

# Revised Model GST Law

*(Nov 2016)*

*for*



**By**

***Athena Law Associates***

# Contents

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- **This presentation covers:**
  - *101<sup>st</sup> Constitutional Amendment Act, 2016*
  - *Basic concepts under GST*
    - *Taxable event - Supply*
    - *Interstate and Intrastate supply*
    - *Imports and Exports*
    - *Time and Place of supply of goods/ services*
    - *Levy - Charging Section*
    - *Taxable Person*
  - *Response to specific queries*

# 101<sup>st</sup> Constitutional Amendment Act, 2016

# Why a Constitution Amendment Bill needed?

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- Under the current system, power to levy taxes on goods & services shared between the Union & States
  - *EXAMPLE: Service Tax & Excise levied by Union, while Sales Tax (VAT) & Entry Tax levied by States.*
- Under the proposed unified system, both Centre & States will (together & in parallel) levy tax on the same subject, i.e. GST on *'supply'* of services as well as goods.

# ARTICLE 246A

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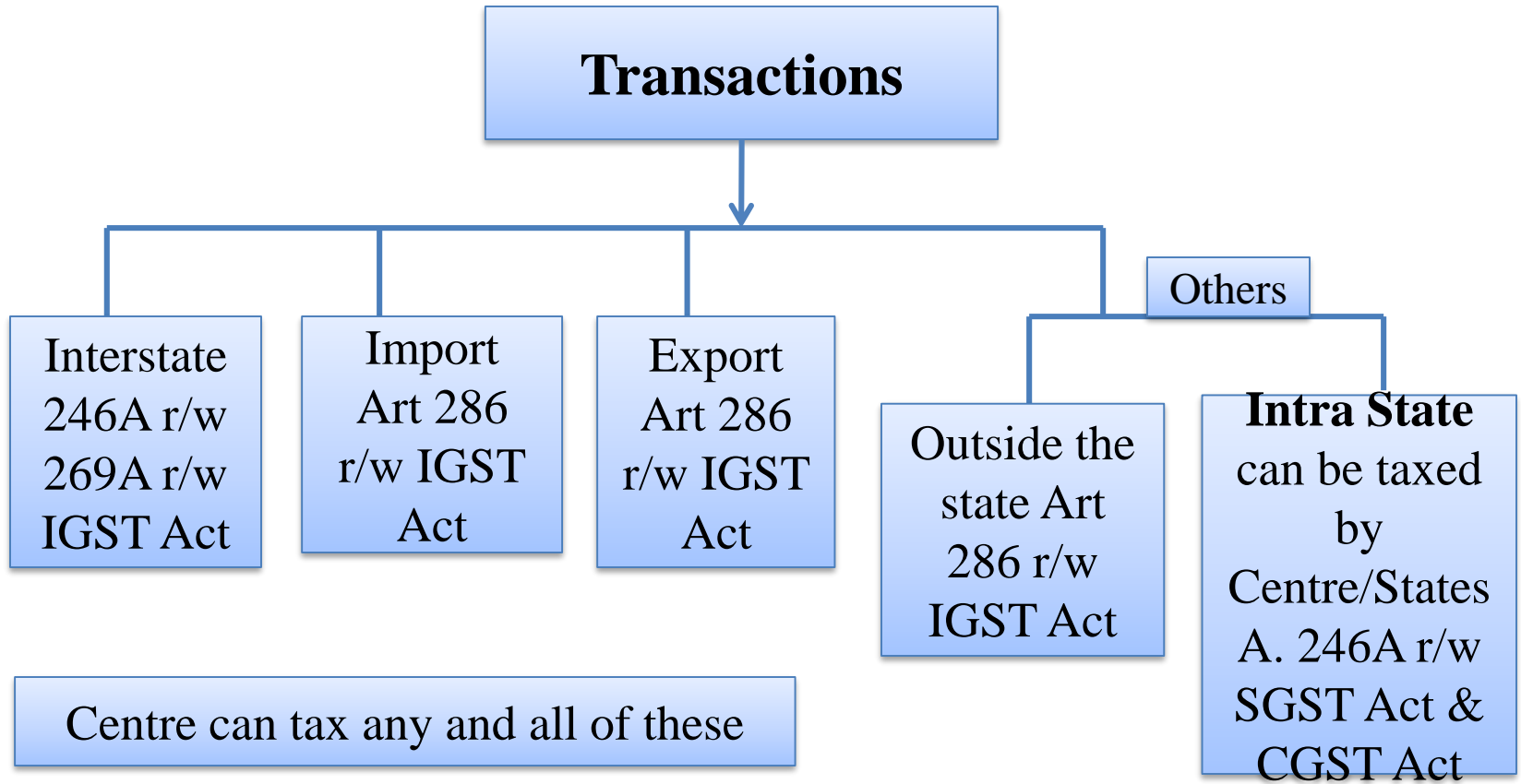
- Gives power to the Parliament & State legislatures to make laws on GST *imposed by Union or by such States*
- Begins with a *non-obstante clause*
- Such GST to be imposed on *supply*
- Parliament reserves *exclusive right* to legislate when *supply* happens in course of *inter-state state trade or commerce*
  - *Exception:* GST in respect of crude petroleum, HSD, MS, Natural gas & ATF, to take effect from a later date to be recommended by the GST Council

# Definitions Clause – Article 366

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- Clause 12A inserted, to define *goods & services tax*:  
*(12A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquors for human consumption*
- Clause 26A inserted, to define *services*:  
*(26A) “services ”means anything other than goods*

# Taxing Powers as per the amendment



# Residuary Power of the Parliament

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- Article 248 i.e. the residuary power of Parliament to legislate has been made subject to Article 246A

## Our comments:

- Parliament therefore, may now make laws on all matters except those covered under the State List, Concurrent List or Art. 246A
- Entry 97 of List I has not been expressly stated to be subject to Art. 246A
  - Though stating so would only be clarificatory (Lists are anyways subject to the Art. 246)
  - Expressly defining the powers would remove ambiguity



# Stamp Duties remain

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- Art. 268 which provides for collection of duties by the States (while the levy is by the Union) amended to exclude excise duties
- In respect of stamp duties, the Article is sustained and there has been no change
- Interestingly, there has also been no change in Entry 91 (List I) & Entry 63 (List II) on rates of stamp duty
- Wide definition of services proposed in Art. 366(26A) to include transactions in *immovable property*
- Therefore, levy of GST as also stamp duty

# Article 268A & Entry 92C - Omitted

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- Article in respect of levy and Collection of service tax has been omitted
- Entry 92C of List I (though not notified) enumerating levy of taxes on service tax by the Union, has also been omitted

