

Refresher Course on GST
by WIRC
26th June, 2017

“Basic Concepts of GST”

Presentation by

C. B. Thakar, Advocate

B.Com., F.C.A., LLB

Journey towards GST

- 122nd CAB Approved by Lok Sabha on 06-05-15
- Amended CAB Approved by Rajya Sabha on 03-08-16
- Amendments Approved in Lok Sabha on 08-08-16
- Endorsement by State Assemblies(50%)
- Presidents Assent for enactment of 122nd CAB
- Formation of GST Council (GSTC)
- Recommendations of draft legislations by GSTC
- Ratification of Recommendations of GSTC by CG and SG
- Drafting of Central and State GST Acts and Rules
- Effective date to be defined by GSTC

Important timelines highlighted by the Revenue Secretary

- Ratification of the CAB by 16 States within 30 days
- Presenting all legislative bills in the winter session of the Parliament and the State assemblies
- Constitution of GST Council within 60 days of enactment
- Establishing GST Network and States IT back-end by Nov.2016
- Testing of software with live transactions by Jan.2017
- Outreach programme as a part of change management to be completed by March 2017

Amendments carried out during the course of passage of CAB in Rajya Sabha

- Compensation for loss of revenue to states under new GST regime 'shall' be provided for a period of 5 years from introduction of the levy of GST
- The 1% additional levy on interstate supply of goods has been scrapped.
- Establishing a mechanism for adjudicating any dispute between Centre and States or between the States, arising out of the recommendations of GST Council

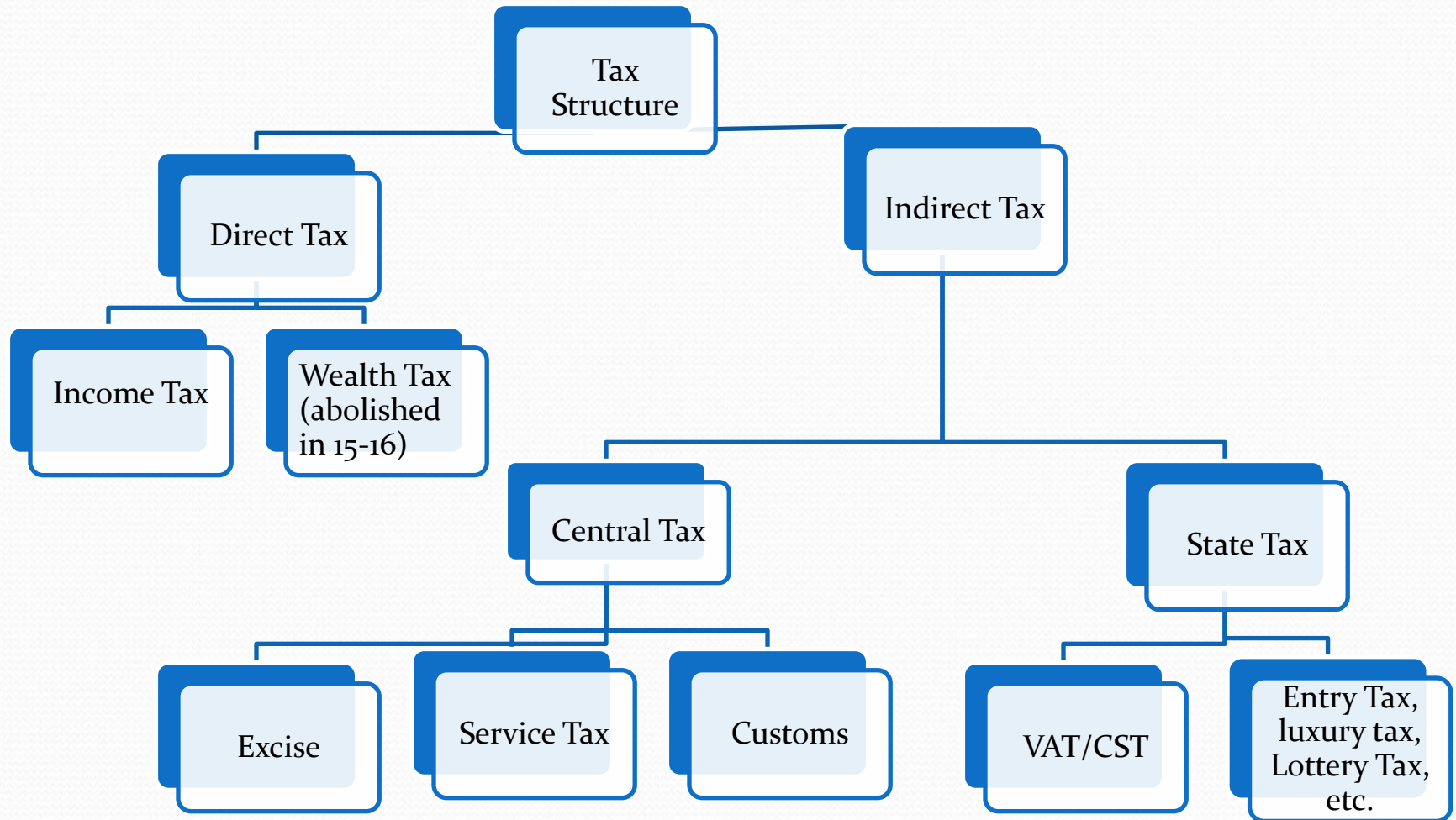
Recommendations not approved in Rajya Sabha

