



BMR & Associates LLP

TAXABLE EVENT UNDER GST

- A DISCUSSION

MALINI MALLIKARJUN

NOVEMBER 21, 2015

CONTENTS

- ❖ PROPOSED GST
- ❖ TAXABLE EVENTS – AN ANALYSIS
- ❖ KEY EUROPEAN VAT DIRECTIVES
– TIME OF SUPPLY
- ❖ IMPACT UNDER GST – SOME THOUGHTS
- ❖ Q&A



HVI & Associates LLP

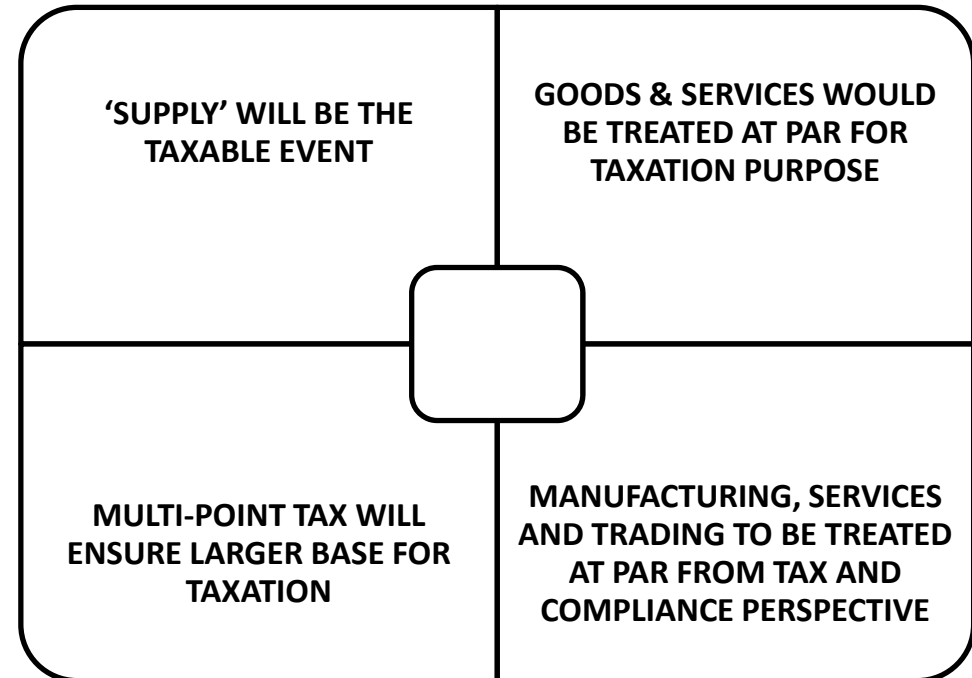
HVI & Associates LLP

PROPOSED GST



PROPOSED GST

- GST is a comprehensive levy on supply of goods and services across the value chain
- GST does not differentiate between 'Goods' and 'Services'
- GST is a destination based consumption tax
- Taxes paid on inputs are available as credit against the output tax liability
- Taxes are collected on the value addition at each transaction
- Taxes are borne by the ultimate consumer
- Taxable event under GST is 'supply'





RVN & Associates LLP

**KEY FEATURES OF THE CONSTITUTION
(122ND AMENDMENT) BILL, 2014**

KEY FEATURES OF THE CONSTITUTION (122ND AMENDMENT) BILL, 2014



Key extracts (from a taxable event perspective) of the GST Constitution Amendment Bill, 2014 has been stated below:

