



## Media and Entertainment sector Impact of Goods and Services Tax (GST)

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# Background of GST

# Evolution of GST worldwide

- VAT/ GST - indirect tax system in more than 150 countries
- Global average rate is 18 percent
- The rate varies from 8 percent in Japan to 25 percent in Sweden, Hungary at 27%
- Canada and Brazil evolved "DUAL GST STRUCTURE"

## In 1918

- German Industrialist proposed the concept of VAT
- Envisioned a sales tax on goods that did not affect the cost of manufacture or distribution but was collected on the final price charged to the consumer

## In 1954

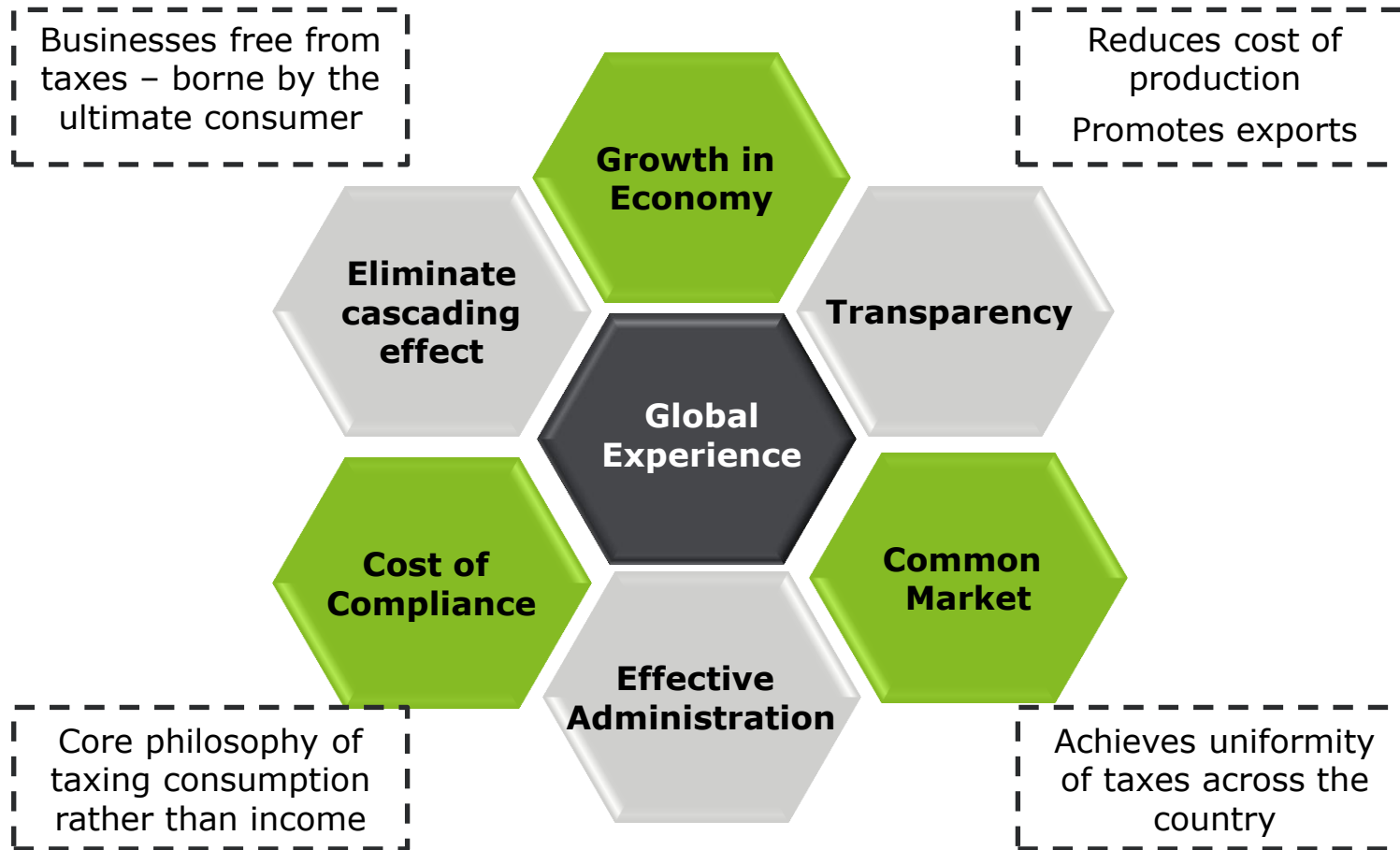
- France became the first country to adopt this tax in April 1954

