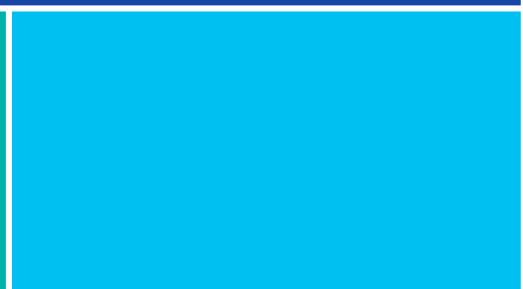
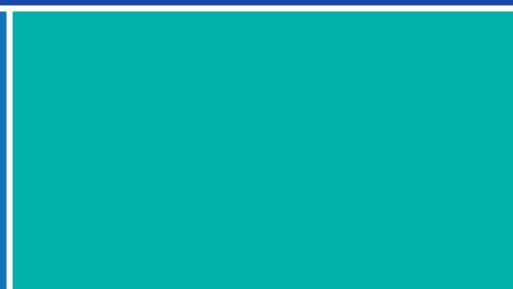
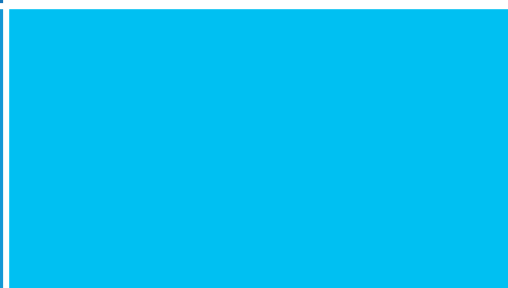


MODEL GST LAW

22 June 2016



AGENDA

- An Overview
- Key Definitions
- Valuations
- Input Tax Credit
- Time Of Supply
- Place Of Supply
- Procedural Aspects
- E-commerce and Aggregator
- Transitional and Miscellaneous Provision
- Integrated Goods and Services Tax, 2016
- Open Issues and Business Impact

