

India's proposed GST system – some of the issues and challenges



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Introduction

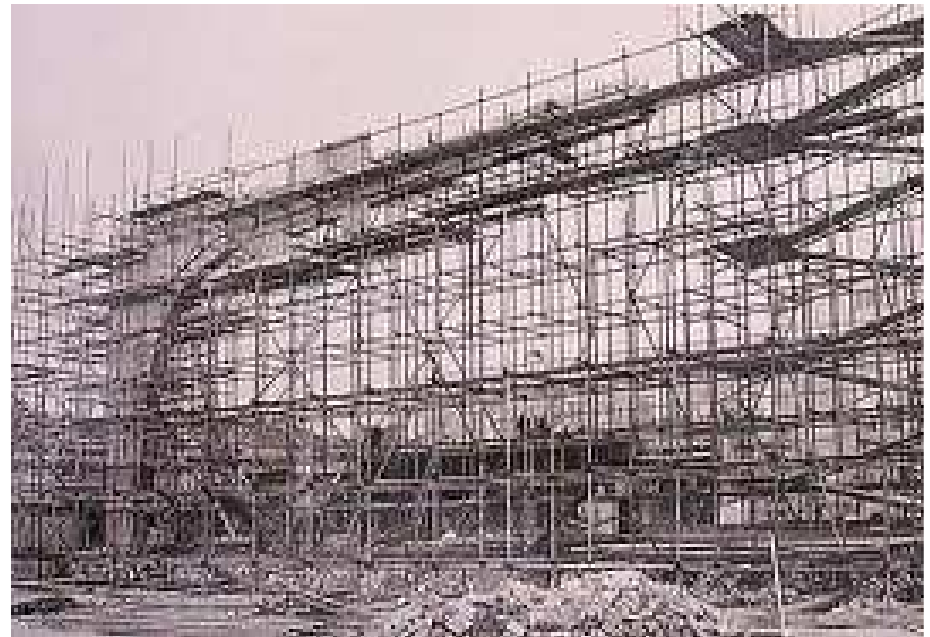
- Potential benefits:
 - reduced compliance burden
 - improved scope for deduction
 - reduction in effective rate for many goods
- But there are also potential issues
- Interesting to compare the proposals with the EU system (40 years old)

Overview of the EU VAT System

- Primary VAT Directive > national legislation
- Single standard rate for “supplies” both goods and services (15% - 27%)
- Lower rates in some cases for food and other “essentials”
- Deduction of input tax when related to taxable trading
- Exemptions for financial services, health/welfare services, education etc
- No deduction when related to exempt
- B2C taxation at origin
- B2B taxation at destination
- Collection by MS

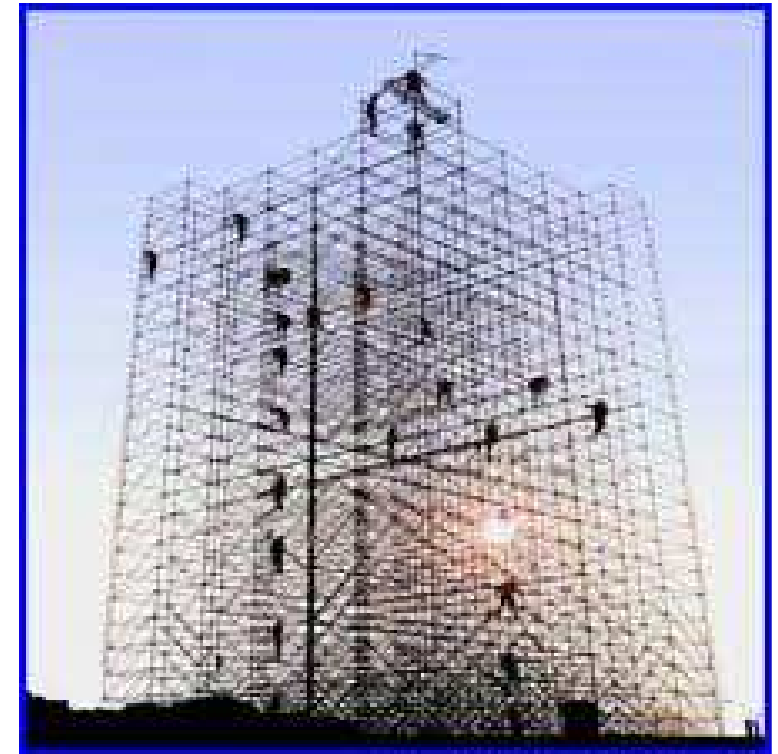
Framework legislation?

- No proposal for framework legislation for State GST (SGST)
- GST Council recommendations aimed at harmonising the structure
- But there remains potential for significant discrepancies across the 30+ States
- Creates complexity and potential confusion
- Not helpful in creating a common market across India



Framework legislation?

- EU: each member state (MS) has its own legislation
- BUT, national legislation must comply with primary EU VAT law



GST Proposals - Is it goods or services?

- Initially different rates for goods and services
- Some things are difficult to classify e.g. SIM cards or media holding software
- Disputes about whether such things are goods or services or a combination

Is it goods or services?

- EU: some similar cases e.g. whether take away food is just food or catering
- Also relevant for the time of supply and place of supply
- The courts are available to decide the issue
- Ultimately the ECJ can settle the issue across the whole of the EU

Interstate GST charges

- Currently no tax charged on interstate transfers of own stock
- Proposal: such transfers will be supplies and so subject to IGST
- Destination State will receive IGST via clearing house, to extent of set off allowed by it to importer
- Lack of clarity about deductibility of the IGST charged due to flexibility for each State to frame its own law
- Example: a State might make IGST not deductible if goods are for use in connection with immovable property
- Potentially could influence trade patterns / business decisions
- Increased working capital requirement

Interstate GST charges

- EU: VAT similarly chargeable on cross border movements of own goods (normally via acquisition tax)
- If goods are used in connection with an exempt activity then tax is irrecoverable as required by the scheme of the tax
- Double taxation should not occur as transferor able to reclaim VAT on their purchase of the goods
- Trade patterns should not be affected as right of deduction (or not) is consistent across EU

No dispute resolution mechanism available to taxpayers

- Proposals do not include legal mechanism/ultimate court for taxpayers to resolve technical disputes and which would create precedents
- Proposal for GST settlement dispute authority which
 - can decide issues between States where there is distortion of competition because of different provisions in their respective legislation
 - but will not resolve differences of interpretation of common legislation
- Therefore potential for recurring disputes on the same issue across 30+ States
- Need for a National GST Tribunal?

No dispute resolution mechanism

- EU: each country has legal mechanisms for resolving disputes
- Primacy of the EU VAT Directive: same treatment should apply across the EU
- Where there are anomalies the ECJ is ultimate court of appeal
- Its judgements create precedents which apply across the EU



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