## In 1973

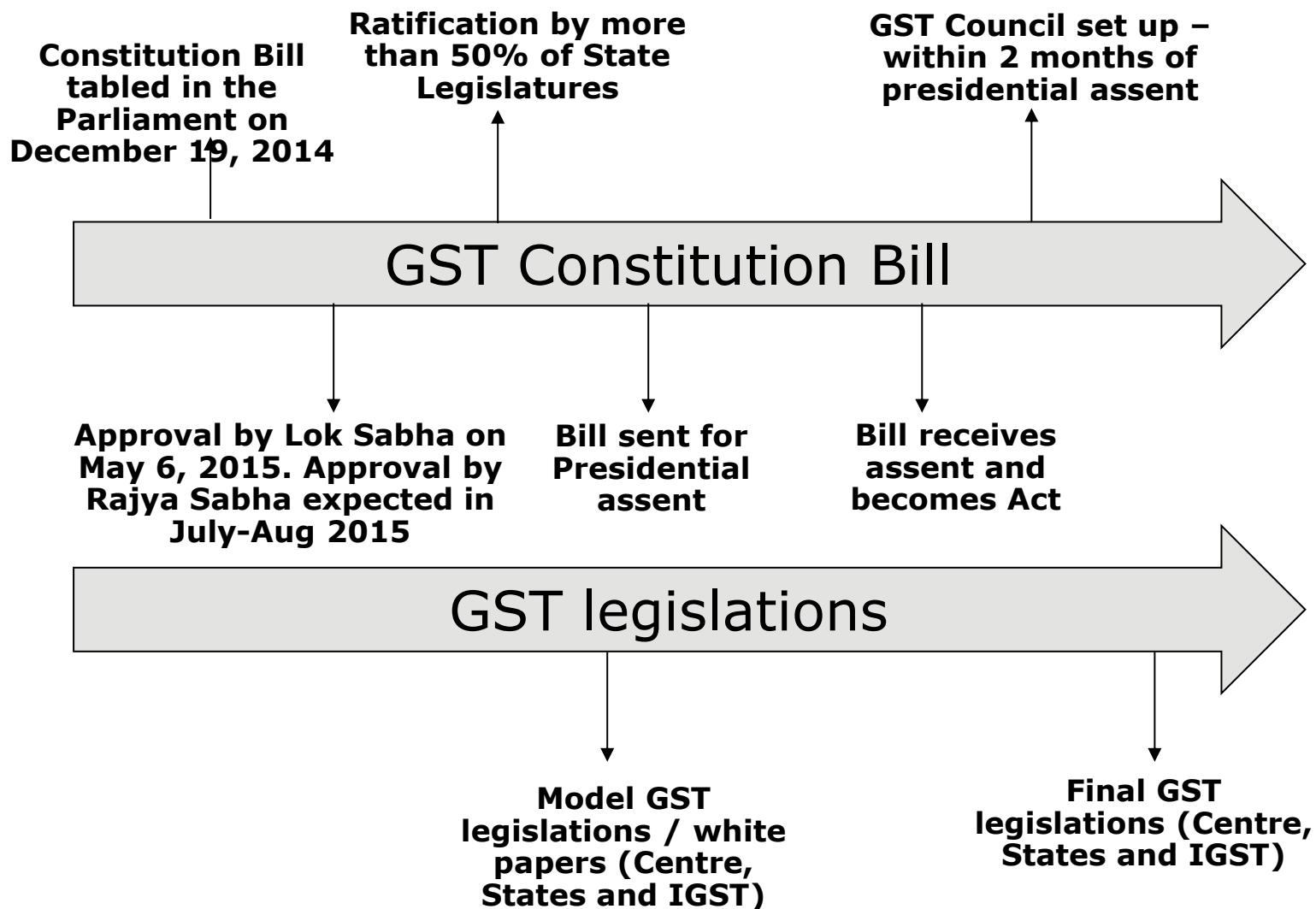
- UK joined the European Union and replaced the existing sale tax with VAT

**GST also referred to as VAT in various countries**

# GST Global Experience



# GST Roadmap: 2015 - 2016



# GST Roadmap: 2016 - 2017

## ACTION STEPS FOR GOVERNMENT

- Creation of GST council approved by cabinet on September 12, 2016
- First meeting of GST council headed by union Finance minister held on September 22, 2016

September to October

- FAQs released by CBEC on GST
- Draft rules & formats released for invoicing, registration, refunds, returns and payments