## Our comments:

- Shows clear intention of the Legislature to charge unified GST on services

# GST on supplies in course of inter-state trade or commerce – Article 269A

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- Supplies in course of *inter-state trade or commerce & in course of import into the territory of India*
  - levy & collection by Union
  - to be apportioned between Union & States
- Method of apportionment between States to provided by Parliament by law based on recommendations of the GST Council
- Parliament has been given the power to formulate principles for determining
  - when a supply takes place in course of inter-state trade or commerce
  - place of supply

# Taxes levied & collected by Union (assigned to States) – Article 269

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- Article on taxes on sale or purchase of goods and on consignment of goods (except as provided u/ Art. 269A), when the same is in course of inter-state trade or commerce has been sustained
- However, the Article specifically excludes the subject matter in Art. 269A

# Revenue Distribution between the States – Article 270

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- Art. 270(1A) introduced:
  - GST levied & collected by the Union
    - (except the GST having been apportioned *with* the States u/A 269A(1))
    - Shall be distributed between the States in accordance with Art. 270(2)

## **Our comments:**

Not clear as to whether the entire tax referred in Art. 269A is to be excluded, or only the tax apportioned *to* the States is to be excluded

# Revenue Distribution between the States – Article 270

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## **Our understanding:**

- IGST comprises of Central Govt's share + State Govt's share  
$$I = C + S$$
- Under Art. 269A(2) S is assigned to States
- Therefore, Art. 270A(2) contemplates apportionment of revenue of Centre alongwith C (above)

# Amendment in SCHEDULE VII (Union List)

**Entry 84** substituted for the previous entry, as follows:

*84. Duties of excise on the following goods manufactured or produced in India, namely:*

*(a) petroleum crude;*

*(b) high speed diesel;*

*(c) motor spirit (commonly known as petrol)*

*(d) natural gas;*

*(e) aviation turbine fuel;*

*(f) tobacco and tobacco products*

## **Our comments:**

- Excise duty may only be charged in respect of the aforesaid items i.e. by way of a positive list
- Above products leviable to excise duty even when it is chargeable to GST too

# SCHEDULE VII - Union List

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- Entries omitted:

*92 – Taxes on sale or purchase of newspapers  
and on advertisements published therein*

*92C – Taxes on services*



# SCHEDULE VII - Union List

## (Our Comments)

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Following entries have not been omitted:

89 – *Terminal taxes on goods/passenger*

90 – *Taxes on transactions at stock exchanges*

92A – *Taxes on sale or purchase of goods (in the course of inter-state trade or commerce)*

92B – *Taxes on consignment of goods (in the course of inter-state trade or commerce)*

# SCHEDULE VII

## (State List)

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Entry 54 substituted as:

*“54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods”*

Previous Entry 54:

*“Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I”*

# SCHEDULE VII

## (State List)

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Entry 62 substituted as:

*"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council"*

Previous Entry 62:

*"62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling"*

Entries Omitted:

*52 – Taxes on entry of goods*

*55 – Taxes on advertisements*

# SCHEDULE VII

## (State List)

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Entries not touched upon:

49 – *Taxes on lands & buildings*

50 – *Taxes on mineral rights*

53 – *Tax on sale/consumption of electricity*

56 – *Taxes on goods & passengers by road or inland waterways*

57 – *Taxes on vehicles*

58 – *Taxes on animals & boats*

63 – *Stamp duty*

## Basic concepts under GST Act

# Introduction

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- Levy of CGST/ SGST/ IGST in on **supply of goods and/or services** in the course of interstate and intrastate trade and commerce.
- S. 2(49): “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- S. 2 (92) “services” means **anything other than goods**;
  - Explanation 1.- Services *include* transactions in money but does not include money and securities;
  - Explanation 2.- Services *does not include* transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a *separate consideration* is charged.

# Taxable Event under GST - Supply

# Meaning of Supply

## (Section 3 of CGST)

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- Supply is defined in an inclusive manner and it includes all forms of supply such as:
  - sale
  - barter
  - license
  - lease
  - transfer
  - exchange
  - rental
  - disposal
  - made or agreed to be made
  - for **consideration**
  - by a person in the **course or furtherance of business**
- Supply also includes:
  - **Importation of service**, for a consideration, whether or not in the course or furtherance of business
  - Supply to be specified by **Notifications issued** by Central or State Government



# Supply without consideration

## (Schedule I of CGST Act)

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- Supplies specified in Schedule I made or agreed to be made without consideration in the course or furtherance of business. This schedule includes:-
  - Permanent transfer/disposal of business assets where ITC has been availed on such assets.
  - Supply between related persons or between distinct persons as specified in Section 10 when made in the course or furtherance of business.
    - Two registered premises of same person
    - Establishment of a person in one state and his other registered establishment
  - Supply between an agent and his principal, i.e.,
    - when agent received goods for principal and supplies goods to the principal; and
    - when goods supplied by principal to agent where the agent undertakes to supply the goods on behalf of principal.
  - Importation of service by taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
    - Persons sent abroad for training purposes in related companies.

# Supply – *not to include*

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- Activities or transactions falling under **Schedule III** to be treated neither as supply of goods nor a supply of services:
  - Services rendered by an employee in course of his employment.
  - Services rendered by a Court or Tribunal.
  - Services rendered by any person performing his duties and functions in the capacity of the office held by him under the Constitution.
  - Services by a foreign diplomatic mission located in India.
  - Services of funeral, burial, crematorium or mortuary.

# Supply – *not to include*

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Activities or transactions undertaken by Central or State Governments, or local authorities in which they are engaged as public authorities specified in **Schedule IV** to be treated *neither as supply of goods nor a supply of services* such as:

- Services provided by a Government or local authority
  - to another Government or local authority
  - **excluding** services by dept. of posts, life insurance and agency services (*these to be taxable*)
- Services provided by a Government or local authority
  - to individuals in discharge of its statutory powers or functions
  - such as issuance of passports, visas, birth or death certificate,
  - right to use natural resources to farmer for agriculture

# Supply – *not to include...Contd.*

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- Services provided by Government towards-
  - (i) diplomatic or consular activities;
  - (ii) citizenship, naturalization and aliens;
  - (iii) admission into, and emigration and expulsion from India;
  - (iv) currency, coinage and legal tender, foreign exchange;
  - (v) trade and commerce with foreign countries, import and export across customs frontiers, interstate trade and commerce; or
  - (vi) maintenance of public order.
- Any services provided by a Government or a local authority in the course of:
  - discharging any liability on account of any tax levied by such Government or authority.