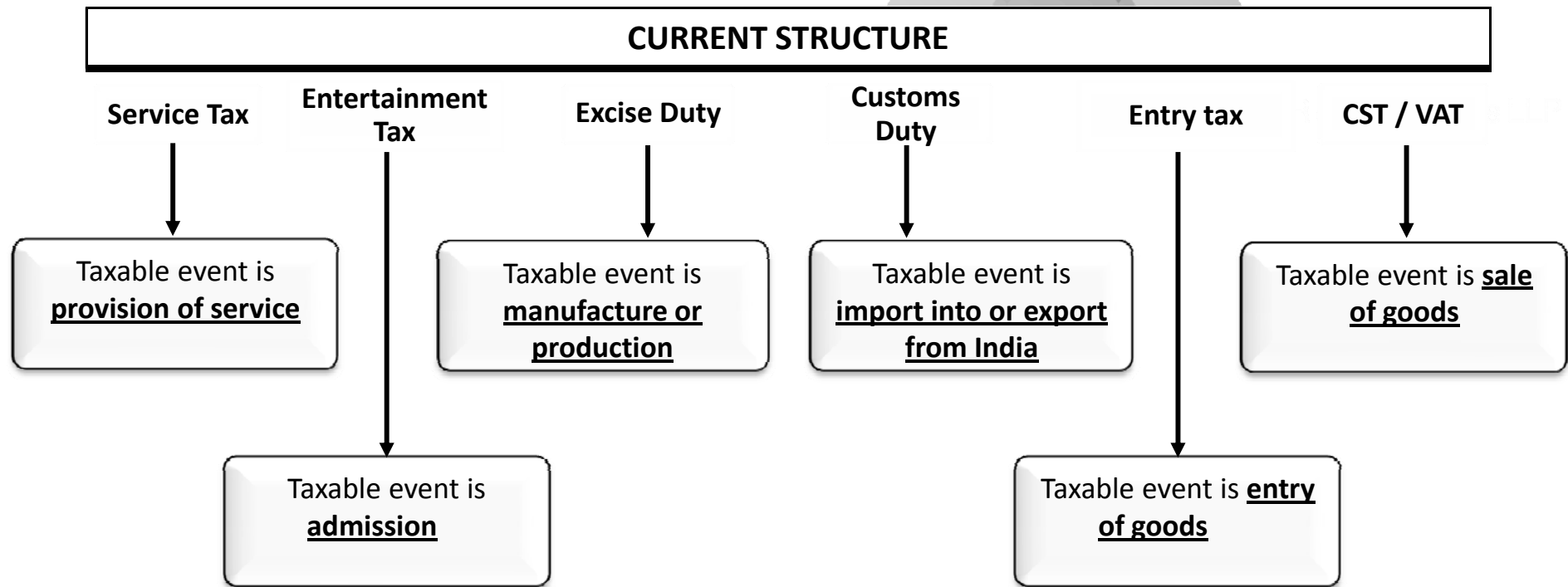
- The proposed Goods and Service Tax will be levied on all transactions involving supply of goods and services, except those which are kept outside the purview of the goods and services tax
- As per Clause 14 of the Constitution (One Hundred And Twenty-second Amendment) Bill, 2014
 - 'Goods and Service tax' has been defined to mean any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption
 - 'Services' has been defined to mean anything other than goods
- Additionally, the Select Committee Report has also recommended that an explanation should be given that for the purpose of levy of additional tax on inter-state supply of goods, 'supply' should mean "All forms of supply made for a consideration"

**TAXABLE EVENT UNDER EXTANT
INDIRECT TAX LAWS**

HVI & Associates LLP



TAXABLE EVENT UNDER EXTANT INDIRECT TAX LAWS



TAXABLE EVENT – AN ANALYSIS

HWH & Associates LLP



TAXABLE EVENT



Taxable event – An analysis of key characteristics

- Triggers liability to pay tax
- Conceptual relevance increasingly diluted with specifically denoted 'point' of tax, for instance:
 - *Raising of invoice or receipt of payment*, for service tax
 - *Removal of goods*, for excise duty
 - *Filing of Bill of Entry*, for customs duty
- For VAT, taxable event is 'sale'; largely denoted by delivery of goods

TAXABLE EVENT FOR SERVICE PROVIDER



CURRENT STRUCTURE

Service Tax is levied when a taxable service is rendered

Tax liability is required to be on occurrence of the point of taxation ('POT') as per the Point of Taxation Rules, 2011 ('POTR')

As per Rule 3 of POTR, the POT for a service provider could be at the time of earlier of the following events:

- *Receipt of payment for the services*
- *Raising/ issuing of invoice*

POT would go back to date of actual date completion of service (if invoice is raised after 30 days from completion)

For a service receiver, the taxable event is triggered generally at the point of payment to the vendor

PROPOSED GST

GST is leviable at the time of "supply" of the service

It is expected that all transactions that are not supply of goods shall qualify as supply of services

Point of taxation in respect of services would likely be in line with the extant POTR. As a result, raising of invoice, receipt of payment and actual rendition of service are likely to be relevant for a supplier of service

It is expected that reverse charge mechanism would continue under GST and the payment would continue to be the taxable event to trigger payment of GST by the recipient

TAXABLE EVENT FOR MANUFACTURER



CURRENT STRUCTURE

Excise duty is levied on “manufacture” or “production” of goods

Excise duty is required to be discharged on removal of goods from the factory or registered warehouse

Even in absence of sale / supply of goods, taxability arises once the goods are manufactured

Currently, a manufacturer is liable to pay excise duty on manufacture and sales tax on subsequent sale of such manufactured goods

PROPOSED GST

GST is leviable on “supply” of goods

Owing to lack of the definition for the term “supply”, no clarity available as when a supply shall be regarded to have occurred

No taxability to arise unless ‘supply’/ ‘deemed supply’ (if stipulated) of goods takes place

Under GST, manufacture shall no longer be a trigger point for GST. GST shall be payable on supply of goods

TAXABLE EVENT FOR IMPORTER/ EXPORTER



CURRENT STRUCTURE

Duties of customs are leviable on import and export of goods into / from India

For imports, the taxable event is (generally) on clearance of goods for home consumption

For export transactions, the export sale is said to be complete is when the goods cross the customs frontiers of India. However, the taxable event shall be on clearance and loading of goods for export

PROPOSED GST

With regard to import, Countervailing Duties ('CVD') as well as Additional Duties of Customs ('ADC') are likely to be subsumed by Integrated GST ('IGST')

