



# GST @3 - The good, the bad and the ugly

*Since the initial idea was floated, it took almost 17 years for the implementation of GST to replace the erstwhile indirect tax system in India. The government succeeded in completing a daunting task, which involved reaching a consensus with the States, allaying the fears and apprehensions of the industry, striking a balance between revenue augmentation and ease of business, and ultimately passing the Constitutional amendment to codify and implement the GST law. The implementation of GST required strong leadership from the Central government and a willingness to cede certain powers by both the Central and the State governments in the true spirit of co-operative federalism. With GST recently turning 3, we look into some of the positive and negative aspects of this regime, understand how it can be stabilized further and what the future holds.*

## The Good

The government has been largely successful in achieving the objective of bringing the country closer by removing inter-state barriers, to enable smooth flow of goods across the country and ease of doing business in India.

### One Nation, One Tax

The structure of GST has integrated all Indian states into a single, common market by eliminating multiple indirect taxes, such as central excise duty, services tax, additional customs duty, surcharges, state-level value-added tax, and octroi. Elimination of multiple levies has eliminated the cascading effect of taxes and reduced the tax complexities as the businesses just have to deal with one tax across India.

### Creation of One Nation One Market

Earlier, logistics companies had to maintain multiple warehouses across the country to avoid state entry tax on interstate movement of goods. Now, GST has eliminated all the inter-state barriers by removing check-posts, introducing a nationwide e-way bill, eliminating the entry tax/LBT, and has reduced transit time of movement of goods within the country. A uniform indirect tax law has also reduced the economic distortion amongst States, caused by varied indirect tax policies, and turned India into a true common market.

### Boost to the economy and targeted increase in government revenues

GST has given a boost to India's tax to Gross Domestic Product ratio, which is an indicator of economic efficiency and sustainable long term growth. Over a span of three years, the government has been successful in achieving the milestone of an increased tax base with 1.23 crore registrations as on 13 July 2020, from 38 lakh taxpayers registered in July 2017. The revenue collection in FY 2019-20 soared by 42% as compared to the collections made in FY 2016-17.

### Technology driven

The government through GSTN has harnessed technology and employed data mining and analytical tools, which can detect inconsistency/error in reported data, frauds, etc. As a result, the taxpayers have to be vigilant and ensure that their compliances and reporting are accurate, which helps to avoid complications at a later stage. Through robust checks and balance, the government has been successful in bursting tax frauds and racket of bogus billings in India and recover legitimate due of taxes. In addition, filing online GST refunds and their speedy disbursal has given a boost to the exporters, setting an excellent example of what can be achieved through technology.

### Transparency

The taxpayers can track their compliances online on the GST Portal, access their past compliance records, verify the compliance status of suppliers, ensure that the supplier has declared its supplies to their business correctly, track applications, etc. One can easily get the basic information about any business by entering the respective PAN or GSTIN.

## The Bad

Despite the positive aspects, certain concerns need to be addressed by the GST Council. We have captured a few key issues, which are plaguing businesses:

### Tedious compliances

The GST law requires taxpayers to get themselves registered in all the states of their operations. This not only increases the compliance burden but also increases the financial burden. Besides, everything from registration to return along with payment is now online, making it difficult for small scale businesses who are still grappling with the complexities involved with online compliance system.

### Unreliable IT platform

The robust IT framework has been playing a crucial role in the implementation of the GST process. However, on many occasions, businesses have had to face hiccups on the GST portal resulting in delayed filings and misreporting, which can eventually lead to unwarranted litigations. At times, the government even had to provide extensions in due dates and deferments in the implementation of certain changes such as e-invoicing and the new return filing system.

### Tax burden on small businesses

Under the erstwhile laws, the Central excise was only paid by businesses with an annual turnover of above INR 1.5 crore. However, with the new tax regime, any business with an annual turnover of above INR.20 lakh/ 40 lakh is required to get registered and pay GST. There is a composition scheme for SMEs, but it has its own set of limitations and restrictions like denial of the input tax credit, etc.

### Repugnant Advance Rulings

An advance ruling is an option available with a taxpayer in case of confusion and uncertainty about certain provisions, and he does not want to risk indulging into litigation in the future. But, in a large number of cases, it has been seen that the advance rulings are unfavorable for the applicant, contrary to judicial precedents and understanding prevalent in the industry. Though AAR rulings are not binding on any taxpayer other than the applicant, it has created a nuisance value. The GST Council can look into the possibility of appointing Technical Members on the advance ruling authorities who can provide additional legal expertise in the issues placed before them.

### Tendency to negate inverted duty structure by increasing GST rate on outward supplies

In certain sectors, the GST rate on outputs is lower than the GST rates on the inputs resulting in the accumulation of ITC, e.g., mobile phones. Recently, it has been seen that the GST Council has sought to address this by increasing the GST rate on outward supplies rather than reducing the GST rate on the inputs. As a result, the major players in this sector had to increase the prices of their products, signifying that the tax cost outweighed any purported benefit from the utilization of accumulated ITC. Considering such cases, the GST Council should revisit its strategy on the rationalization of the inverted duty structure.

### Delay in the constitution of Appellate Tribunals

It has been 3 years since the successful implementation of the GST law; however, the benches of the GST Appellate Tribunal are yet to be constituted in any state. This results in pendency of litigations, which need to be addressed at the earliest to ensure cases under GST does not pile up, resulting in delays as was a common occurrence under the erstwhile laws.

## The Ugly

Considering the positive and negative aspects, there are certain elements, which we believe require a significant policy change from the GST Council to align the GST law closer to its founding principles:

### National Anti-profiteering Authority (NAA)

The NAA was constituted under the GST law to ensure that businesses pass on the benefit of reduction in GST rates to their customers, and they do not profiteer at the expense of the customers. The tenure of this authority was extended recently till 30 November 2021. However, in the absence of any methodology provided in the GST law, there have been cases where businesses have felt unfair treatment due to the order passed by the NAA, which requires businesses to repay huge sums to their customers. An unfavorable order from NAA also creates a negative impression about the values of a business in the minds of its customers. The constitutional validity of the NAA is also a subject matter of many petitions pending across various High Courts. The GST Council should undertake a serious consideration of this matter and propose suitable changes to GST law to either notify a methodology for determining the profiteering or do away with this authority completely to achieve ease of doing business.

### Subsuming various GST rates into fewer slabs

The myriad of GST rates has resulted in classification disputes between the taxpayer and the GST authorities. The GST Council should look into this aspect and merge the various GST rates into fewer slabs to avoid confusion and minimize the possibility of unwarranted litigation. Also, the different cesses such as Compensation cess, Kerala flood cess, Sugar cess should be abolished.

## Way Forward

A landmark change such as GST was expected to bring with it initial hurdles and difficulties. The government and GST Council, on most occasions, have acted proactively to help businesses overcome such problems as a result of which, many sectors are experiencing the benefits of having a single, unified tax structure. With the GST regime becoming more or less stable, it is an opportune time for the government to look into the taxpayer's suggestions, recommendations and fix the pending loopholes and lacunae in the law and come out with the improvised version in the near future.

In our view, steps must be taken to safeguard against unwarranted litigation and to make the system more taxpayer-friendly.

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