



INTERNATIONAL TAXATION CONFERENCE 2017

Potential Litigation and Adjudication Mechanism under GST

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Potential litigation areas

- Globally, upon the introduction of GST/VAT regimes, the key areas of dispute have typically been valuation and place of supply
- These issues will be exacerbated under the Indian GST
 - *Qua* valuation, a 'transaction value' approach has been extended to services for the first time
 - *Qua* place of supply, India's GST is unique in operating within a federal setup, which entails potential Centre-State, State-State disputes
- In addition to these issues, with the adoption of a multi-slab rate structure (in line with the Customs Tariff classification for goods and per a new classification system for services), disputes on the appropriate classification of various supplies are likely to arise
- On anti-profiteering, the conduct of the authorities will determine what is the extent of litigation
- Other potential areas include exchange/ barter, composite and mixed supplies, intangibles etc.

Structure for Dispute Resolution

AAR

- Set up by respective states under CGST Act – only binding on the applicant and jurisdictional officer in respect of the applicant
- Contemplation of a 2 stage process – admission, followed by disposal
- Further appeal - Appellate Authority for Advance Rulings (which is also State-wise)
- Any further challenge - Writ Petition before the jurisdictional High Court

Adjudication

- Issuance and adjudication of Show Cause Notice in state of registration of assessee
- No provision mandating a uniform approach to be taken, even in case of an identical issue *qua* the same assessee and under *pari materia* provisions

Appeal

- The Tribunal (National/ Regional Benches) will take up issues on place of supply, while State/ Area Benches which will take up all other issues
- A further appeal from the National/ Regional Benches lies to the Supreme Court
- A further appeal from the State/ Area benches lies to the High Court, and thereafter to the Supreme Court

Open issues

- Some States have set up the AARs so far but not all
 - The AARs set up by States will also issue rulings for CGST and IGST purposes
- Timelines – Notoriously slow under the existing laws (Central or State), despite the 90 day deadline
- A procedure may be considered for combining the admission and final disposal into a single hearing with the consent of the applicant
- *Qua* a single set of statutory provisions (e.g. CGST Act, IGST Act), there could now be multiple and conflicting ruling
 - As a consequence, no clarity for a company with a PAN India presence, where are two competing AAR rulings *qua* the same supply of goods/ services
 - No concrete indication from the Government that a centralised body will be set up to resolve such issues
 - Similar divergence of views and multiplicity of proceedings will be seen in the State-wise adjudication mechanism as well

Open issues

- No centralised authority like the CSTAA to resolve issues arising out of divergent views in State-State, Centre-State disputes (e.g. place of supply)
 - Assessee may be caught in the cross-fire despite having made a *bona fide* and timely payment of tax in one State
 - As the quantum of tax will also be identical, there is also no question of evasion of tax, and there is only an issue of where the tax is rightly payable
- This is also exacerbated by the fact there is no contemplation of an adjustment of tax paid in one State against tax paid in another State
 - Instead, there is a mandatory 10% & 20% pre-deposit at the level of the 1st, 2nd appeal respectively (unlike the earlier provisions where tax already paid in another State had to be taken into account, while determining the quantum of pre-deposit)
- Anti-profiteering mechanism set up in full, and receiving complaints from consumers, whereas the methodology for passing on benefits in pricing have yet to be prescribed
 - Whether price alteration to be undertaken at the product level, category level or SKU level
 - Non-GST factors (market conditions, pure commercial factors etc.) to be taken into account
 - Base date to be taken as a referral point
 - De minimis / tolerance percentage

THANK YOU

SHOULD YOU HAVE ANY QUERIES, YOU ARE WELCOME TO
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