



# Report of the Select Committee of the Rajya Sabha on the Constitution (One Hundred & Twenty-Second Amendment) Bill, 2014

Tax Alert  
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The Rajya Sabha's Select Committee on the Constitution (One Hundred & Twenty-Second Amendment) Bill, 2014 ('GST Bill'), under the Chairmanship of Bhupendra Yadav submitted its Report to the Upper House on July 22, 2015. The Report endorsed most of the amendments in the GST Bill, and also made certain recommendations; the Report also contains the dissent notes submitted by the Congress, AIADMK and Left parties to the Committee. The GST Bill will now have to be passed by the Rajya Sabha considering this Report.

The Select Committee was appointed by the Rajya Sabha to examine and present its Report on the GST Bill, which contains 21 clauses, which amend, insert and repeal certain provisions of the Constitution of India. The Select Committee held discussions on various dates, and heard the views of various stakeholders including Ministries, States, bodies of trade, associations, financial institutions and experts, besides conducting field visits. After deliberations, the Committee has amongst various observations, made three recommendations, of which one seeks to make an amendment to the GST Bill itself, whereas the other two make recommendations in relation to the GST enactments that would eventually come to be passed.

## RECOMMENDATIONS OF THE SELECT COMMITTEE

S.No.	Relevant law	Recommendation	Remarks
1.	Clause 19 of the GST Bill [Compensation to the States]	Instead of the present language: "Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the State for the loss of revenue arising on account of implementation of the Goods and Services Tax for a period of 5 years."	Clause 9 of the GST Bill presently provides for compensation for revenue loss by States for a period which may extend to five years, and not fully for the fourth and fifth years. In order to secure the States interest and consensus, this modification is proposed. <i>ELP Comment: Compensation to States has historically been a contentious issue. Any step that creates consensus on this issue is a move forward.</i>
2.	GST law [Band]	Definition of the term 'band' for the purposes of Article 279A(4)(e) – "Band" : Range of GST rates over the floor rate within which Central Goods and Services Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of goods or services by the Central or a particular State Government as the case may be."	Article 279A(4)(e) provides that the GST Council shall make recommendations to the Union, and States on the rates including floor rates with bands of goods and services tax. The definition of 'band' has been suggested with a view to protect the revenues of local bodies, for ensuring that the standards of local governance are maintained, and these are self-sustaining and not dependent on States. <i>ELP Comment: It is to be hoped that the issue of band is not used to create too may divergences in the rate structure between virtuous goods, sin goods, and other approaches that could cause a divergence of rates. The greater the goods in the RNR category and lesser the diversity by geography or other factors, the better it would be for our GST.</i>
3.	GST law [Additional Tax of 1%]	That a definition of the term 'Supply' be introduced in the GST enactment – "Supply: All forms of supply made for a consideration."	The GST Bill presently provides for 1% Additional Tax on all inter-State supplies (and not only sales) of goods. This recommendation has been made, considering the cascading effect of this tax, to ensure that inter-State movement of goods would only be taxable if there is a consideration attached to it, i.e. movement of goods within the same entity (branch transfers / stock transfers) would not attract 1% Additional Tax. Some members of the Committee had proposed to delete the clause enabling the market distorting levy of 1% Additional Tax, in view of the guaranteed compensation for any revenue loss incurred by the State or Union Territory for a period not less than 5 years, in terms of the recommended amendment to Clause 19 of the GST Bill (refer Sl. No. 1 of the above table). This recommendation however was not adopted in the Report. <i>ELP Comment: All steps that can be taken to avoid cascading will help strengthen the GST structure.</i>

## OTHER ASPECTS DISCUSSED IN THE SELECT COMMITTEE'S REPORT

Besides the above, having discussed a plethora of interconnected issues, the Committee has made observations on some key aspects. A great deal of deliberations has been on municipalities and Panchayats, their fiscal autonomy and revenue generating ability. It has also been recommended that GST rates should be moderate, and with a cap on the RNR rate at 20%, and a reduced rate of 14%. It is pertinent that GST rates are a matter for the GST Council (yet to be created) to take an appropriate view on. Besides these, the Select Committee also considered the views and proposals of the banking and financial services sector and has provided certain recommendations in this regard including on the GSTN.