# Supply – *not to include...Contd.*

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- Services provided by a Government or a local authority by way of:
  - tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or
  - assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:
    - PROVIDED that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource:

# Supply – *not to include...Contd.*

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- Services provided by Government by way of:
  - deputing officers after office hours or
  - on holidays for inspection or container stuffing or
  - such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT)
- Services provided by Govt. or a local authority by way of:
  - registration required under any law for the time being in force; or
  - testing, calibration, safety check or certification relating to protection or
  - safety of workers, consumers or public at large, required under any law for the time being in force

# Supply – *not to include...Contd.*

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- **Governmental Authority** means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.
- **Health care services** means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

# Supply – *not to include...Contd.*

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- **Education services** means services by way of—
  - i) pre-school education and education up to higher secondary school or equivalent;
  - ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or
  - iii) education as a part of an approved vocational education course.



# Composite Supply & Mixed Supply

# Composite Supply – Meaning

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- Section 2(27) of the Model GST law defines *Composite Supply* as follows:
  - *a supply made by a taxable person to a recipient*
  - *comprising two or more supplies of goods or services, or any combination thereof,*
  - *which are naturally bundled and supplied in conjunction with each other in the ordinary course of business,*
  - *one of which is a principal supply*
- In a composite supply where two or more supplies are being made, one of which is a principal supply, it shall be treated as a supply of such principal supply.
- Example: Goods packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

# Composite Supply – Tax Liability

## Section 3(5)(a)

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- The tax liability on a composite supply shall be determined in the following manner —
  - (a) a **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;
    - **S. 2 (78) - principal supply** shall mean:
      - *the supply of goods or services which constitutes the predominant element of a composite supply and*
      - *to which any other supply forming part of that composite supply is ancillary and*
      - *does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply*

# Mixed Supply – Meaning & Tax Liability

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- Mixed supply has been defined in Section 2(66) of the Model GST Law as:
  - *two or more individual supplies of goods or services, or any combination thereof*
  - *made in conjunction with each other by a taxable person for a single price*
  - *where such supply does not constitute a composite supply*
- Example: Supply of canned foods, sweets, chocolates, cakes when supplied for a single price – tax shall be at the highest rate applicable on any of the product.

## **Tax Liability-Section 3(5)(b)**

- A mixed supply comprising of two or more supplies shall be treated as **supply of that particular supply which attracts the highest rate of tax.**

# Time of Supply of goods

# Time of supply of goods (Section 12)

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- The liability to pay CGST/SGST on the goods shall arise at the time of **supply** of goods.
- Revised Model GST Law has explained time of supply of goods under 4 categories :
  - Time of supply of goods under forward charge
  - Time of supply of goods under reverse charge
  - Time of supply in case of supply of vouchers
  - Residuary Clause

# Time of supply of goods under forward charge

## [Section 12(2)]

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- The MGL states that the time of supply of goods shall be earlier of the following:
  - Date of issue of invoice or the last date on which invoice should be issued
  - Date on which payment is received by the supplier
- PROVIDED in case where supplier of taxable goods receives an amount up to **one thousand rupees** in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall at the option of the said supplier be the date of invoice.

# Time of supply of goods under reverse charge [Section 12(3)]

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- In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates:-
  - Date of receipt of goods
  - Date on which payment is made
  - Date immediately following 30 days from the date of issue of invoice
- However, in cases where it is not possible to determine the time of supply under the above cases, then the time of supply shall be the date of entry in the books of account of the recipient of supply.



# In cases of supply of vouchers

## [Section 12(4)]

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- In case of supply of vouchers, by a supplier, the time of supply shall be :
  - In case the supply is identifiable at the time of issuance of voucher, **time of supply is the date of issue of voucher.**
  - In case it is not possible to identify the supply or other cases, **time of supply is date of redemption of such voucher.**

### **Residuary Clause [Section 12(5)]:**

- In case time of supply is not determined according to the above methods, time of supply shall be :
  - In case where periodical return has to be filed - **the date on which such return is to be filed**
  - In any other case - **the date on which CGST/SGST is paid**

# Time of Supply of services

# Time of supply of services (Section 13)

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- The liability to pay CGST/SGST on the services shall arise at the time of supply of services.
- Revised Model GST Law has explained time of supply of services under 4 categories :
  - Time of supply of services under forward charge
  - Time of supply of services under reverse charge
  - Time of supply in case of supply of vouchers
  - Residuary Clause

# Time of supply of services under forward charge

## [Section 13(2)]

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- The MGL states that the time of supply of services shall be earlier of the following:
  - Date of issue of invoice by the supplier or the last date on which invoice should be issued
  - Date on which payment is received by the supplier
- PROVIDED in case where supplier of taxable service receives an amount up to **one thousand rupees** in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall at the option of the said supplier be the date of invoice.

# Time of supply of services under reverse charge [Section 13(3)]

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- In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates:-
  - Date on which payment is made
  - Date immediately following 60 days from the date of issue of invoice by the supplier
- However, in cases where it is not possible to determine the time of supply under the above cases, then the time of supply shall be the date of entry in the books of account of the recipient of supply.

# In case of supply of vouchers

## [Section 13(4)]

---

- In case of supply of vouchers, by a supplier, the time of supply shall be :
  - In case the supply is identifiable at the time of issuance of voucher, **time of supply is the date of issue of voucher.**
  - In case it is not possible to identify the supply or other cases, **time of supply is date of redemption of such voucher.**

## **Residuary Clause [Section 13(5)] :**

- In case time of supply is not determined according to the above methods, time of supply shall be :
  - In case where periodical return has to be filed - **the date on which such return is to be filed**
  - In any other case - **the date on which CGST/SGST is paid**

# Last date on which Invoice should be issued

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## Section 28: Tax Invoice

- A registered taxable person supplying taxable goods shall, before or at the time of –
  - (a) removal of goods for supply to the recipient, where the supply involves movement of goods, or
  - (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.
- A registered taxable person supplying taxable services shall, before or after the provision of service but within a period prescribed in this behalf, issue a tax invoice, showing the description, value, the tax payable thereon and such other particulars as may be prescribed.
- Further rules in this relation may be prescribed by the Central/State Govt. on recommendation of the Council by notifications.

