

# Goods & Services Tax: The proposed new Article 246A of the Constitution

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## Goods & Services Tax: the proposed new Article 246A of the Constitution

The present constitutional framework for indirect taxation and the changes proposed in the 122<sup>nd</sup> constitutional amendment bill introduced in Parliament on 18 December 2014 form the backdrop of this essay. Discussion of changes will focus on the proposed new Article 246A, as it constitutes the main content of the proposed change.

### Present Constitutional demarcation of state and union powers to tax

In the federal structure of the Indian polity as embodied in the Constitution of India, the powers to legislate on taxation are divided between the states and the union legislatures in a specific manner. As laid down in Article 246 of the Constitution, List I (“union list”) in the Seventh Schedule lists the matters on which only Parliament can legislate, List II (“state list”) lists the matters on which only the state legislatures can legislate, and List III (“concurrent list”) lists the matters on which both Parliament as well as the state legislatures can legislate.

#### *Indirect taxation: areas in which states / union are empowered to legislate*

In the context of indirect taxes, the powers to legislate taxes are currently divided thus between the union and the states:

- List I: the union list:
  - Entry 84: excise duties on manufacture, except of liquor and narcotics;
  - Entry 92A: interstate sale of goods (- this is taxed by Parliament under the Central Sales Tax Act; however, the said Act provides that the tax will be collected by the state governments);
  - Entry 97: residuary entry covering matters not specified in List I or List II: Parliament enacts laws for the levy of service tax under the powers conferred by this entry.
- List II: the state list:
  - Entry 54: tax on sale and purchase of goods within a state;
  - Entry 52: entry tax;
  - Entry 51: excise duty on alcoholic liquors for human consumption, and narcotic drugs and narcotics.

#### *Laws made for levy of indirect taxes*

- In terms of Entry 84, the Central Excise Act 1944, which extends to the whole of India, provides for levy and collection of a central excise duty on all goods except alcoholic liquor for human consumption and narcotic drugs and narcotics produced or manufactured in India.
- In terms of Entry 92A, the Central Sales Tax Act provides for levy and collection of central sales tax (CST) on interstate sale of goods.
- In terms of Entry 54 the states have their individual Value Added Tax enactments (e.g., the Karnataka VAT Act, the Maharashtra VAT Act) providing for levy and collection of a value-added tax on sale of goods within the state.
- In terms of Entry 51 the states have their individual enactments for levy and collection of excise duty on alcoholic liquor for human consumption, and on narcotic drugs and narcotics.
- Some states have entry tax in terms of Entry 52 (e.g., Karnataka Tax on Entry of Goods Act 1979).

### Major change proposed in demarcation of fields of legislation on taxation

This existing division of powers of taxation between the state and union legislatures is set to change.

#### *State legislatures as well as Parliament will be empowered to legislate on GST*

To facilitate the introduction of a single Goods and Services Tax (GST) covering tax on goods as well as services across states, the 122<sup>nd</sup> Constitutional amendment bill has been introduced in the Lok Sabha. Under this, an Article 246A is proposed to be inserted after Article 246, and this will allow both the centre and the state to legislate on goods and services tax. (The exception is that only Parliament will have the power to legislate on supply of goods or services that takes place in the course of interstate trade or commerce. This is discussed separately later in this essay.)

Giving the same power to both the union and the states may sound like a recipe for chaos, with the possibility of enactments being passed at cross-purposes. However, this is only an enabling amendment of the

Constitution, and the blueprint of GST that has been agreed upon among the states and the union government contains the requisite clarity on the respective roles of centre and states.

The levy of GST will be synchronised across states and centre, as per the CBEC's note issued for the information of its officers ([http://www.cbec.gov.in/deptt\\_offcr/gst-status-18032014.pdf](http://www.cbec.gov.in/deptt_offcr/gst-status-18032014.pdf)):

“Suitable legislation for the levy of GST (Central GST Bill and State GST Bills) drawing powers from the Constitution can be introduced in Parliament or the State Legislatures only after the enactment of the Constitution Amendment Bill. Unlike the Constitutional Amendment, the GST Bills would need to be passed by a simple majority. Obviously, the levy of the tax can commence only after the GST law has been enacted by the respective legislatures. Also, unlike the State VAT, the date of commencement of this levy would have to be synchronized across the Centre and the States. This is because the IGST model cannot function unless the Centre and all the States participate simultaneously.”

The central government's press note at (<http://pib.nic.in/newsite/PrintRelease.aspx?relid=113831>) explains that there will be two components of GST, viz., the state GST (SGST) and the central GST (CGST), levied on each transaction:

“Both Centre and States will simultaneously levy GST across the value chain. Centre would levy and collect Central Goods and Services Tax (CGST), and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State.”

Thus it appears that the states will legislate on SGST while the centre will legislate on CGST.

The empowered committee of finance ministers explains how this works on the ground in Answer 10 of the FAQs on its website ([http://www.empcom.gov.in/content/20\\_1\\_FAQ.aspx](http://www.empcom.gov.in/content/20_1_FAQ.aspx)):

“Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for , say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10 ) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.”

At present, VAT credits are set off against VAT payable, and central excise and service tax credits are set off against central excise or service tax payable. VAT credits cannot enter the stream of Cenvat credit or *vice versa*. This situation is slated to continue. As at present, cross-utilisation of SGST and CGST will not be possible.

#### *Parliament will legislate tax (IGST) on inter-state transactions*

The proposed Article 246A provides in its clause (2) that

“Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”

The government press note explains that,

“The Centre would levy and collect the Integrated Goods and Services Tax (IGST) on all inter-State supply of goods and services. There will be seamless flow of input tax credit from one State to another. Proceeds of IGST will be apportioned among the States.”

The empowered committee of state finance ministers, constituted to draw up a blueprint for GST, explains IGST in Answer number 17 in the FAQs on its website ([http://www.empcom.gov.in/content/20\\_1\\_FAQ.aspx](http://www.empcom.gov.in/content/20_1_FAQ.aspx)) as follows:

“ The scope of IGST Model is that Centre would levy IGST which would be CGST plus SGST on all inter-State transactions of taxable goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit

of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.”

IGST is thus the aggregate of CGST plus SGST. It can be paid from credit of IGST, CGST and SGST. However it is not very clear from this whether the separation between CGST and SGST will be required to be maintained within the IGST, and whether if an assessee has credit of SGST but not of CGST, this could be used for paying the CGST component of IGST.

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