AN OVERVIEW

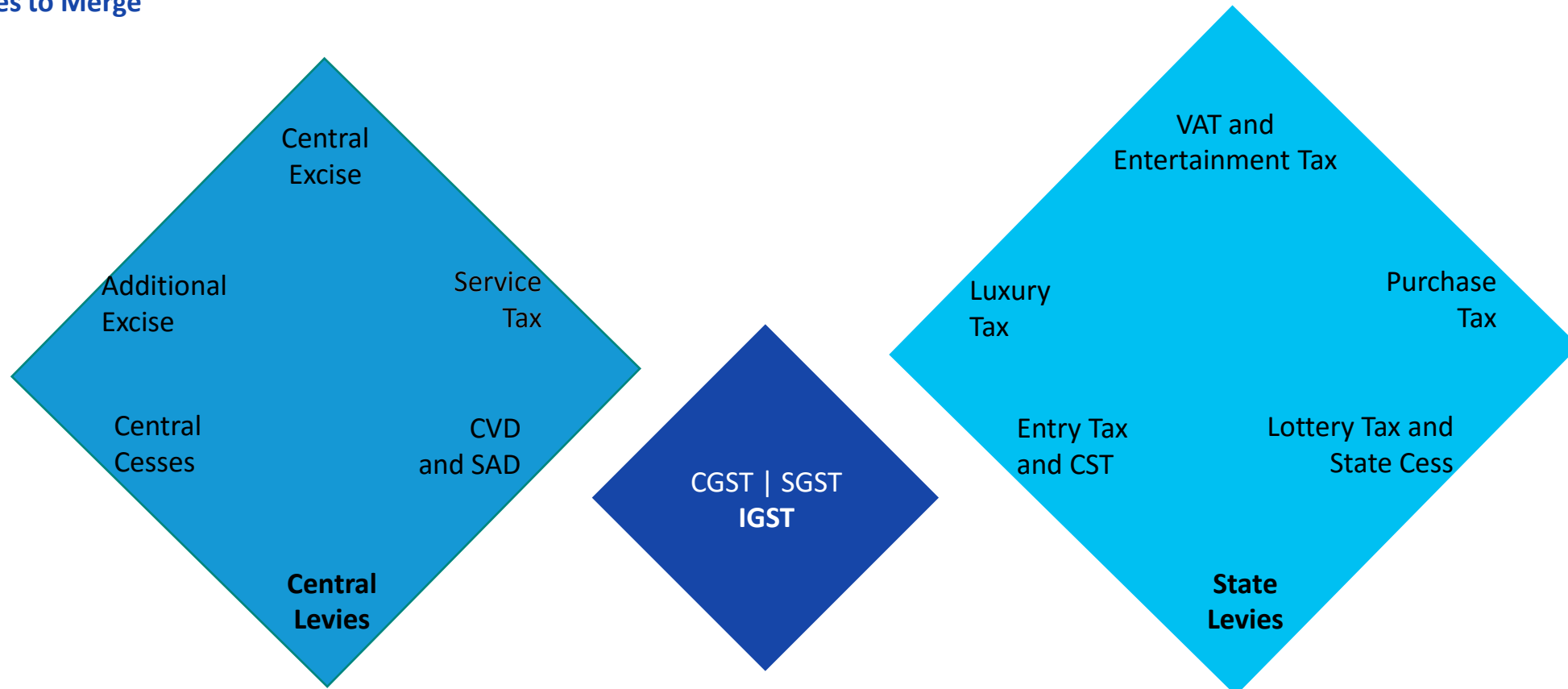
General Information

- Applicable across India

Chargeability

- CGST and SGST on supply of intra state goods and/or service
- IGST on supply of interstate goods and/or service

Likely Taxes to Merge



KEY DEFINITIONS

Goods

- All types of **movable property other than actionable claim and money** but
- Includes **securities**, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply

Services

- Means **‘anything other than goods’**
- Explanation – services **include intangible property** and actionable claim but **does not include money**

Intangible Property

- Any property other than tangible property

Consideration

- Can be **monetary/non-monetary**
- By said person or any other person
- Monetary value of **forbearance** of an act can be a consideration
- **Deposit** whether refundable or not shall not be considered as consideration, unless the supplier applies the deposit as consideration for the supply

Zero Rated Supply

- A supply on which no tax is payable but credit is admissible – Exports are treated as Zero Rated Supply

Input Service Distributor

- Concept of ISD also present in the model law – Stress is on having the same PAN between the offices

Works Contract

- Definition is similar to that under the current law
- Shall be treated as ‘supply of service’ – Schedule II

Input

- Goods other than capital goods, subject to exceptions, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business

Input Service

- Any service subject to exceptions, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business

MEANING & SCOPE OF TERM - SUPPLY

Supply

For Consideration	Without Consideration (Schedule I)	Others
<ul style="list-style-type: none"> ▪ All forms of supply of goods/services ▪ Would include <ul style="list-style-type: none"> ▪ Sale ▪ Transfer ▪ Barter ▪ Exchange ▪ License ▪ Rental, lease or disposal ▪ In the course or furtherance of business 	<ul style="list-style-type: none"> ▪ Would include specific situation in Schedule I <ul style="list-style-type: none"> ▪ Permanent transfer/disposal of business asset ▪ Temporary application of business assets to a private or non-business use ▪ Services put to private or non-business use ▪ Assets retained after deregistration ▪ Supply of goods and/or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business 	<ul style="list-style-type: none"> ▪ Importation of service, whether or not for a consideration and whether or not in the course or furtherance of business ▪ The supply of any branded service by an aggregator shall be deemed to be a supply of the said service by the said aggregator ▪ Transactions between principal and agent is deemed to be a supply

Important matters to be treated as Goods or Service – excerpts from Schedule II

The following classification issues have been clarified under GST

- Any **lease, tenancy of land and building**, treated as ‘supply of services’
- Where **business assets are put to any private use**, treated as ‘supply of services’
- Construction (**including works contract**) of a complex, building, civil structure or a part thereof, treated as ‘supply of services’
- **Transfer of the right to use** any goods for any purpose, treated as ‘supply of services’
- Implementation of information technology **software**, treated as ‘supply of services’

