-PROFITEERING

Amidst vehement discussions on the Goods and Service Tax (GST) in the Lok Sabha, a member M Veerappa Moily suggested that "price control and anti-profiteering mechanism helps in determining unreasonably high profits. In the Indian context, we should take some precautions so that the profiteering lobby shall not thrive over this. Some countries have seen a rise in inflation because of switching over to GST regime." This suggestion caught the attention of the Finance Minister and post several deliberations by the GST Council, an anti-profiteering measure was introduced in the new Model GST Law released on November 26, 2016. Anti-

Profiteering means to stop a person from earning unreasonable profit through sale of goods and services.

The new draft on GST law introduced the provision of “Anti-profiteering” in Section 163 which enables the Central government to constitute an authority to monitor:

- The price charged for goods and services in the lead-up to, and following the introduction of, GST and
- That trade and industry pass the benefits of input tax credit or reduction in tax rates to consumers.

The authority also has the power to impose penalty in cases where it finds non-compliance with the abovesaid.

### INTERNATIONAL PERSPECTIVE

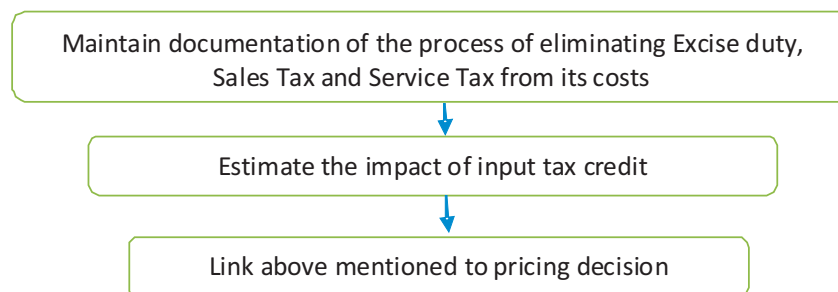
Australia was the first country to enact this provision in July 2000. Australian Competition and Consumer Commission (ACCC) road map was to educate the consumers and businesses through publication of price guidelines, communication strategies and hot lines. Education was followed by extensive monitoring of prices through Net Dollar Margin Rule for 12 months before the commencement of GST.

Malaysia also introduced this provision in April 2015. They chose to use Net Profit Margin methodology to control prices. However, it led to widespread litigation and was found to be administratively difficult to implement.

International experience indicates that anti-profiteering provisions are only effective if there is a significant lead-in time to allow the relevant authority to educate consumers and businesses as to their rights and obligations and monitor the prices.

### WHAT BUSINESSES SHOULD DO?

Businesses should consider the following:



This should be done at product level and entity level both. Another simple measure is to display 2 prices, one before and one after the implementation of GST. This will allow customer to compare the prices and see the change.

### TAXABILITY OF ‘FREE SUPPLIES’ UNDER GST

The proposed Goods and Services Tax (GST) draft model was released in June’16. The purpose of GST is to incorporate various taxes from the present Indirect Taxes structure and form one tax for all. Under the proposed model, ‘Goods’ means any kind of movable property other than actionable claims and money and ‘Services’ means anything other than Goods.

Under GST, taxable event will be only one incidence, i.e. Supply. As per Section 3 of the GST model, “Supply” is defined as:

- All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- Importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and
- A supply specified in Schedule I, made or agreed to be made without a consideration.

Schedule I, as mentioned above, includes permanent transfer/disposal of business assets, temporary

application of business assets or services to a private or non-business use, assets retained after deregistration, supply by a taxable person to another taxable or non-taxable person without consideration in the course or furtherance of business.

**Example:**

- + Free Supplies like samples, buy 1 get 1 free etc.
- + Transfer of assets during liquidation or dissolution of firm.

Under the proposed GST model, free supplies are taxable, unlike present scenario where free supplies are taxable only under Excise Laws and Custom Laws. For taxation purpose under GST, two things are of utmost importance:

**a. Time of Supply: Under GST, tax shall be payable at the earliest of the following dates on which:**

- + Goods are removed for supply to the recipient (for goods required to be removed);
- + Goods are made available to the recipient (for goods not required to be removed);
- + Invoice is issued by the supplier;
- + Payment is received by the supplier;
- + Recipient shows receipt of goods in his books of account.

So, in the case of free supplies where there is no invoice, payment or mention of the same in the books of accounts, the taxable event will be when goods are removed for supply or made available to the recipient.

Since no invoice is issued or payment is made in the case of free supply, the time of supply in case of services will be date of completion of the provision of service.

**b. Valuation of goods/services: As per the GST Model, valuation rules are to be applied when:**

- + the consideration, whether paid or payable, is not money, wholly or partly;
- + the supplier and the recipient of the supply are related;
- + there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;
- + business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;
- + Such other supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council.

So, in case of free supplies, i.e. supply without consideration, Valuation Rules apply which are:

<b><u>RULE 4</u></b>	<b>Comparison Method</b> (similar to the present valuation mechanism as given in the Excise Law)	Transaction value of goods/services of like kind and quality supplied at or about the same time to other customers adjusted with factors like: a) Difference in dates of supply; b) Difference in commercial levels and quantity levels; c) Difference in character of goods/services; d) Difference in other expenses relating to place of supply
<b><u>RULE 5</u></b>	<b>Computed Value Method</b>	It is to be applied where Rule 4 cannot be applied. Under this method the complete cost of the goods/services including the charges for brand and designing, profit margins and general expenses while rendering similar services or supplying similar goods shall be deemed to be the value.
<b><u>RULE 6</u></b>	<b>Residual Method</b>	Where both Rule 4 and 5 fail to apply the value shall be determined using the reasonable means consistent with the principles and general provisions of these rules.

For example: A pharmaceutical company is planning to introduce a new Antibiotic in the market. In order to do the same, marketing division decided to give its free samples to the Doctors. Now under GST, these samples will be liable to tax. Time of supply in this case would be when the said Antibiotic is out for delivery to the Doctors. And the valuation of the same would be similar to the one having same type of salt (like quality, quantity) and quantity (like 10 tablets). Yes, some adjustments can be made in the value so arrived.

**However, under the proposed GST draft model there is ambiguity on certain points which are:**

- 1.As per Rule 4 of Valuation Rules, “value of goods/services of like kind and quality” can be challenged.
- 2.As per Rule 5 of Valuation Rules, “charges for brand and designing” is not properly clarified in terms of its calculation or apportionment.
- 3.No provisions for repeated free supply of goods/services.

In short, the intention of GST is to expand the scope of levy of Indirect Taxes on supplies that are made without consideration which is not there in the existing mechanism.

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