Introduction of the GST Bill

After a long await, last Friday (December 19, 2014) finally saw the Finance Minister, Mr. Arun Jaitley table the Constitutional (One Hundred and Twenty Second Amendment) Bill, 2014 (**'Amendment Bill'**) in the Lok Sabha. While introducing the Bill in the Lok Sabha, the Finance Minster described it as *'single most important tax reform after 1947'*. By the Amendment Bill, the Constitution is proposed to be amended so as to confer concurrent taxing powers on the Union as well as the States to introduce the Goods and Services Tax (**'GST'**) in the country and vest the respective legislatures (Parliament and State Legislatures) to make laws for levying GST on every transaction of 'supply of goods or services or both'. While the idea of GST was first mooted by the then Finance Minister Mr. P Chidambaram in the Budget Speech of 2006-07, however, the passage of GST could not become a reality in all these years owing to irreconcilable differences between the Centre and the States over the framework, taxing powers, issues of revenue loss and compensation.

However, the election of the new NDA Government seems to have augured well for the revival of GST. The introduction of the Amendment Bill is unarguably the first major economic policy initiative by the NDA Government and its introduction at the fag end of this stormy Parliament session somewhere reflects the commitment of the NDA Government to push through its much promised economic reforms including the GST, which, *when implemented*, shall usher in a harmonised national market of goods and services and shall lead to a simplified, non adversarial and assesses friendly tax administration system in the country.

Key Features of the GST Bill

A closer look of the Amendment Bill reveals that it not only seeks to empower the Centre and State with the concurrent taxing jurisdiction over 'transaction of supply of goods or services or both' but it also provides a *prima facie* broad framework as to what the Indian GST would be in terms of its coverage, its operating mechanism, implementation and dispute resolution. Set out below are the key amendments *qua* introduction of GST proposed by the present Amendment Bill:

RELEVANT CONCEPTS	WHAT THEY MEAN
Scheme of Taxation (Article 246A, Article 269A, Article 270, Article 286)	<u>*Taxation under the GST*</u> Consistent with the federal structure of the country, GST would have two components: one levied by the Centre referred as to as the Central GST ('CGST') and the other levied by the States referred to as State GST ('SGST'). Further, the Centre will have the power to tax inter- state supply of goods and services through levy of 'Integrated Goods and Service Tax' ('IGST'). Such IGST will be apportioned between the Centre and State in the manner as may be provided by Parliament by law on the recommendation of the GST Council. It has been proposed that the Parliament may by law formulate the principles for determining the place of supply, and when a supply of good or supply of services or both takes places in the course of inter-state trade or commerce. <u>*Taxes to be Subsumed*</u> Subsuming of various **Central indirect taxes** and levies such as Central Excise Duty, Additional Excise Duty, Excise Duty levied under the Medicinal Toilet Preparations Act, Service tax, Central Sales Tax, Additional Customs Duty i.e. CVD and Special Additional Duty of Customs i.e. SAD and Central Surcharges and Cesses so far as they relate to the supply of goods and services. Subsuming of various **State** Value Added Tax/Sales Tax, Entertainment Tax (other than that levied by local bodies), Octroi and Entry Tax, Purchase Tax, Luxury Tax, Taxes on lottery, betting and gambling and State Cesses and Surcharges so far as they relate to the supply of goods and services. However, Entry 62 of List II (State List) has been sought to be substituted *to allow* local bodies (Panchayat, municipality, regional/district council) the right to levy and collect taxes 'on Entertainment and Amusements'.