# Rules for determining “place of supply” of goods



# Place of Supply of goods - Section 7 (IGST)

## (other than imports & exports)

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- In cases, where supply involves movement of goods, the place of supply of goods shall be :-
  - **Location of goods at the time at which movement of goods terminates for delivery to the recipient.**
- Where goods delivered by the supplier to a recipient
  - on the direction of a third person,
  - whether acting as an *agent* or otherwise,
  - before or during movement of goods ,
  - either by way of *transfer of documents of title* to the goods or otherwise,
  - it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be –
  - The principal place of business of such person

# Contd...

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- Where supply doesn't involve movement of goods by the supplier or the recipient, the place of supply of goods shall be :-
  - **Location of such goods at the time of delivery to the recipient**
- Goods assembled or installed at site, place of supply of goods shall be :-
  - **Place of such installation or assembly**
- Goods supplied on board a conveyance, such as vessel, an aircraft, a train or a motor vehicle, place of supply of shall be :-
  - **Location at which goods are taken on board**
- Cases where place of supply of goods cannot be determined in terms of above situations , the same shall be determined in a manner prescribed by the Central Government on the recommendation of the Council.

# Place of supply of goods (imports & exports)

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- The place of supply of goods imported into India shall be :-
  - **Location of the importer**
- The place of supply of goods exported from India shall be :-
  - **Location outside India**

# Location of supplier of service

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- Location of supplier of service is defined in Section 2(65) as:  
*location of supplier of service” means:*
  - (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;
  - (ii) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
  - (iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
  - (iv) in absence of such places, the location of the usual place of residence of the supplier;

# Principles to determine Intrastate and Interstate Supply

# Intrastate Supply

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- *Principles for determining supply of goods/ services in the course of intrastate trade or commerce*
  - Intra-State **supply of goods** means
    - any supply of goods where location of the supplier and the place of supply are in the *same State* (Subject to the provisions of Section 7 of IGST Act)
    - intra-State supply of goods shall **not** include:
      - supply of goods to or by a **SEZ developer** or to or by an **SEZ unit**;
      - supply of goods brought into India in the course of **import** till they cross the customs frontiers of India.
  - Intra-State **supply of services** means
    - any supply of services where the location of the supplier and the place of supply are in the *same State* (Subject to the provisions of Section 9 of IGST Act)
    - intra-State supply of services shall not include:
      - supply of services to or by a **SEZ developer** or to or by an **SEZ unit**.

# Interstate Supply

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- ***Principles for determining supply of goods/ services in the course of interstate trade or commerce***
  - supply of goods in the course of inter-State trade or commerce means
    - any supply where the location of the supplier and the place of supply are in ***different States*** (Subject to the provisions of Section 7 of IGST Act)
  - supply of services in the course of inter-State trade or commerce means
    - any supply where the location of the supplier and the place of supply are in ***different States***. (Subject to the provisions of Section 9 of IGST Act)

# Insterstate Supply...Contd.

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- Supply of goods in the course of **import** into the territory of India till they cross the customs frontiers of India shall be deemed to be a supply of goods in the course of inter-State trade or commerce.
- Supply of services in the course of **import** into the territory of India shall be deemed to be a supply of services in the course of inter-State trade or commerce.



# Insterstate Supply...Contd.

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- *Principles for determining supply of goods/ services in the course of interstate trade or commerce*
  - Supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce. [**Exports**]
  - Supply of goods and/ or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.
  - *Residuary provision for deeming supplies to be interstate supplies* - any supply of goods and/or services in the taxable territory, not being an intra-State supply and not covered elsewhere.

# Zero rated supply (incl. Exports)

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- S. 2(29) & S. 16 (IGST) - Zero rated supply
  - Supply of any goods and/or services in terms of Section 16 of IGST Act.
  - Sec. 16 defines the following supplies to be Zero-rated supplies:
    - **Export of goods and/or services; or**
    - **Supply of goods and/or services to a SEZ developer or a SEZ unit.**
  - Credit of ITC may be availed for making zero-rated supplies even if such supply is an exempted supply, except as provided in S. 17(3) of CGST Act (*S. 17(3) - apportionment of credit by NBFCS*)

# Zero rated supply...Contd.

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- A registered taxable person exporting goods/ services shall be eligible to claim refund in terms of S. 16(3), i.e., either by exporting under bond and claiming refund of ITC or export goods on payment of IGST and claim refund.
- A SEZ developer or SEZ Unit receiving zero rated supply shall be eligible to refund of IGST paid on such supply, subject to conditions to be specified.

# Imports

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- Transactions where receiver of goods/ services is in India and supplier is outside India such transaction is defined as import.
- On import of goods/ services IGST is applicable. The IGST so paid shall be available as ITC, subject to specific provisions for ITC under the Act.
- Basic Customs Duty (BCD) shall continue as it is.
- Special Additional Duty (SAD) & Countervailing Duty (CVD) shall not be applicable as IGST is levied.
- Any other countervailing duty/ safeguard duty shall continue as it is.

# Exports

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- Transaction where supplier is in India and the receiver of supply is outside India are defined as Exports.
- Exports can either be made under bond or on payment of IGST (as applicable) and the supplier may claim the same as refund.
- Even though Export Rules are yet to be placed in public domain, procedure mentioned in Draft Invoice Rule is discussed below:
- Invoice to carry the endorsement “SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST” or “SUPPLY MEANT FOR EXPORT UNDER BOND WITHOUT PAYMENT OF IGST”, as the case may be, and shall, carry the following details:
  - (i) name and address of the recipient;
  - (ii) address of delivery;
  - (iii) name of the country of destination; and
  - (iv) number and date of application for removal of goods for export [ARE-1].

# Taxable Person

# Taxable Person

## (S. 10 of CGST)

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- (1) Taxable Person means a person who is registered or liable to be registered under **Schedule V** of this Act.
- (2) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in **respect of each such registration, be treated as distinct persons** for the purposes of this Act.
- (3) An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as **establishments of distinct persons** for the purposes of this

# Persons liable to be registered – Sch. V

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Every supplier shall be liable to be registered in the state from **where he makes a taxable supply of goods and/or services** if:

- his aggregate turnover in a financial year exceeds Rs. twenty lakh, or
- in cases of taxable person is conducting business in any of the states of Arunachal Pradesh, Assam, Sikkim, J&K, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Himachal Pradesh and Uttarakhand, his aggregate turnover in a financial year exceeds Rs. ten lakh
  - **Aggregate turnover** – It is the aggregate value of all taxable supplies, computed on all India basis, excluding taxes charged under CGST/ SGST/ IGST
- Every person who was registered or held a license on the day immediately preceding appointed day under an earlier law liable to be registered w.e.f. the appointed day.
- In case of **transfer/ succession of business** by a taxable person – the transferee/ successor shall be liable to register w.e.f. Date of transfer/ succession.
- In case of **amalgamation/ de-merger by order of a High Court** – the transferee liable to register w.e.f. date on which RoC issues a certificate of incorporation.
- Person not liable to registration may voluntarily register.
- Persons NOT liable to registration:
  - Person engaged EXCLUSIVELY in business of supplying goods and/or services that either are not liable to tax or are wholly exempted
  - Agriculturist