## DISSENT NOTES OF THE OPPOSITION

The Congress, AIADMK and Left parties have submitted dissent notes to the Select Committee. The Congress has raised 8 points of dissent, which are as under:

- (a) Suggested an 18% cap on GST rates, lest it result in burden on consumers, particularly the poor;
- (b) Complete elimination of the 1% additional GST on inter-State supply of goods to avoid cascading, and creation of a Compensation Fund under the administrative control of the GST Council where the 100% State compensation would be deposited;
- (c) Clarification in Clauses 9 and 18 of the GST Bill to exclude from the term 'supply' / 'supplies', the movement of goods from one unit of a firm to another unit of a firm in different States under the same ownership, or when two or more firms are collaborating in units located in different States for the manufacture of the same end-product;
- (d) Inclusion of tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption within the purview of GST, in line with the fundamental aim to establish a common market;
- (e) Increase in State's share in voting in the GST Council to 75%;
- (f) Incorporation of a GST Disputes Settlement Authority as provided for in the 2011 Bill;
- (g) Introduction of provisions to ensure that tax collection by local bodies does not suffer;
- (h) Special consideration to be given by the GST Council to any State or Union territory with or without a legislature, such as Goa or Puducherry, whose population does not exceed twenty lakhs.

The points of dissent raised by the AIADMK party are:

- (a) There is no need for a GST Council, considering the existing mechanism of the Empowered Committee of State Finance Ministers. If at all, the weight-age of the Central Government of the total votes cast should be 1/4th;
- (b) Petroleum and petroleum products should be totally kept outside the purview of GST;
- (c) States should be empowered to levy higher tax on tobacco and tobacco products;
- (d) Instead of levying a 1% Additional Tax, States should be permitted to retain 4% of the CGST portion of the IGST collected on all inter-State supplies;
- (e) 100% compensation should be provided for a period not less than 5 years.

The Left parties, in their points of dissent, have raised a concern that the GST Bill in its present form promotes interests only of corporates, who will dictate the policies of governments.

## CONCLUDING REMARKS

The Finance Minister, Mr. Arun Jaitley has conveyed the Government's commitment towards ushering in the GST on 1<sup>st</sup> April, 2016. In this context, there is (in the report) a clear observation that the Empowered Committee of State Finance Ministers and the Department of Revenue, Government of India have constituted various committees and working groups for designing and formulating the mechanics of GST and drafting the GST Rules, reflecting the Government's focus on steering towards the introduction of GST on 1<sup>st</sup> April, 2016. On the dissent notes of the Opposition, Mr. Jaitley has commented that they are hardly dissent notes on the GST Bill, and in fact, are in dissent of the proposals that were originally made by the Congress party, and stated that he hopes that they will reconsider them and arrive at a consensus.

Interestingly, Dr. Parthasarathy Shome, former Chairman, Tax Administrative Reforms Commission, has recently said, "Perhaps it is worth trying the experiment for a year or two and then decide whether the bottom line question is answered at all. And that bottomline question is: have business and investment decisions become more seamless than during the regime of VAT, Cenvat and service tax? I will not say today without real experience that we will be worse off. I will not say that we will definitely be better off. And therefore perhaps we are at a little bit of risk here."

## WAY FORWARD

The Government clearly is doing everything to embrace GST by 1<sup>st</sup> April, 2016, however, challenges are numerous and vast. In the parliamentary process, unless the Congress party is on-board passage of the GST Bill through the Rajya Sabha with required majority seems difficult. The BJP may need to have a joint sitting of both Houses of Parliament if the Congress party is un-wielding. Given the positivity that GST can create in India, it is hoped that all differences will be reconciled at the earliest. On a practical basis, 1<sup>st</sup> April, 2016 still appears to be a challenge.

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