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TAXABLE EVENT & PLACE OF SUPPLY

Taxable Event

While under the current indirect tax regime, various levies of the Centre and States are triggered by distinct taxing events [e.g. Service tax on provision/deemed provision of services, Value Added Tax ('VAT') on sale of goods, Excise duty on manufacture of excisable goods etc.], under the upcoming Goods and Services Tax ('GST') regime these multiple events are likely to be subsumed into a single tax trigger viz., 'supply'.

Accordingly, the 122nd Constitution Amendment Bill, 2014 introduced in the Lok Sabha on December 19, 2014 ('Amendment Bill') defines GST as a tax on 'supply' of goods or services or both. While 'supply' has not been defined, the term is of wide import and is unrestricted by the typical connotations associated with terms such as 'sale', 'manufacture' etc. – as a result, these concepts which assumed great significance under the present indirect tax scenario, are likely to lose their relevance with the introduction of GST.

Judging by the precedents from VAT/GST regimes across the world (also based on 'supply'), any transaction in goods or services will effectively be brought to tax unless specifically excluded. Businesses may therefore expect a wide base of activities to become liable to GST, given that a 'supply' will subsume multiple taxing events. By way of illustration, the manufacture and sale of goods which currently attract two separate levies (viz. Excise duty and VAT) will attract a single levy as a 'supply' under the GST regime (CGST at Central level and SGST at State level).

One of the most significant outcomes of 'supply' being the tax trigger is the elimination of potential duality of taxes. GST is likely to be leviable on supplies of both goods and services at an identical rate. Also, the term 'services' under the Amendment Bill has been defined to simply cover "anything other than goods". It is expected that this mutual exclusivity will be mirrored in various GST legislations enacted by State(s) and Centre. This effectively should result in alleviation of various longstanding disputes in relation to duality of taxes, such as for software, intellectual property rights and right to use transactions etc. In particular, it is possible that certain transactions, such as "deemed sales" or those involving intangibles, which are currently treated as goods transactions, may instead qualify as service transactions under the GST regime.

Another significant implication is for transactions such as stock transfers, consignment sales or job work transactions. The expectation is that with introduction of the concept of 'supply', *sans* any requirement of transfer of title, even supplies of goods to self or to an agent or job work transactions could attract GST. This would effectively ensure continuity of the tax chain allowing free flow of credits.

Further, there being no requirement of consideration inherent to a 'supply' (unlike in the case of a 'sale'), it remains to be seen whether and how GST will apply in cases where there is no consideration paid or payable for goods or services, as also in cases where no *monetary* consideration is involved (e.g. barter).

Place of Supply

Closely linked to the taxable event of 'supply', are the rules governing the place of supply, which will determine not only whether a given transaction is chargeable to GST in India, but also which State can stake claim to the SGST component built into IGST. Fundamentally, GST is a destination-based consumption tax, and the rules for the place of supply should be aligned with this principle. Internationally, a distinction is typically made between B2B and B2C supplies. The former transactions are taxed as per the location of the recipient while the latter are taxed as per the location of the supplier. However, given that GST will be implemented in India's unique federal set-up with its ever-changing political landscape, the place of supply rules will be rigorously tested.

In the interim, the Place of Provision of Service Rules, 2012 ('Rules') have been introduced in July, 2012 along with the negative list approach, and are expected to continue even under the GST regime in the context of 'services'. The default rule for determining place of supply is the location of the recipient, per the destination principle. Certain special rules cover the place of provision for events, movable/immovable property, transportation etc. These rules are broadly pegged to the location where the

service is effectively consumed. One notable exception is the rule for intermediary services, which are taxed at the location of provider rather than the recipient, thereby subverting the destination principle and effectively taxing exports of such services to foreign recipients. Such anomalies ought to be addressed while formulating the supply rules under the GST regime.

It is also hoped that in the move to GST, the current lacunae in terms of identifying the situs for a supply of intangibles is suitably addressed, possibly by treating these as service transactions, or alternatively by way of a special set of norms.

As regards tangible goods, tax is currently based on the physical movement of goods within/between States. In the event that supplies of goods continue to be taxed on this basis, special place of supply rules will need to be enacted for supplies of gas, electricity etc., which are supplied through common distribution networks running across the various States. Alternatively, the place of supply under GST may be delinked from this criterion and reformulated along the lines of the general B2B/B2C rule described above. If this be the case, it will give rise to important implications for various sourcing models which are currently employed by businesses; for instance, the bill-to-ship-to model will be entirely redundant if GST is in any case based solely on the location of the recipient, and not on the movement of goods. Businesses may accordingly need to re-evaluate a host of practices, including the need of operating depots in various States across the country (as there may no longer be any tax arbitrage between intra-State and inter-State movement of goods). Moreover, concepts such as in-transit sales, high seas sales and sales in the course of import may also become redundant.

Most significantly, there is a need to ensure simplicity and clarity in the place of supply rules especially given the surge in e-commerce and electronic delivery of services, while also incorporating the nuances of each business sector – this will indeed go a long way in sub-serving Government's 'make in India' initiative and realizing the vision of India becoming a single 'common economic market'. Any other approach may result in endless disputes not only between taxpayers and the revenue authorities, but also between two or more States who assert jurisdiction over supply of goods/services. To obviate such issues, it is imperative that industry engages with the policy makers at this critical juncture of policy/rule formulation to ensure that key inputs for each sector are duly factored into the eventual place of supply rules.