VALUATIONS

Value of supply of goods and/or services shall be transaction value, i.e. the actual price, where

- Price is the sole consideration
- Supplier and recipient are not related

Transaction value shall include

- Amount incurred (by recipient & not included in price)
- Royalty and license fee (as a condition of supply)
- Fees, Taxes (other than SGST, CGST, IGST)
- Subsidies
- Reimbursable expenditure
- Discount and incentive (after supply)
- Value of free supplies by recipient
- Incidental Expenses (commission & packing and others done before or at time of delivery)

Transaction value shall not include

- Discount allowed as normal trade practice and duly recorded in the invoice

GST valuation rules prescribe

- Determination of value by comparison method, computed value method, residual method
- GST valuation prescribed in case of pure agent and money changer
- GST valuation not prescribed for insurer, air travel agent and distributor or selling agent of lottery

MRP based levy not provided in the model law

INPUT TAX CREDIT

Manner of Taking Input Tax Credit

Tax Payable to Government	CGST	SGST	IGST
Credit permitted (in the following order)	CGST	SGST	IGST
	IGST	IGST	CGST
			SGST

ITC allowed on

- ITC available only to extent goods/services are **used for business purpose**
- **Taxable supplies** include Zero Rated supplies
- **ITC shall not be claimed after** the filing of the return of September following the end of financial year or filing of the relevant annual return, whichever is earlier

ITC not allowed on

- On motor vehicles (except in some cases)
- In relation to outdoor catering, beauty treatment, etc. ITC also not available on goods and/or services **primarily for personal use or consumption of any employee**
- Goods and/or services **used in works contract of construction of immovable property** (acquired by principal, the property in which may or may not have been transferred)

Transfer of ITC

- **ITC is transferable** during change in the constitution of business
- **Change in the constitution** of a taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities

TIME OF SUPPLY

Particulars	Goods	Services
General Time of Supply	a) (i) Goods required to be removed - date when goods are removed (ii) Goods are not required to be removed - date when goods are made available to the buyer b) Date of invoice c) Date of receipt of payment by supplier d) Date of receipt of the goods as per books of account whichever is earlier	a) When invoice is issued within prescribed time <ul style="list-style-type: none"> ▪ Date of invoice ▪ Date of receipt of payment b) When invoice is not issued within time <ul style="list-style-type: none"> ▪ Date of completion of service ▪ Date of receipt of payment c) When (a) and (b) does not apply <ul style="list-style-type: none"> ▪ Date on receipt of services in recipient books of account
Continuous Supply	a) Successive statements of account/payments <ul style="list-style-type: none"> ▪ Date of expiry of successive statements of accounts or successive payments b) No successive statements of account <ul style="list-style-type: none"> ▪ Date of invoice or ▪ Date of receipt of payment, whichever is earlier 	a) Where due date of payment is ascertainable <ul style="list-style-type: none"> ▪ Date on which payment is liable to be made b) Where due date of payment is not ascertainable <ul style="list-style-type: none"> ▪ Date when supplier receives payment, or ▪ Issues an invoice, whichever is earlier, c) Where payment is linked to completion <ul style="list-style-type: none"> ▪ Time of completion of event
Reverse Charge Basis	a) Date of receipt of goods b) Date of payment c) Date of receipt of invoice d) Date on debit in the books of accounts	a) Date of receipt of service b) Date of payment c) Date of receipt of invoice d) Date of debit in the books of accounts

PLACE OF SUPPLY | GOODS

Particulars	Place Of Supply
Supply involves movement of goods	Location of goods at the time where the movement of good terminates for delivery to recipient
Supply of goods delivered on the direction of third person (Bill to - Ship to model)	Location of principal place of business of the third person on whose command goods are disposed
Supply does not involve movement of goods	Location of such goods for delivery to recipient
Where goods are installed or assembled	Location of such installation or assembly
Goods – supplied on board a conveyance	Location at which goods are taken on board
Where place cannot be determined	Place to be determined by law made by Parliament in accordance with recommendations of the council