# Person liable to be registered – Sch. V

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- **Compulsory registration** of the following categories irrespective of the initial threshold limit or existing license or registration in preceding law:
  - Person making inter-state taxable supply,
  - Casual taxable persons,
  - Person required to pay tax under reverse charge,
  - E-commerce operator who shall pay tax if supplying notified service under Section 8(4),
  - Non-resident taxable persons
  - Person supplying goods/services on behalf of other taxable person
  - Input service distributor,
  - E-commerce operator under Section 56
  - Every other E-commerce operator
  - Input service distributor
  - Tax deductor at source under section 46 (government, government body, authority, etc.)
  - Other notified persons or classes of persons

# Job Work (Section 55)

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## 55. Special procedure for removal of goods for certain purposes

- A registered taxable person (principal) may, under intimation and prescribed conditions,
  - send any inputs and/or capital goods, without payment of tax, to a job worker for job-work and
  - from there subsequently send to another job worker and likewise, and shall -
  - **bring back inputs**, after completion of job-work or otherwise,
  - and/or **capital goods**, other than moulds and dies, jigs and fixtures, or tools,
  - within **one year** and **three years**, respectively, of their being sent out,
  - to any of his place of business, without payment of tax;
  - **supply such inputs**, after completion of job-work or otherwise,
  - and/or capital goods, other than moulds and dies, jigs and fixtures, or tools,
  - within one year and three years, respectively, of their being sent out **from the place of business** of a job-worker on payment of tax within India, or with or without payment of tax for export

# Contd...

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- PROVIDED that the “principal” shall not supply the goods from the place of business of a job worker unless the said “principal” declares the place of business of the job-worker as his additional place of business
- or where the job worker is registered under Section 23
- Or where the “principal” is engaged in the supply of such goods as may be notified by the Commissioner in this behalf.
- In case the inputs and capital goods are not brought back/ supplied within prescribed time, it shall be deemed that inputs/ capital goods have been supplied by the principal to the job-worker.
- ITC of inputs/ capital goods received by the job-worker without first being brought to the premises of the principal shall be available to the principal.
- **However, provisions restricting ITC shall not be applicable for moulds and dies, jigs and fixtures, or tools sent out to a job-worker for job-work. S.20(7)**
- Responsibility for accountability of the inputs and/or capital goods shall lie with the “principal”.

# Contd...

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- The activity of job-work shall be taxable as treatment or process, applied to another's goods, and is considered as *supply of service* in terms of Sch. II of the CGST Act.
- Waste and scrap generated during the job work
  - may be supplied by the job worker directly from his place of business
  - on payment of tax if such job worker is registered,
  - or by the principal, if the job worker is not registered

specific queries

# Specific Queries to address

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- The basic raw material for glass industries is silica sand. The state Govt Charge royalty on the same. Whether the royalty shall also be subsumed into the GST rate. Further there is no excise duty on the raw material but only CST is there, will this also attract the tax neutral GST rate?
  - GST shall be leviable on royalties payable to Government for mining rights except on one time royalty, payable upfront or in installment, for rights assigned before 01.04.2016.
  - Excise Duty and VAT/CST will be subsumed under GST
  - GST rate shall be in a range of 0-28%. Exemption (if any) to be notified by Central or State Government.
- The impact on job work especially when the job worker is in different State. Also when the goods are required to be send to second job worker which is in the third State? **[Ref. Slide 88-90]**
  - Principal can send Inputs/Capital Goods **without payment of tax** to a Job Worker for job work and subsequently to another job worker, from there and likewise. *[S. 55]*
  - **If Inputs or Capital Goods**, other than moulds and dies, jigs and fixture, or tools, are **not received back within 1 year or 3 years** respectively – It shall be **deemed** that Principal has **supplied** the goods to job worker on the day when goods were sent out.

# Specific Queries to address ...Contd.

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- How the treatment shall be made if the goods are directly to be dispatched to the customer from the first job worker or the second job worker? [**Ref. Slide 88-90**]
  - Principal can supply such goods within 1 year/3 years directly from place of business of Job-worker on payment of GST within India, or with or without payment of tax for export. [S. 55(1)(b)]
  - Provided Principal declares place of business of job worker as his additional place of business except where- (i) Job Worker is registered or (ii) Principal is engaged in supply of notified goods by Commissioner.
- It also means that the job workers must also be registered irrespective of the threshold limit and/or only doing the job work which is covered under the present excise notification no 214/86.
  - No, Job worker is not required to take registration if its turnover is under threshold limit.

# Specific Queries to address ...Contd.

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- Will the samples attract the GST?
  - Only if (Sch. I, Para 2):
    - between related person, or
    - between separate registration of same person, or
    - between establishment of person in one state and his establishment in another state
- Since the “Stock Transfer” shall be taxable and the value shall be taken on the basis of domestic transfer pricing, hence how the treatment shall be given for the profit element in such stock transfer?
  - Valuation provisions for supply of goods without consideration are yet to be prescribed.



# Specific Queries to address ...Contd.

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- Modus operandi of “Consignment Sale” after GST?
  - Supply of goods by an principal to his agent where the agent undertakes to supply such goods on behalf of the principal is deemed as supply even if made without consideration (Sch. I, Para 3)
  - therefore leviable to GST
- What shall be the status of sales under ARE 1? [**Ref. Slide 80**]
  - Export of goods shall be considered as Zero rated supply
  - Documents prescribed under GST Invoice Rules provides that in case of exports number and date of ARE-1 is to be mentioned on the invoice.
  - Thus, it seems that ARE-1 Forms shall continued.