RELEVANT CONCEPTS	WHAT THEY MEAN
Goods and Services Tax (Article 366 12A)	Goods and Service Tax has been defined to mean any tax on supply of goods or services or both excluding 'taxes on the supply of alcoholic liquor of human consumption'. Therefore, the only item sought to be excluded from the purview of GST is 'alcoholic beverages'. States shall retain its power to charge Excise duty and Sales Tax/VAT on 'alcoholic beverages' under the GST era as well. Significantly, petroleum and petroleum products such as - high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel have been subsumed in the GST. However, it has also been provided that petroleum products shall not be subject to the levy of GST till notified at a future date on the recommendation of the GST Council. The present taxes levied by the States and the Centre on petroleum and petroleum products, i.e., Sales Tax/VAT, CST and Excise duty only, will continue to be levied in the *interim* period. It is important to note that the earlier Bill sought to exclude from the purview of GST, petroleum and petroleum products besides alcoholic beverages which as stated above is the only item which remains outside the purview of GST.
Promulgation of Goods and Service Tax Council (Article 279A)	*<u>Composition</u>* The GST Council is envisaged as a recommendatory body with the Union Finance Minster as Chairperson, Minister in charge of Finance or Taxation or any other Minster nominated by each State Government as members and Union Minster of State in charge of Revenue as Member of the GST Council. The Members shall choose a Vice Chairman from amongst themselves. *<u>Recommendatory Power</u>* The GST Council will be the heart for smooth implementation of GST in the country as it has been empowered to make recommendations on issues of significance such as taxes to be subsumed under GST, rate structure, exemption list of goods/services, threshold limits. Further, the present Amendment Bill (unlike the earlier Bill) extends the recommendatory role of the GST Council to include subjects such as model GST Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern place of supply. The GST Council has also been *inter alia* vested with the power to recommend special schemes with respect to States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand- a focus area of the new NDA Government. As stated above, GST Council has also been empowered to recommend the date on which the GST can be levied on petroleum crude, high speed diesel, petrol, natural gas and aviation turbine fuel-which- as stated above shall continue to be taxed temporarily by the States. It has been specifically provided that the GST Council shall be guided with the objective to create a "harmonized structure" and a "harmonized national market" for GST. *<u>Decision making Mechanism</u>* The present Amendment Bill seeks to increase the quorum for meetings of the GST Council from *one-third* (in the earlier Bill) to *one half* of the total number of members of the GST Council. Instead of the 'consensus' based decision making process at the meeting of the GST Council, the Amendment Bill introduces a 'weighted voting system'. As per this voting system, every decision of the GST Council would be taken at a meeting, by a majority of not less than three-fourth of the 'weighted votes of the members present and voting', wherein the Central Government would have the weightage of one third of the total vote cast and the State Governments would have a weightage of two-third of the total votes cast. A formula for calculation has also been prescribed in the Statement of Objects and Reasons. *<u>Dispute Resolution Mechanism</u>* The Present Amendment Bill empowers the GST Council to decide the modalities of resolving disputes arising out of its recommendations. This is a clear departure from the previous proposal of having a separate GST Dispute Settlement Authority ('GST DSA') - Orders of which were proposed to be amenable only to the jurisdiction of the Supreme Court of India. The concept of GST DSA was strongly opposed by the State Governments and was also held undesirable in the 73rd Report of the Parliamentary Standing Committee on Finance (2013).

RELEVANT CONCEPTS	WHAT THEY MEAN
Treatment of Goods of Special Importance (Article 286)	The Amendment Bill seeks to dispense with the concept of 'declared goods of special importance' by omitting Clause (3) of Article 286 of the Constitution. The omitted Clause empowered the Parliament to restrict and provide such conditions with respect to any State laws which sought to levy tax on sale and purchase of such goods which were declared by the Parliament to be of 'special importance' in inter-state trade or commerce and/or a tax on sale or purchase concerning transactions of works contract, hire-purchase and transfer of right to use any goods as specified in Sub-Clauses (b), (c),(d) of Clause (29A) of Article 366 of the Constitution.
Resolution of the issue of CST Compensation to States	The Amendment Bill seeks to resolve the contentious issue of CST Compensation to States by seeking to 'Constitutionally Guarantee' compensation through the following method:
Additional tax on supply of goods in the course of inter-State Trade and Commerce	Provides for the imposition of an additional tax on the supply of goods in the course of inter- state trade and commerce, at a rate not exceeding 1%, for a period of two years/or any other period as recommended by the GST Council. The proceeds of such a tax would go to the State Government from where the supply originates.
Compensation to States for Loss of Revenue on Account of Introduction of GST	It has been provided that Parliament by law and on the recommendation of the GST Council, shall compensate States for loss of revenue arising on account of implementation of GST for such period which may extend to 5 years. The GST Council shall decide on the modalities of the compensation and also the sun-set clause. However, that such compensation shall not extend beyond five years.

The provisions of the Amendment Bill suggests that the NDA Government has been more amenable and receptive to pleas of the State Government and has (unlike the UPA Government) walked the extra mile to arrive at consensus with States on various contentious issues especially structure of tax, coverage of goods, compensation for revenue loss, flexibility of the GST Council, etc.- which ostensibly were major impediments stalling the process of implementation of GST.

The Next Steps

The introduction of the Amendment Bill in the Parliament is a welcome step and a desired move forward towards achieving a full-fledged harmonized system of GST. However, the Government needs to ensure that Amendment Bill's introduction should not meet the same fate as that of the erstwhile Amendment Bill. For the Bill to come into force, it would need to be passed by at least two-third majority in both Houses of Parliament and subsequent ratification by at least half of the State Legislatures. While passage of the Bill is expected to be smooth in the Lok Sabha, its passage in the Rajya Sabha remains doubtful, given that the Government is less in number and is facing an acrimonious and a united opposition. Due to the recent run-ins between the Government and the opposition and the rarity of unity amongst the opposing political parties, achieving a consensus is going to be an uphill task for the Government. Even if the Government is able to get the Bill passed in the coming Budget Session, it will be an uphill task to secure its ratification from half of the State Legislatures, not to mention the drafting of the numerous regulations/laws which shall govern the entire framework of GST.

Conclusion

Hence, the deadline of April 2016 for the introduction of GST seems an uphill task. However politics has always been the 'art of the possible, the attainable — the art of the next best' and it will be of interest to watch the move of the Government in the coming months. However, given the resoluteness of the NDA Government and its avowed intent to introduce the GST by April 2016, it will indeed be jeopardous for us to not be prepared for the same. It is time to look at your business models keeping the impeding GST in mind. We shall keep you posted.