GOODS AND SERVICES TAX (GST) VS CURRENT INDIRECT TAX ENVIRONMENT IN INDIA AND IMPACT OF GST ON REAL ESTATE SECTOR

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ABSTRACT
With the Rolling out of GST, it is necessary to know the current tax environment and find out the lacunae in our existing system and how GST will help in resolving the long lived problems of our current indirect tax system. This research paper has tried to analyse the most awaited Goods and Services Tax (GST) regime and its benefits to our economy. The paper has tried to make a comparison of the Current Indirect Tax Environment in India and the proposed GST and also tried to determine the impact of GST on Real Estate Sector.

Keywords: Goods and Service Tax (GST), Service Tax, Indirect Tax, VAT, Central Excise

INTRODUCTION
For the government, there are two broad sources of revenue from taxes namely, Direct Tax and Indirect Tax. Direct tax is levied on person’s income and wealth and is paid directly to the government; the burden of such tax cannot be shifted onto others. This tax is progressive in nature i.e. it increases with an increase in the income or wealth and vice versa. It levies according to the paying capacity of the person, i.e. the tax is collected more from the rich and less from the poor. The plans and policies of the Direct Taxes are being recommended by the Central Board of Direct Taxes (CBDT) which is under the Ministry of Finance, Government of India. There are several types of Direct Taxes such as Income Tax, Wealth Tax, Property Tax, Corporate Tax etc.

On the other hand, Indirect Tax is referred to as a tax charged on a person who consumes the goods and services and is paid indirectly to the government. The burden of tax can be easily shifted to another person. The tax is regressive in nature, i.e., as the amount of tax increases, the demand for the goods and services decreases and vice versa. It levies on every person equally whether he is rich or poor. The administration of tax is done either by the Central Government or the State government. The department of revenue of the ministry of finance exercises control in matters relating to all indirect taxes through statutory board named the Central Board of Excise and Customs (CBEC).

There are several types of Indirect Taxes, such as: Central Sales Tax, VAT (Value Added Tax), Service Tax, STT (Security Transaction Tax), Excise Duty, Custom Duty etc.

The tax is levied and collected either by the Central government or State government or the local bodies.

OBJECTIVE
The objective of this paper is to study the current Indirect Tax Environment of India, various types of taxes charged such as Central Excise, VAT, Service Tax etc. Whether the Input credits are available at present or not and what are the issues under the present tax regime. The concept of GST is studied
comprehensively along with its benefits and lastly its impact on the Real Estate sector has been analysed.

**Taxing Authority**

**Central Government**

1. Customs Duty
2. Excise Duty
3. Service Tax
4. Central Sales Tax (‘CST’)

**State Government**

1. Value Added Tax (‘VAT’)

**State/Local Bodies**

1. Entry tax/ Octroi

**CENTRAL EXCISE**

The excise duty falls under the Central Excise Tariff Act 1985. Excise Duty is levied on a manufacturer or producer in respect of the commodities produced or manufactured by it, with intention to sell or proceed to sale of those particular goods. The goods must be manufactured in India; movable and marketable and includes any article, material or substances. It is also necessary that the Goods should be mentioned in the Central Excise Tariff Act 1985.

For the goods that are manufactured must be something new/ distinct article. It should have a distinct name, character or use.

They should be either ad valorem (i.e., value based) or specific (i.e., quantity based). The basic duty on most of the excisable goods is charged at a uniform rate of 12.5%. It is payable at the time of clearance/ removal of goods from factory. Various exemptions/ concessions are available, subject to fulfillment of eligibility criteria and prescribed conditions.

**SERVICE TAX**

Service tax is levied on all activities, except those specifically mentioned in the Negative List and the Mega Exemption List. There are some specific exclusions from the definition of “Service”, these includes Immovable property, transfer of title in goods, services rendered by employees to employer in the course of employment and transactions in money. Gifts and grants of pocket money are considered without an activity and hence do not come under the ambit of service tax.

At present service tax rate applicable is 15% (inclusive of 0.5% Krishi Kalyan Cess and 0.5% Swachh Bharat Cess). This is applicable on the amount of value of services i.e., Gross amount received by a provider of service from the recipient of service for provision of the taxable service.