# Specific Queries to address...Contd.

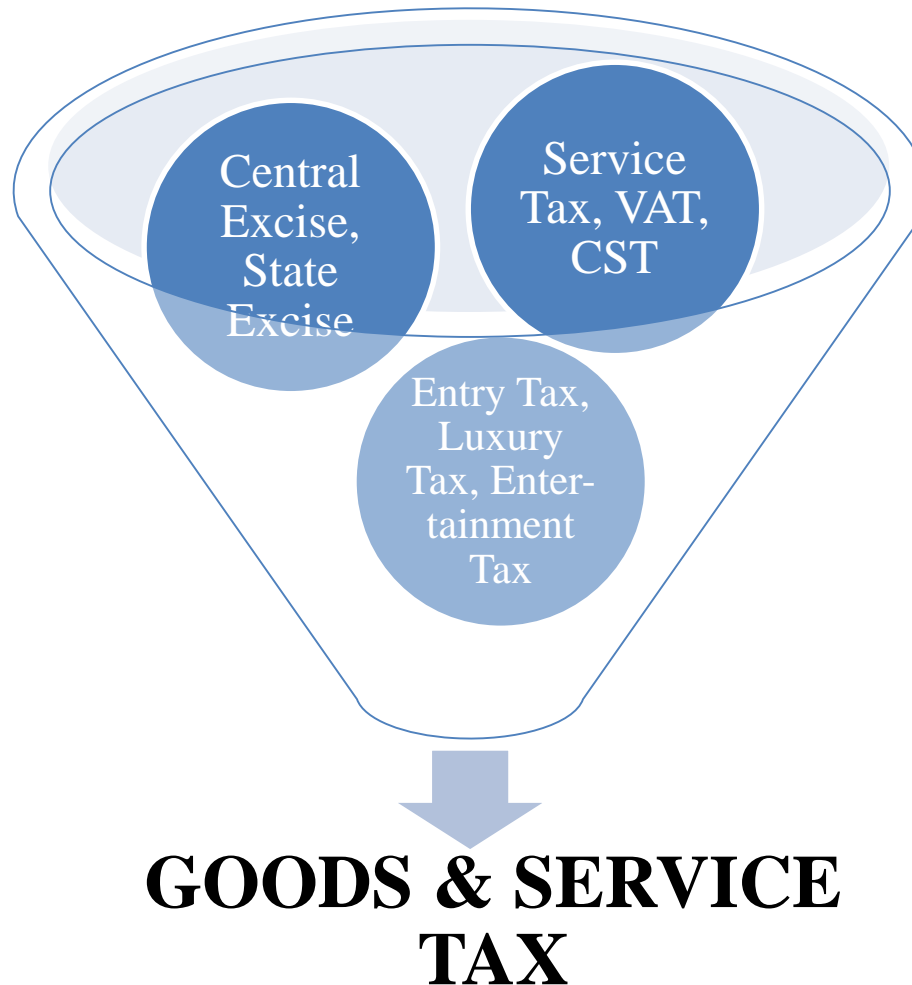
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- What shall be the status of E-1 sales as per current sales tax act?
  - All inter-state transaction shall be leviable to IGST. Even E-1 sales would be taxable
  - Exemptions are still to be prescribed.
- Whether the documents to avail the GST benefit will be irrelevant since the GST shall be available online and there is no need to verify the documents by the department?
  - Necessary to have the invoice
  - Although all details of invoices will be verified online, but records and documents are to be preserved at least for the period of 5 years from the due date of filling Annual return.
  - Thus, copy of invoices is to be kept in records for the specified period.
- What shall be treatment to the purchase of goods where there is no CENVAT benefit for example non-production goods like steel, electrical items, air conditioners and machinery installation structure?
  - Under the GST regime the scope of ITC has been kept very wide. ITC shall be available of GST paid on all purchase of goods/service except in few specified cases.

*Our Scope of Work  
for  
GST Transition Services*

# Biggest indirect tax reform: GST

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# Our Role in implementation of GST

Under GST\* we propose to offer following three distinct services:

Strategic  
advisory

Transitional  
handholding  
service

Procedural  
compliances

*The abovementioned services are detailed in the slides to follow.*

*\*Here, GST refers to the model GST law and draft rules as available in public domain. We shall endeavor to analyze the business in light of the most updated law available in public domain.*

# 1. Strategic advisory

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## **Business Strategy under GST Regime: Tax optimization & risk management**

- Study of current business model in light of Model GST Law.
- Identification of efficiencies and inefficiencies of business model in light of GST
- Identification of methods for optimization of business model in view of GST. This would specifically include:
  - Comparative analysis of tax effect of different procurement/ purchase strategies. More effective contracting for GST optimization
  - Identification of Input GST Credit available to the Company and optimize method of its utilization
  - Identification of possible issues/risks under GST Law
  - This shall specifically include the assessment of risks associated with GST cost on account of current prevailing contracts
- Suggesting suitable strategy for minimizing the above risks under GST Law
- In sum, we would suggest the most efficient “**supply chain**” and “**route to market**” from tax cost optimization point of view.

# 2. Transitional handholding service

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- **This portion of service offering shall consist of the following 3 Stages:**
  - i. **GST “As-is” & “Impact” Analysis on “Individual Transactional Level”**
    - ✓ Mapping the taxes applicable on “*As Is*” basis
    - ✓ Identifying the GST implications on the current business model “*To Be*” Analysis
      - ❑ Impact of GST on current transactions of the Company i.e. Tax payable on current transactions under GST Law.
      - ❑ Impact of GST on Input Tax Credit on current purchases i.e. Availability and Non-availability of Input Tax Credit on current procurements of goods and services under GST Law
  - ii. **GST implementation**
    - ✓ Assistance in implementation of GST during transition period at each transaction level
    - ✓ This shall include advisory services regarding putting in place the required procedures and systems for GST
  - iii. **GST hand-holding**
    - ✓ Assistance in working with GST
    - ✓ Regular training of teams
    - ✓ Providing regular insight as per business requirement
  - iv. **Registration** – Assistance in obtaining certificate under GST Act

# 3. Other Procedural Compliances

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- This portion of service offering shall consist of the following post implementation compliances:
  - ✓ Review of regular tax returns under GST Law
  - ✓ Assistance in filing of regular returns under GST Law
  - ✓ Optimization for improved compliances and best compliance rating score