PLACE OF SUPPLY | SERVICES

Particulars	Registered (B2B)	Unregistered (B2C)
General services	Location of registered person	Location of recipient where address on record exists and in any other case location of supplier
Service pertaining to immovable property	Where immovable property is located or intended to be located	
Restaurant and catering services, personal grooming, health service, etc.	Where services are actually performed	
Services pertaining to training and performance appraisal	Location of registered person	Location where services are actually performed
Services in relation to admission to entertainment events or amusement parks or any other place	Place where the event is held or where the park or such other place is located	

PLACE OF SUPPLY | SERVICES

Particulars	Registered (B2B)	Unregistered (B2C)
Services by way of organisation of event	Location of registered person	Place where the event is held
Services by way of transportation of goods, including by mail or courier	Location of registered person	Location where goods are handed over for transportation
Telecommunication services including data transfer, cable and DTH service: <ul style="list-style-type: none"> ▪ In case of fixed line/circuit/cable ▪ Mobile connection (post-paid) ▪ Mobile connection (pre-paid) 	<ul style="list-style-type: none"> ▪ Location of fixed line/ circuit/ cable is installed ▪ Billing address of the recipient on record of service provider ▪ Location where payment received/ vouchers sold 	
Banking, stock broking and other financial services	Location of recipient as per records of supplier (if linked to recipient accounts)	
Supply of insurance services	Location of registered person	Location of recipient as per records of supplier

REGISTRATION

Separate Registrations for Multiple Business Verticals

- Appears optional in case of **separate registration for each business vertical in each State**, subject to conditions
- Registration in **every State from where supplier makes a taxable supply**
- **Voluntary registration will be allowed**

Time Limit

- Within **30 days** from becoming **Liable to Register** (compulsory registration below)

Compulsory Registration – Schedule III

- i. Threshold Limit – aggregate turnover of goods/services during the financial year exceeds INR 9 lac (INR 4 lac in Sikkim and North Eastern States)
- ii. Non-threshold criteria
 - Person making any interstate supply
 - Casual taxable persons
 - Persons who are required to pay tax under reverse charge
 - Non-resident taxable persons
 - Persons who are required to deduct tax (TDS)
 - Persons who supply goods and/or services on behalf of other persons whether as an agent or otherwise
 - Input service distributor
 - E-commerce operator
 - Persons who supply goods and/or services, other than branded services, through an e-commerce operator
 - Aggregator
 - Such other person or class of persons as may be notified by the government on the recommendations of the Council

REFUNDS

Refund Claim

- **Refund on Unutilised Credit:** Refund can be claimed by a taxable person for any unutilised input tax credit at the end of any tax period, provided that no refund of unutilised input tax credit shall be allowed in cases other than:
 - Exports
 - Credit has accumulated on account of *rate of tax on inputs > rate of tax on outputs*
- **Refund for Exports:** Refund of tax on goods and/or services exported out of India; or
- **Refund of Inputs for Exports:** Refund of tax on inputs/input services used in the goods and/or services which are exported out of India, or
- **Refund for Deemed Exports:** Refund of tax on the supply of goods regarded as deemed exports

Time Limit

- Refund application shall be made **before the expiry of two years** from the relevant date (*except when it has been paid 'under protest'*)

Processing of Refund Claim

- Refund claimed on account of export of goods and/or services by registered taxable persons shall be processed within 90 days
 - **80%** of the total amount - refunded on a provisional basis (**upfront**)
 - **20%** may be refunded after due verification of documents

Interest

- If the refund is not granted **within three months** from the date of receipt of application
- Interest rate to be notified

RETURNS

Returns	Filing Due Date
Outward Supplies (excludes suppliers of ISD, composition levy and tax deductor)	10 th of the next month
Inward Supplies (excludes suppliers of ISD, composition levy and tax deductor)	15 th of the next month
Monthly Return	20 th of the next month
Return for Composition Levy (Quarterly Returns)	18 th of the next quarter
Return for ISD (Monthly Returns)	13 th of the next month
Return for Tax Deducted at Source (Monthly Returns)	10 th of the next month
Annual Returns (excludes suppliers of ISD, composition levy, tax deductor, casual taxable and non-resident taxable person)	31 December following the end FY