Service provider can claim credit of duties/taxes paid on the goods or services are used in providing the output taxable services, such a credit is known as Cenvat Credit. In case of ‘Import’ of service, Service tax is to be paid by the service recipient (under reverse charge mechanism). Service tax so paid is available as Cenvat Credit to the service recipient. However, service tax is not payable on the ‘Export’ of services. One of the basic example of Service tax is as follows: Suppose A Ltd. engages B Ltd. (a company located in USA) to provide installation services. B Ltd. does not have any office in India and does not have a service tax registration in India. In such a case, Service tax @ 15% would be payable on such import of services by A Ltd. under the reverse charge mechanism (as a recipient of service) in cash. A Ltd. can avail cenvat credit of the service tax paid under the reverse charge mechanism. However, input credit of VAT/ CST paid on procurements will not be available.
VALUE ADDED TAX

In India, VAT is a State subject, the concept of VAT is more than 88 years old. VAT is an improvised Sales Tax, Trade Tax or Retail Tax System. It is levied at every point of sale on the value added. Tax credit is given on the VAT paid at earlier stage. Thus, VAT is a tax on profit.

Below is the snapshot of various types of Taxes discussed, their nature of levy and availability of credit:

<table>
<thead>
<tr>
<th>Taxes/Duties</th>
<th>Nature of Levy</th>
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<tbody>
<tr>
<td>Customs Duty</td>
<td>Customs Duty is the duty levied on import of goods into India. Currently, the general effective rate of duty is 29.44%.</td>
</tr>
<tr>
<td>Excise Duty</td>
<td>Excise Duty is Duty on manufacture of goods in India. Currently, the general effective rate of duty is 12.5%. The credit is available to the manufacturer and the service provider, but not to a trader.</td>
</tr>
<tr>
<td>Service Tax</td>
<td>Service Tax is tax on provision of specified services. Currently, the general effective rate of service tax is 15%. The credit is available to the manufacturer and the service provider.</td>
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<tr>
<td>Central Sales Tax (‘CST’)</td>
<td>Central Sales Tax refers to tax on sale of goods in India entailing movement of goods from one State to another. Rate of CST on a product is equivalent to the rate of VAT in the state. However, where statutory declaration is furnished by the purchaser, rate of CST is 2%.</td>
</tr>
<tr>
<td>Value Added Tax (‘VAT’)</td>
<td>Value Added Tax is tax on sale of goods in India entailing movement of goods within the State. Rate of VAT varies between 5% or 15% (depending on nature of goods sold &amp; state concerned). Credit available to both Manufacturer and Trader.</td>
</tr>
<tr>
<td>Entry tax/Octroi</td>
<td>Entry tax/Octroi is levied on entry of goods into a local area in some States for use or consumption or sale therein. Levy is state specific. Credit available to both Manufacturer and Trader.</td>
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ISSUES UNDER THE PRESENT INDIRECT TAX REGIME

Multiple indirect taxes in our structure lead to cascading effects of tax on tax. There are many compliance requirements which create lot of difficulties in administration. Another major issue in the present tax regime is that the traders cannot take input tax credit of CST, CVD, Excise duty & Service tax on input services, thus it is a cost to them. For service providers, they too cannot take input tax credit of VAT/ CST. Further to the woes, there are disputes on Goods vs. Services, (eg. Software, transfer of right to use) resulting in double taxation & long standing disputes. All these issues have shown lack of harmony and hence economic inefficiencies in the existing Indirect tax structure.

GOODS & SERVICES TAX (‘GST’)

GST is a comprehensive value added tax on goods and services. It’s a value added tax collected at all stages of supply chain or transactions. There is no differentiation between goods and services. It’s an Integration of all indirect taxes on goods and services.

GST is levied on ‘Supply’ of Goods or Services or both. The ‘Supply’ of Goods or services or both includes the following:

- All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal
- Import of services
- Activities to be treated as ‘Supply’ even without consideration:
Transfer/disposal of business assets
Supply between related persons

The Dual GST model (CGST & SGST) is largely to replace the multiple Indirect taxes presently. Central GST (‘CSGT’) & State GST (‘SGST’) is levied on intra-state supplies of goods or services or both. Integrated GST (‘IGST’) is levied on inter-state supplies of goods or services or both. Hence, IGST = CGST + SGST. The proposed rates of GST are 0%, 5%, 12%, 18% and 28%. All services have been fitted into these four rates, which are 5%, 12%, the standard 18% and the luxury rate of 28%.