# Firm Overview

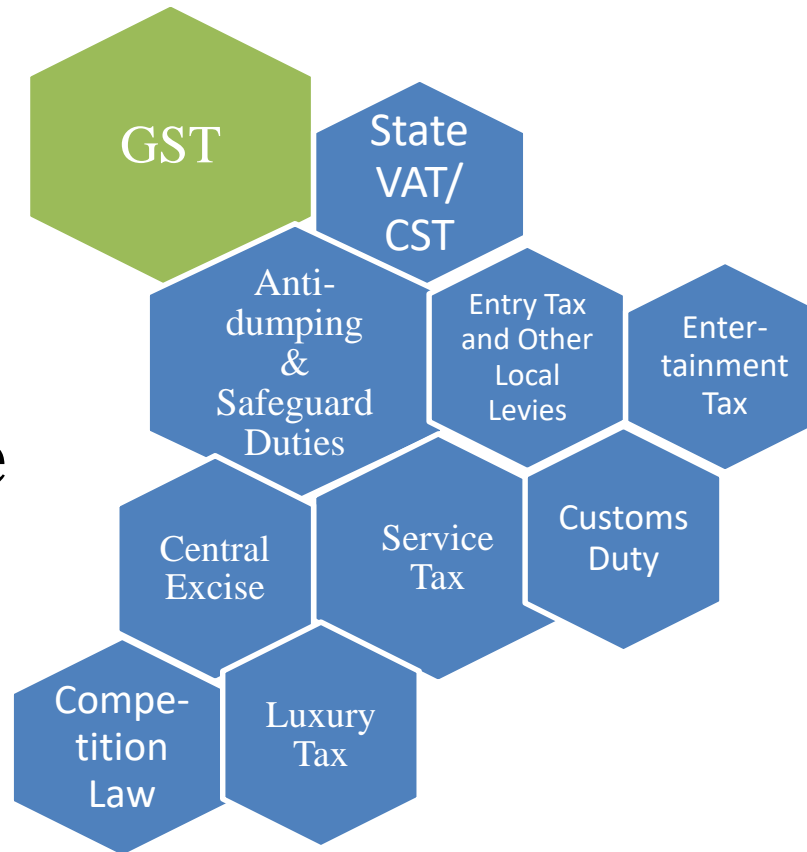
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- Athena Law Associates is a law firm specializing in Indirect Taxes, trade laws and competition law
- We provide entire gamut of commercial services including litigation and advisory services, in niche areas of indirect taxes, trade laws and competition law
- The biggest strength of Athena is its people and the varying backgrounds from which they come. This helps Athena respond to clients' complex business challenges with a broad range of services across industry sectors.
- Our endeavour is to serve our clients through consistently delivering high quality services.
- The emphasis is on hard work and continuous training which enable our people to provide services of highest quality

# Our Areas of Practice

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## Tax & Trade Laws



# Implementation Strategy

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- **Implementation Strategy**

- GST transition shall be executed by firm members in a multistage and structured manner.
- Post discussion with relevant stakeholders goals shall be set and divided in manageable chunks with fixed timelines.
- Along with implementation – staged reviews to be in place for timely achievement of set goals.
- Recalibration to be done post staged reviews.
- Finalization of GST transition (and associated activities).
- Final review and declaring closure.

# Team Structure

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## Teams shall consist of following groups

- **Planning and Review Committee**
  - The Planning and Review Committees shall be headed by Partners/ Principal Advisors of the firm.
- **Implementation Cells**
  - The Implementation Cells shall be headed by Managerial Persons of the firm
  - Each implementation cell shall consist of one Manager and two to three team members of appropriate experience and qualification
  - All teams shall be a combination of professionals from legal as well as accountancy background for holistic approach and practical implementation

# Select Profiles

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## Mr. Pramod Kumar Rai

Founder and Principal Advisor

Athena Law Associates

- B. Tech. graduate from IIT, Kanpur
- Ex IRS Officer of 1996 batch.
- Gold Medal in law (LLB) and Masters degree in law from the University of Georgia on a 100% university funding (oldest public grant University of United States).
- More than 20 years of experience in Indirect Taxes.
- Currently Senior Standing Counsel for Customs, Excise and Service Tax at the Hon'ble High Court of Delhi.

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## Mr. Puneet Agrawal

Partner

Athena Law Associates

- B.Com (H) from SRCC, Delhi University
- CA - ICAI Scholarship Holder
- LLB – Faculty of Law, Delhi University
- Previously at Lakshmikumaran and Sridharan
- Flair for lecturing and training - more than 300 lectures.
- Leading internal team on GST & engaged towards the blog [www.gstlawindia.com](http://www.gstlawindia.com)
- Specialized in business structuring and contract negotiations and delivering result oriented solutions.

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# Dedicated Team

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## Mr. Vipin Aggarwal

Principal Advisor

Athena Law Associates

- B. Com (H) and Chartered Accountant (Fellow member of ICAI)
- Professionally practicing since 1986
- Has vast experience of auditing, accounting, financial management, business advisory and consultancy.
- A specialist in devising systems for organizations and has successfully devised control systems and accounting systems in a number of organizations of varied industries.

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## Mr. Pawan Arora

Sr. Manager, Consulting Head

Athena Law Associates

- B. Com, CA and Law Graduate
- He has also worked in multinational companies at managerial positions handling their Indirect Taxation and has been instrumental in re-designing internal tax policies and streamlining their systems from Indirect Tax perspective
- During his tenure in industry he gained vast experience of in-house consultancy on Indirect Tax issues.
- Currently leading the Consulting and Tax Review services of the firm.

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# Dedicated Team

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## Mr. Dipankar Majumdar

Manager, Consulting-in-Charge, Kolkata

Athena Law Associates

- BA LLB from Army Institute of Law, Mohali
- Has handled high-value and voluminous indirect tax litigations.
- He has conducted a number of indirect tax reviews as well as internal team trainings for clients of varied industries.
- Was associated with indirect tax team of KPMG conducting Indirect tax Advisory, Litigation and Compliances, *et. al.*
- Currently leading the Consulting and Tax Review Services of Athena in Kolkata.