Rectification of Omission/Incorrect Particulars

Rectification shall not be allowed after the

- Due date for filing of return for the month of September or second quarter, as the case may be, following the end of the financial year, or
- Actual date of filing of relevant annual return, (*whichever is earlier*)

E-COMMERCE AND AGGREGATORS

Definition

- **Electronic Commerce Operator:** Any person who directly or indirectly owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with
- **Aggregator:** Any person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said aggregator

Tax Collected at Source by the e-commerce Operator

- **Every e-commerce operator**
- **At the time of receiving credit or cash on delivery (COD) from online customers:** At the time of credit of any amount to its account or at the time of payment of any amount in cash or by any other mode, whichever is earlier,
- **Shall collect and deposit tax with the Government directly:** Collect an amount, out of the amount payable or paid to the supplier, representing consideration towards the supply of goods and/or services made through it
- **Compulsory Registration for e-commerce operator and those supplying through this market platform**

Special Provisions for Aggregator

- **Supply of any branded service by an aggregator** shall be deemed to be a supply of the said service by the said aggregator
- **Compulsory liability to be registered**

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Automatic Provisional Migration

- Every person registered under the earlier laws shall be issued a certificate of registration on provisional basis, which **shall be valid for a period of six months**. Thereafter, post furnishing of required information, Final certificate of registration shall be granted.

Credit Carry Forward

- CENVAT credit carried forward → allowed as ITC under CGST Law
- Value Added Tax (VAT) credit carried forward → allowed as ITC under SGST Law

Others

- Un-availed **CENVAT credit** on capital goods, **not carried forward in a return, to be allowed** in certain situations
- Credit of eligible duties and **taxes in respect of inputs held in stock to be allowed** in certain situations
- Credit of eligible duties and **taxes on inputs held in stock to be allowed** to a taxable **person switching over from composition scheme**
- **Pending refund** claims to be **disposed of under earlier law**

Miscellaneous Provisions

- **Prioritisation Rule for Payment** – taxes for the current period cannot be paid until the taxes/interest/late fee/penalty in relation to returns of previous tax periods have not been deposited
- Provisions have been made for demands and recovery, appeals and revision, refund, advance rulings, settlement of cases, offences, penalties, compliance rating, etc.

INTEGRATED GOODS AND SERVICES TAX, 2016

Definition: “Integrated Goods and Services Tax” (IGST)

- Means tax levied under this Act on the supply of any goods and/or services in the course of inter-state trade or commerce

Explanation I

Supply of goods and/or services **in the course of import** into the territory of India shall be deemed to be a supply of goods and/or services in the course of inter-state trade or commerce

Explanation II

Export of goods and/or services shall be deemed to be as supply of goods and/or services in the course of inter-state trade or commerce

- **Across India:** IGST will be applicable across India
- **Inter-State Supply:** Supply of goods/services shall be deemed to take place in the course of inter-state trade or commerce if the location of the supplier and the place of such supply are in different states
- **Similar Provisions to GST:** Provisions relating to registration, valuation, time of supply of goods etc. in the Integrated Goods and Services Tax, 2016 are similar to that of the Goods and Services Tax Act, 2016

Additional Tax

The Model GST Law is silent on this topic

OPEN ISSUES

- How will self supplies of services be valued under GST?
- Will GST be applicable on securities?
- What will the fate of additional 1% tax under GST regime?
- Any specific provision on benefits for supplies to SEZs, EOUs, etc.?
- While electronic supply of software (development, design, etc.) may qualify as supply of service, uncertainty lies with respect to supply of software on media
- What would the impact be on current policies of FTP vis-à-vis manufacturing and services?
- Which services and goods will be covered under reverse charge, TDS purpose?
- Concept of ISD is only for Services and not for Dealer in Goods
- Can one construe Captive Consumption as Deemed Supply ?
- No time limit prescribed for Issuance of SCN
- Permissibility of transfer of SGST under ISD mechanism – Will this defeat the purpose ?
- Check-post, Road permits & Way-bills – An end of era ?
- Scope for litigation – Services used for personal benefit of employee or for business