- Cap on GST Rates not included in the CAB as the rate will be first recommended by the GST Council.
- The recommendation for Adjudication of Assesseees having turnover below Rs. 1.5 crore by the States is not considered in the CAB and will be decided by the GST Council

GST – Money Bill or Finance Bill

- Proposal to introduce the GST Bill as a ‘Financial Bill’ and not as a ‘Money Bill’.
- In the case of a Money Bill, the role of the Rajya Sabha is limited to making recommendations, whereas in the case of a Financial Bill, it has full powers to approve, modify or reject the Bill.
- However, no assurance was given by the Finance Minister in Parliament that the GST Bill would be presented as a Financial Bill.

Existing Tax Structure in India



Subsuming of Existing Taxes

Central Taxes

- Central Excise duty
- Additional Duties of Excise
- Additional Duties of Customs (CVD)
- Special Additional Duties of Customs (SAD)
- Service Tax
- Cesses and surcharges

Subsuming of Existing Taxes

State Taxes

- State VAT
- Central Sales Tax
- Luxury tax
- Entry Tax (Including LBT & Octroi)
- Entertainment Tax
- Taxes on Advertisements
- Taxes on Lotteries, Betting & Gambling

Exclusions

- ▶ Basic Customs Duty
- ▶ Stamp Duties
- ▶ Other taxes:
 - ▶ Tax on alcoholic liquor for human consumption (State)
 - ▶ Petroleum products – levy of GST to be made effective at a future date