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## Ms. Shuchi Agrawal

Manager

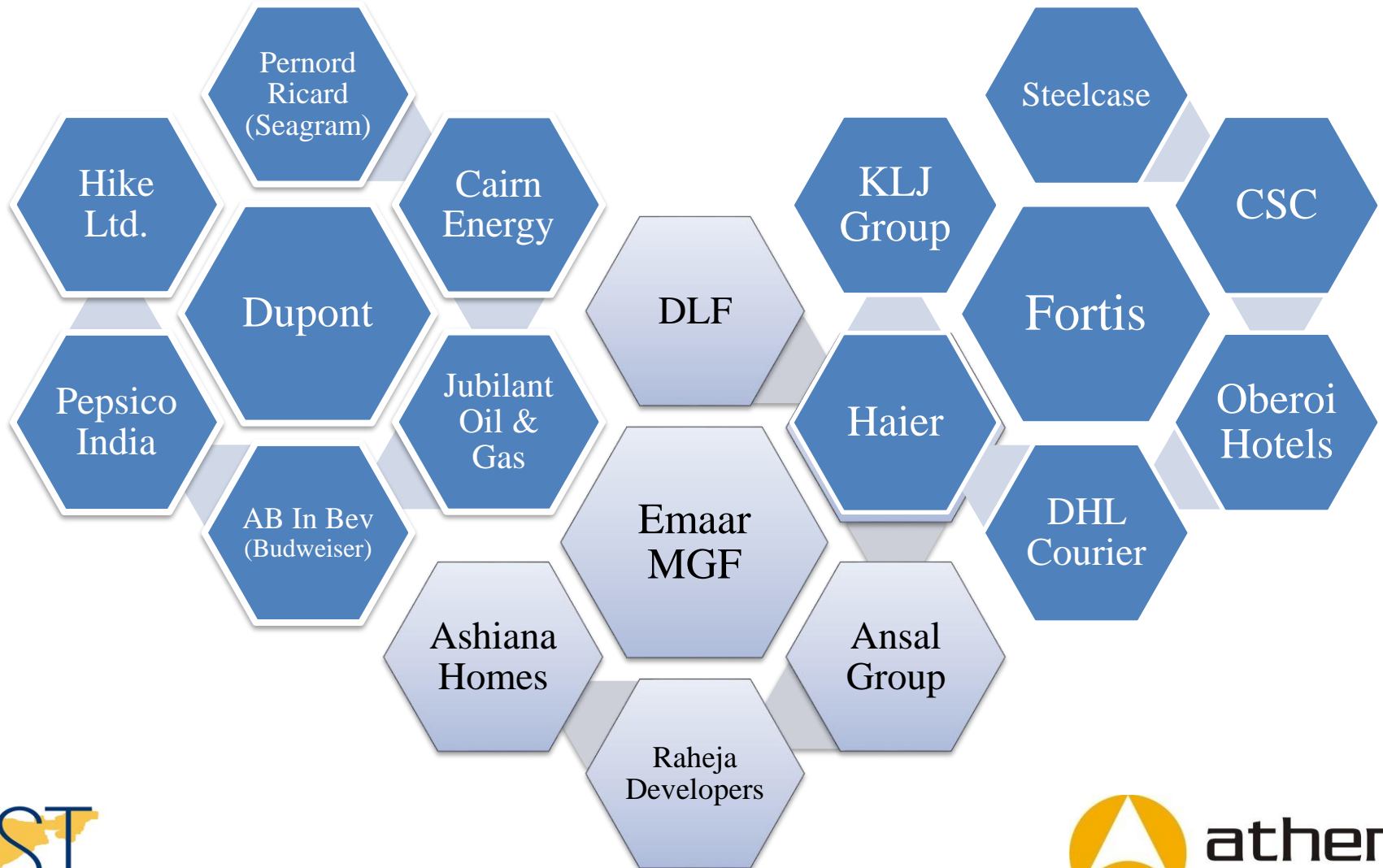
Athena Law Associates

- B. Com (H), Chartered Accountant and Law Graduate
- Associated with Athena since 2010
- Prior to Athena, have served one of the Big Fours in Indirect taxation
- Vast experience of consultancy and advisory in Indirect Taxation
- Advises clients from diverse industries

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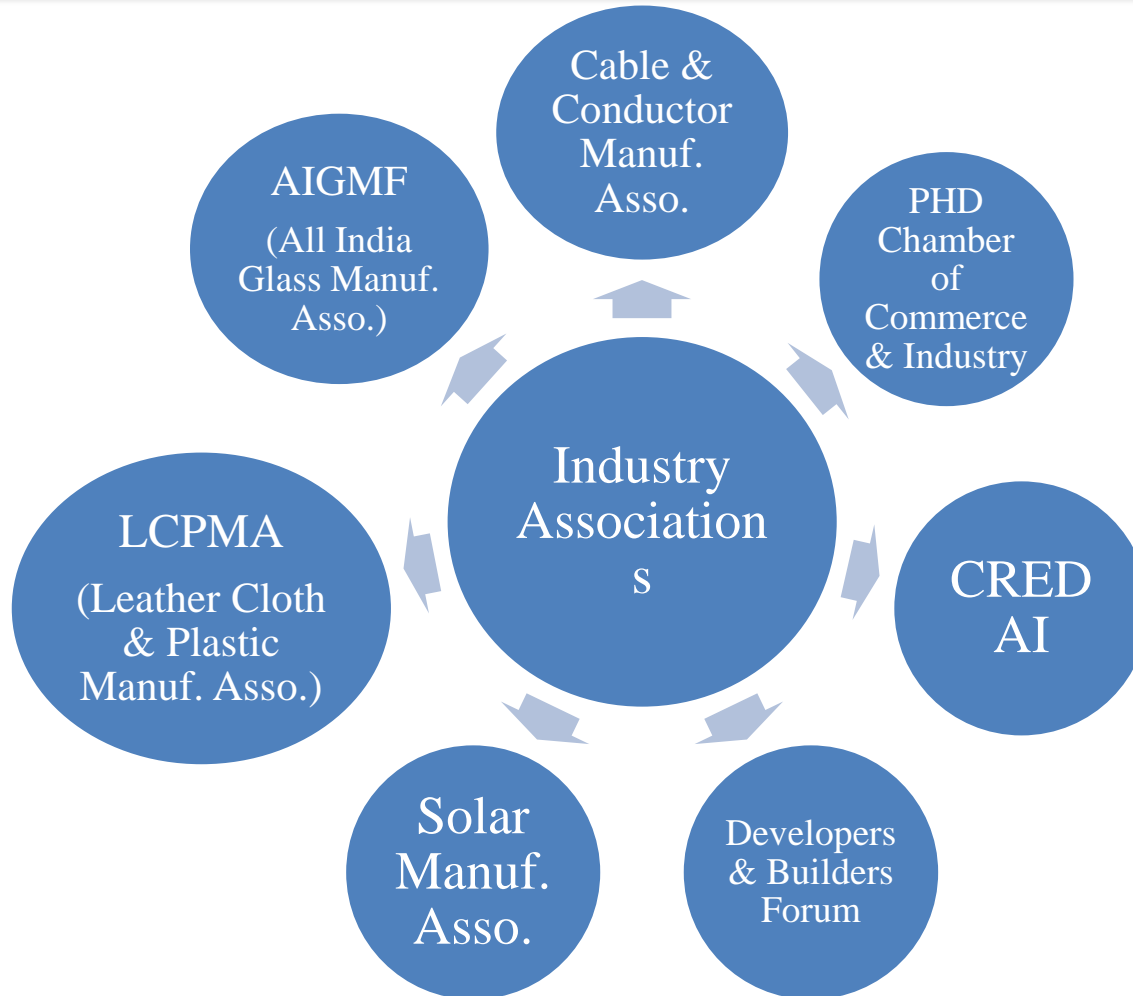
# Major clients for whom we have worked





# Industry Associations for/ with whom we have worked

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# THANK YOU

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