IMPACT ON BUSINESS

Pricing

- Input cost structures improvement possibilities
- Review of margins
- Decision to pass on the benefits

Taxation

- Alignment with business
- Tax computation and returns
- Transition issues – existing contracts, tax credits, registrations

Cost Impact

- Increase in cost of services due to increase in tax rate
- Imposition of non-creditable 1% additional tax – If any
- IGST on stock transfers

Contractual Clauses

- Revision of contract pricing
- Restructuring of tax clauses
- Indemnity clause / Change of law

IT/ERP

- Invoicing and accounting
- Capturing taxes and credits
- Transition of systems

Finance and Accounting

- Multiple location accounting operation
- Handling multiple payments across states of supply
- Budgeting and planning exercise

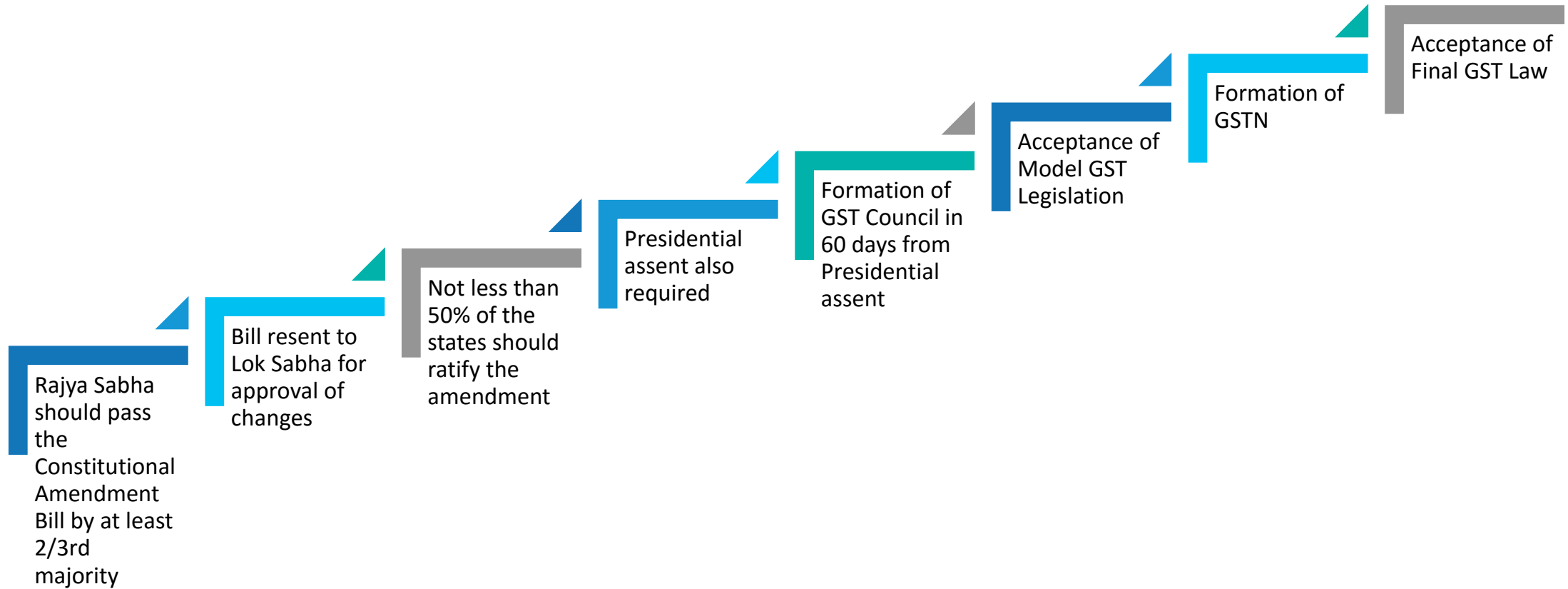
Compliances

- PAN-based registrations
- Requirement of state-wise registrations under the new GST law
- Increase in the number of returns to be filed

Supply Chain

- Sourcing
- Distribution
- Inventory management

WAY FORWARD



Q&A

You could also email your queries to
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