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CROSS BORDER TRANSACTIONS

Goods

Under the present system of indirect taxation in India, all import of goods are subjected to import duty comprising of Basic Customs duty ('BCD'), Countervailing duty ('CVD') and Special Additional Duty of Customs ('SAD') levied and collected by the Central Government. Indian States were not empowered to tax import transactions, especially since these were outside the territorial jurisdiction. On the other hand, exports of goods are zero-rated in keeping with the Constitution of India, and the avowed policy not to export taxes / duties with goods. In respect exports, States enabled VAT (input tax) credit on purchases of goods intended either for export or for use as inputs in the manufacture of goods to be exported, and in line with Article 286 of the Constitution do not levy any VAT on exports.

Vide the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 ('Amendment Bill'), the Constitution is proposed to be amended by inserting Article 269A. GST will be levied and collected on all supplies of goods and services, or both, that are in the course of inter-state trade and commerce. The Amendment Bill further proposes to treat supply of goods and services, in the course of import into the territory of India as though these are supplies in the course of inter-state trade or commerce. The exclusive power to formulate rules for determining the place of supply of goods or/and services, will vest with the Parliament. Thus, import transactions will be subjected to IGST under the GST model of taxation. In the proposed GST regime, multiplicity of levies, in a manner of speaking, will ensue; CVD (levied in lieu of Excise duty) and SAD (levied in lieu of (VAT)) will be absorbed into IGST, yet, the following duties will not be subsumed but, will continue to be levied: (i) Basic Customs Duty, (ii) Anti-Dumping Duty, (iii) Safeguard Duties. However, there is no rationale for and it is thus expected that the 1% additional tax proposed to be levied on inter-state supply of goods, will not be applied to imports of goods.

Duties and taxes on imports will therefore rise from that applied today. Import dependent industries, including jewellery (gold), tyre (rubber), paper, copper inputs based manufacturers and generally all businesses with inverted duty structure will more likely be impacted by such increased incidence of levy of duties and taxes on imports. Subject to the credit mechanism, an inability to pass on the increased impost will become a concern for businesses.

One aspect of import transactions that remains is hazy is whether importers will have to deal with two valuation systems for levy of BCD and IGST separately, or whether there will be enough thought to align the valuation mechanism for Customs and GST purposes, to ensure uniformity between imports and domestic (especially inter-state) transactions.

In line with the principle of destination-based consumption tax, it is expected that export of goods will not be brought to tax, in letter and in spirit. Presently, exporters have to grapple with various schemes and procedures (drawback, rebate, refund, set-off) to recoup taxes and duties paid on the inputs (of goods and services) used in / for export goods. The GST regime proposed to be adopted, most expect will address this problem of plenty and simplify and consolidate the mechanics to recoup the taxes and duties paid upstream.

Section 5(3) of the Central Sales Tax Act, 1956 deems the sale of goods preceding the sale occasioning the export to also be a sale in the course of export, and therefore free of State VAT. The GST regime will do away with the levy of CST, taxing such penultimate sales. Consequently, suitable mechanism for exporters to recoup the taxes and duties paid by it will have to be formulated. Businesses models will have to re-align with the new pattern of taxation, and closely monitor for tax costs.

Services

Services received from outside India are made liable to Service tax (levied and collected by the Central Government) under the reverse charge mechanism, depending upon the *situs* of the supply of services are at present determined in accordance with the Place of Provisions of Services Rules, 2012. The same principles are applied to treat a service as export and not levy Service tax.

Under the GST system of taxation, import of services will be brought to tax (under the concept of reverse charge), however, it is imminent that tax rates for such services will sharply rise given that these will be charged to IGST (consisting of both CGST and SGST).

Ideally, the reverse charge provisions should be triggered after a threshold level. It is hoped that foreign service providers are provided the option to register and discharge tax instead of the importer reverse charging it; much like existing provisions for non-resident dealers under State VAT laws.

The destination based consumption principle of taxation is internationally, regarded as the gold standard for determining the taxability of a service transaction. There is a great onus on the Government that well-rounded and comprehensive place of supply rules are formulated for levy of GST regime, to also ensure that transactions do not escape taxation in both countries or, be faced with a levy by both given that there is no system of international tax credit.

Service providers for long were burdened with the 4% SAD imposed on their import of goods. Certain models for optimising this tax cost were evolved over time. Under the GST regime, with this levy slated to be subsumed into IGST for import transactions and available as set-off, tax costs on such transactions will likely be reduced.

General

Importers of both goods (capital goods and inputs) and services will likely encounter cash flow constraints under the new regime owing to the increased rate of levy (of IGST) on imports vis-à-vis present system of taxation. Businesses must ensure minimum leakage of credit on import transactions so as not to let taxes impact doing business in India.