It is pertinent to understand whether the taxable event for trigger of such IGST shall be 'supply by the overseas vendor' or 'import of goods as per the extant custom laws'; likely, latter

It is expected that since CVD and ACD are currently levied under the provisions of the Customs Act, 1962, the taxable event (for payment of IGST) should likely continue to be 'import of goods'

TAXABLE EVENT FOR TRADER

CURRENT STRUCTURE

Currently, VAT / CST is levied on supply of goods in course of an intra-state / inter-state sale, respectively:

Generally, for levy of VAT / CST the taxable event could (illustratively) be in respect of any of the following situations:

- 1) Sale of goods, wherein property in goods is transferred from the seller to the buyer;
- 2) Transfer of property in the course of executing a contract;
- 3) Lease or hire purchase transaction of moveable goods; and
- 4) Transfer of intangible goods

The taxable event for payment of VAT / CST (generally) arises when the transaction is accounted for and the invoice is raised and such sales/ deemed sales are disclosed in the returns



PROPOSED GST

It is expected that GST is to be levied on “supply” of goods. As a result, it is expected that the taxable events would likely be aligned with the present POTR for ‘services’

HVI & Associates LLP

**KEY EUROPEAN VAT DIRECTIVES
– TIME OF SUPPLY**



KEY EUROPEAN VAT DIRECTIVES

– TIME OF SUPPLY

- Under European VAT, the “Chargeable event” occurs **when goods are delivered or services are completed** (Articles 63 of European VAT)
- In case of continuous supply of service or goods extending over various months or years, **the supply is regarded to be completed at end of each calendar month or year** until such supply comes to an end (Article 64 of European VAT)
- In case of advance receipts for supplies to be made in future, **the chargeable event is the receipt of such advance** (Article 65 of European VAT)
- However, Member States may provide that VAT becomes chargeable:
 - when the **supplier issues the invoice**, (not applicable to services subject to reverse charge mechanism)
 - when the **supplier receives payment**, or
 - within a **specified period from the date of chargeable event** (which, as per Article 222 is within 15th day of the following month)(Article 66 of European VAT)

KEY EUROPEAN VAT DIRECTIVES – TIME OF SUPPLY



- In case of goods being supplied by a supplier located in one member state to another ie in case of supplies involving Intra-European Community ('Intra EC') movement of goods, the chargeable event in the suppliers member state is treated to have taken place **on:**
 - **the 15th day of the month following the month** in which the chargeable event (ie delivery) occurs; or
 - **the date of issue of an invoice**, where this occurs before the 15th day of the following month (Article 67 of European VAT)
- In case in intra-community acquisition of goods, the chargeable event is treated to have taken place **when supply of similar goods in effected such member state** (Article 68 of European VAT)
- In case in intra-community acquisition of goods, the chargeable event shall occur **on issue of invoice** and in case where no invoice is issued, **on 15th day of the following month** (Article 69 of European VAT)
- In case of Imports, chargeable event occurs **when the goods are imported** (Article 70 of European VAT)

**The above is based on the updated European VAT directives as at January 1, 2013*



WVH & Associates LLP

IMPACT UNDER GST – SOME THOUGHTS

POSSIBLE IMPACT UNDER GST – (1/2)



- Mere supply liable; ie every movement / delivery in case of goods
- Job-workers to be liable to discharge GST on their supplies, leading to increase in their cost and burden. Whether the option to discharge applicable GST on job-worker's supplies to be introduced in GST as well?
- Whether self-supplies/ captive consumption shall also be regarded as supply? If yes, what shall be the taxable event for the same? Whether on ultimate consumption in the supply of goods or services to the recipient or on mere inter-department supply of goods/ services?
- For goods supplied on approval basis, would the taxable event shall be regarded to have occurred on 'mere supply' or 'on approval'?
- When the supply shall be regarded to have occurred? On departure from the suppliers location or on actual delivery to the recipient?
- In case of continuous supply of goods/ services, whether the taxable event shall be on completion of the final consignment/ supply or shall be regarded to occur on a milestone basis?

POSSIBLE IMPACT UNDER GST – (2/2)



- In case of a works contract, whether the taxable event shall be regarded to occur on accretion/ accession/ blending or on completion of the contract?
- Whether the taxable event shall occur on supply of goods/ services? Will the invoicing/ payment still influence the occurrence of taxable event and thereby shifting the taxable event from actual supply to date of invoice/ receipt of payment?
- In case of GST to be discharged on reverse charge mechanism, whether the taxable event still be determined basis the date of payment and in case of associate enterprises on accrual basis?
- In cases where the consideration for supplies cannot be determined on a upfront basis for eg Royalties for use of IPR, Copyrights, etc, whether the taxable event shall be determined on basis on supply, date of invoice or receipt of payment?

Q & A



RMH & Associates LLP



BMR & Associates LLP

BMR & Associates LLP

BMR & Associates LLP

Challenge Us