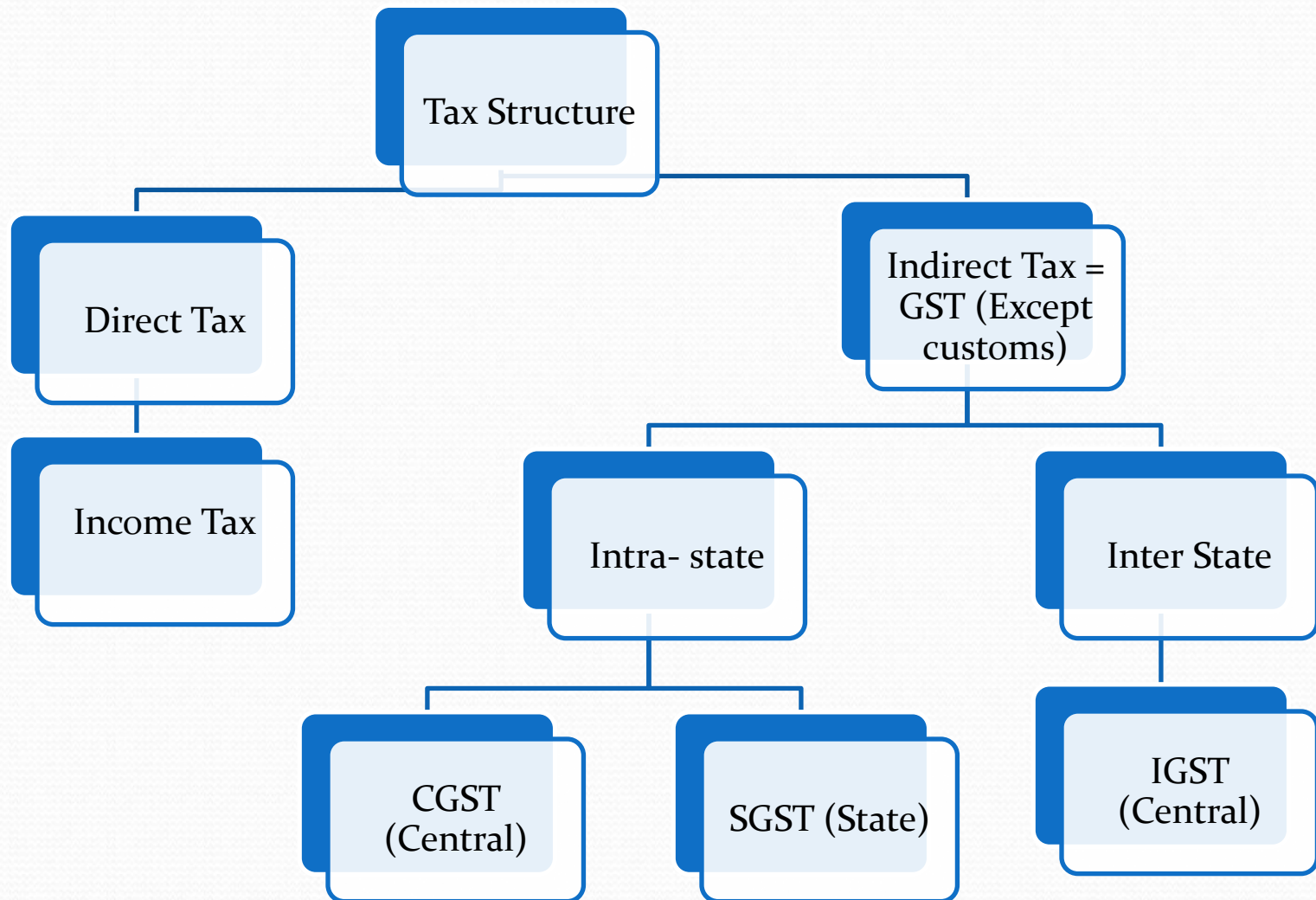
Salient Features of Proposed GST Design

- Ideally GST should be a singular tax on all supplies with a uniform rate and seamless credit for taxes paid at earlier stage.
- Considering Federal Structure of India – EC has worked out the Dual Model of GST
- Central Govt.(CG) will levy ‘Central GST’ (CGST)
- State Govt.(SG) will levy ‘State GST’ (SGST)
- Supplies imported into the country - liable for GST
- Supplies exported from the country - Zero Rated

....Salient Features of Proposed GST Design

- Interstate supplies (Including Br. Trf.), Imports and exports will be governed by an 'Integrated GST' (IGST) which would consist of Two components - CGST & SGST
- CGST will be held by Central Govt. and SGST will be trfd to the destination State Govt.
- IGST will enable smooth flow of credits between Origin and Destination States.
- The tax on Inter State supplies will accrue to the destination State

Proposed Tax Structure in India



Proposed GST Rates

- Goods and Services are to be classified into various slab rates like 0%, 5%, 12%, 18% and 28%. Further there can be compensation cess at prescribed rate.

Benefits of GST

1. Reduction in multiplicity of Indirect taxes
 - GST proposed to be a simpler and rational tax structure with improved administration (common administration) with updated and enhanced IT/technological framework
2. Common base for levy of GST (as against cascading)
3. Reduced cascading effect due to cross tax credit mechanism under GST
 - Currently retention of VAT input tax credit for inter state stock transfers / non availability of Cenvat Credit to Traders

...Benefits of GST

4. Non creditable CST to be removed will lead to cost reduction
5. For Govt.: Increased tax collections due to wider tax base and better compliance
6. For Consumer: Reduction in taxes if Govt. tax collection increases – rate reduction in prices possible.

Important Definitions and Concepts

- **Sec.2(55) “goods”** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- **Sec. 2(102)“services”** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

- **Sec.2(17) “business” includes--**
- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

- **Sec.2(107) “taxable person”** means a person who is registered or liable to be registered under section 22 or section 24;
- **Sec.2(6) “aggregate turnover”** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

- **Sec.2(20) “casual taxable person”** means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;
- **Sec.2(119) “works contract”** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

- 1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- 2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
- Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

- 3. Supply of goods—
 - (a) *by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or*
 - (b) *by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*
- 4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- **1. Transfer**
- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- **2. Land and Building**
- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
- **3. Treatment or process**
- Any treatment or process which is applied to another person's goods is a supply of services.

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- **4. Transfer of business assets**
- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - (i) the business is transferred as a going concern to another person; or
 - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- **5. Supply of services**
- The following shall be treated as supply of services, namely:—
 - *(a) renting of immovable property;*
 - *(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- *Explanation.—For the purposes of this clause—*
- *(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*
- *(i) an architect registered with the Council of Architecture constituted*
- *under the Architects Act, 1972; or*
- *(ii) a chartered engineer registered with the Institution of Engineers*
- *(India); or*
- *(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- (2) *the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;*
- (c) *temporary transfer or permitting the use or enjoyment of any intellectual property right;*
- (d) *development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;*
- (e) *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and*
- (f) *transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.*

SCHEDULE II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- **6. Composite supply**
- The following composite supplies shall be treated as a supply of services, namely:—
 - *(a) works contract as defined in clause (119) of section 2; and*
 - *(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*
- **7. Supply of Goods**
- The following shall be treated as supply of goods, namely:—
- Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

- 1. Services by an employee to the employer in the course of or in relation to his employment.
- 2. Services by any court or Tribunal established under any law for the time being in force.
- 3. (a) *the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;*
- (b) *the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or*

SCHEDULE III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

- (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
- 4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- 6. Actionable claims, other than lottery, betting and gambling.
- Explanation.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Scope of Supply –Section 7

- **7. (1) For the purposes of this Act, the expression “supply” includes--**
- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Scope of Supply –Section 7

- (2) Notwithstanding anything contained in subsection (1),–
- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,
- shall be treated neither as a supply of goods nor a supply of services.

QUESTIONS



Thank you ...