INPUT TAX CREDIT OF CGST, SGST AND IGST

Input tax credit is admissible to every registered person, but is not admissible in respect of certain specified items like goods or services used for personal consumption etc., and these are further subject to prescribed restrictions. Cross utilization of credit between CGST & SGST is not allowed.

THRESHOLD LIMITS AND VALUATION

Registration is to be obtained in every State from where taxable supplies are effected, where aggregate turnover in a financial year exceeds INR 20 lakh. There is no concept of centralised registration under GST. Compulsory registration (irrespective of threshold), inter-alia, to be obtained by persons making any inter-State taxable supply of goods or services and persons required to pay tax under reverse charge mechanism.

The valuation is to be done at the Transaction Value, which is the price actually paid or payable. The valuation rules are prescribed under the law. In case of related parties, where the transaction value cannot be determined as per the Valuation Rules, value is to be determined at 110% of the cost.

BENEFITS OF GST

GST aims to make India at par with the developed economies following GST model, making it a market with common tax rates and procedures. This will further reduce the cascading effects and make our system simpler and rational. GST has a broader base and lower tax rates as it has subsumed multiple indirect taxes. It is also expected to bring more transparency to indirect tax laws. All imported goods will be charged integrated tax (IGST) which is equivalent to Central GST + State GST. This will bring equality with taxation on local products.

IMPACT OF GOODS AND SERVICE TAX ON THE REAL ESTATE SECTOR

One of the most complex areas of the tax levied by the Centre and the States is works contract and sale of property. Currently, such transactions are broken into three parts – the value of goods and materials, value of services and value of land. The States apply VAT to the goods portion and the Centre taxes the services portion, with no explicit tax on the transaction value of land.

If we talk about nitty-gritty’s of the GST for real estate homebuyers, the existing tax liabilities may remain unaffected after the introduction of the Goods and Services Tax regime. They will be taxed at 12 percent under the GST regime. Currently, a homebuyer has to pay several indirect taxes, including excise duty, value-added tax and service tax, which amounts to a tax outgo of about 11 per cent, excluding Stamp Duty.

Under the new regime, all the other indirect taxes will be subsumed and a buyer will have to pay a uniform 12 per cent tax on the purchase of real estate, except stamp duty. This is true for under construction properties but not on completed, ready-to-move-in apartments. The benefit of entire input credit is available on excise duty and Central sales tax on construction materials paid by developers.
LEASE OF IMMOVABLE PROPERTY FOR RESIDENTIAL PURPOSE

Under the current regime, the leasing of immovable property for residential purpose is exempt. In the draft law, GST is to be levied on such transactions. However, final decision is pending in this regard. Further, Stamp duty is not subsumed under GST, hence, double taxation would arise here.

INPUT CREDIT

Presently, all input taxes are a cost because output service of leasing of immovable property for residential purposes is exempted under Service tax. Under GST, the activity of leasing of immovable property for residential purpose is exempt, input tax credit will too become a cost. The impact here is that the Input credits costs will continue to bring about inefficiencies in our system.

WORKS CONTRACT

Under the current tax regime, both Service tax & VAT are attracted on works contracts, which lead to double taxation. However, GST would treat works contract as “service”, which will certainly eliminate the tax inefficiencies on account of double taxation.

CONCLUSION

It is expected that GST will ensure one tax in the entire country. It will result in seamless transfer of goods and services in the country. GST is a major indirect tax reform, which in long run will be in the interest of the country. Implementation of the Goods and Services Tax (GST) is expected to reduce tax evasion and improve ease of doing business by engendering a common market throughout the country. GST is equally beneficial for as under the present system. However, GST is expected to hit out Black money. By bringing land and immovable property under GST, there will be a close check on the menace of black money and will also curb inflation of prices. In the long run, GST will definitely help the real estate sector at macroeconomic level. Lastly, GST is surely a transparent and clear system as compared to the existing multiple layers of taxation.

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