Roll out of CGST & IGST Bills by Centre, SGST Bills by States

November to January

Rollout of GSTN and IT infrastructure by States  
Notification of GST rates for Goods and Services

February to June

**Nationwide GST roll out**

1 July 2017

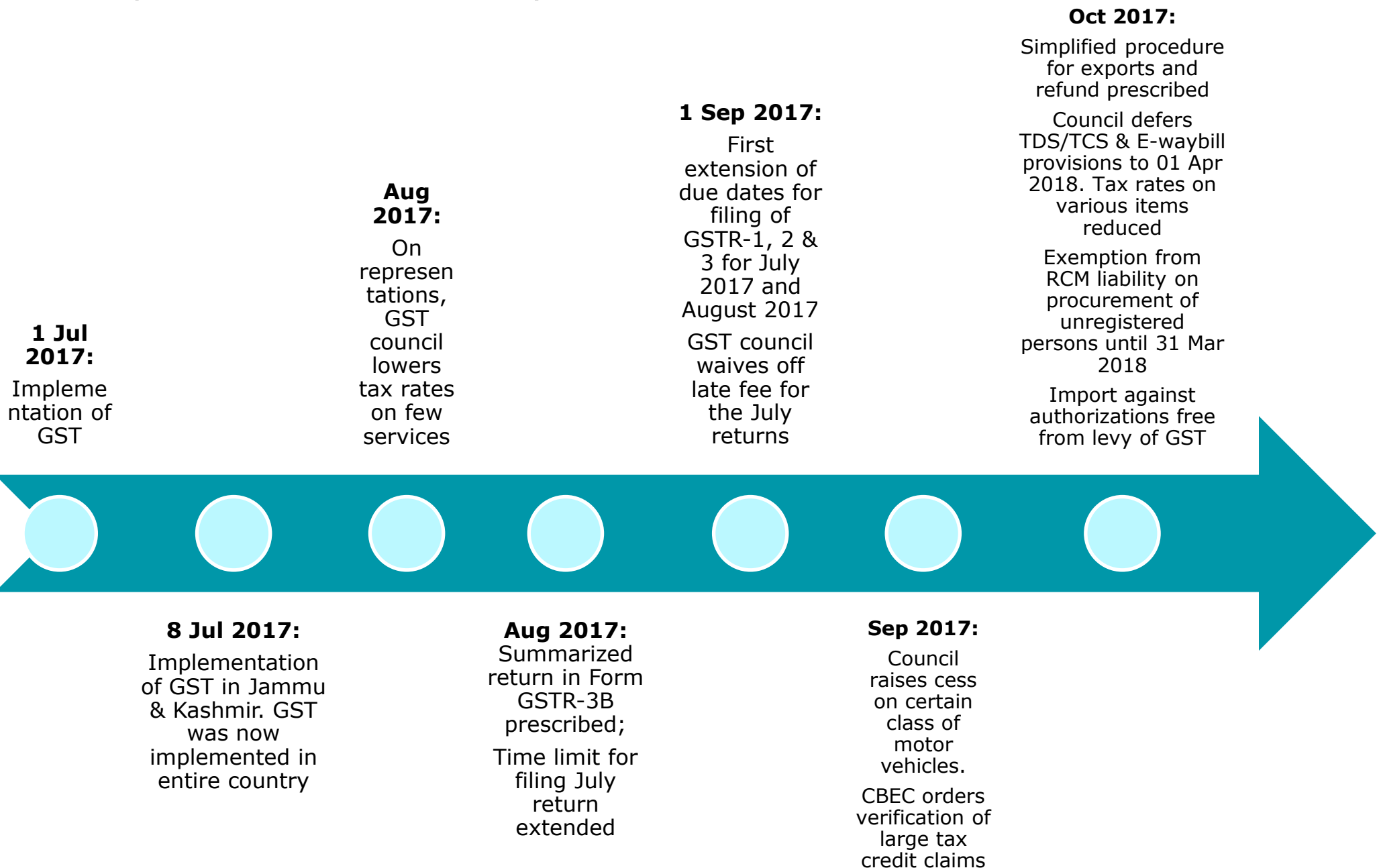
# GST Implementation: July 2017

- GST was introduced in India on 1 July 2017 and was applicable throughout the country except in the state of Jammu & Kashmir where it was introduced on 8 July 2017
- Introduction of GST is a significant step in the field of Indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market
- At present, GST applies to all goods and services except the following:
  - Alcoholic liquor for human consumption
  - Five petroleum products, viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel.
  - Electricity
  - Real Estate



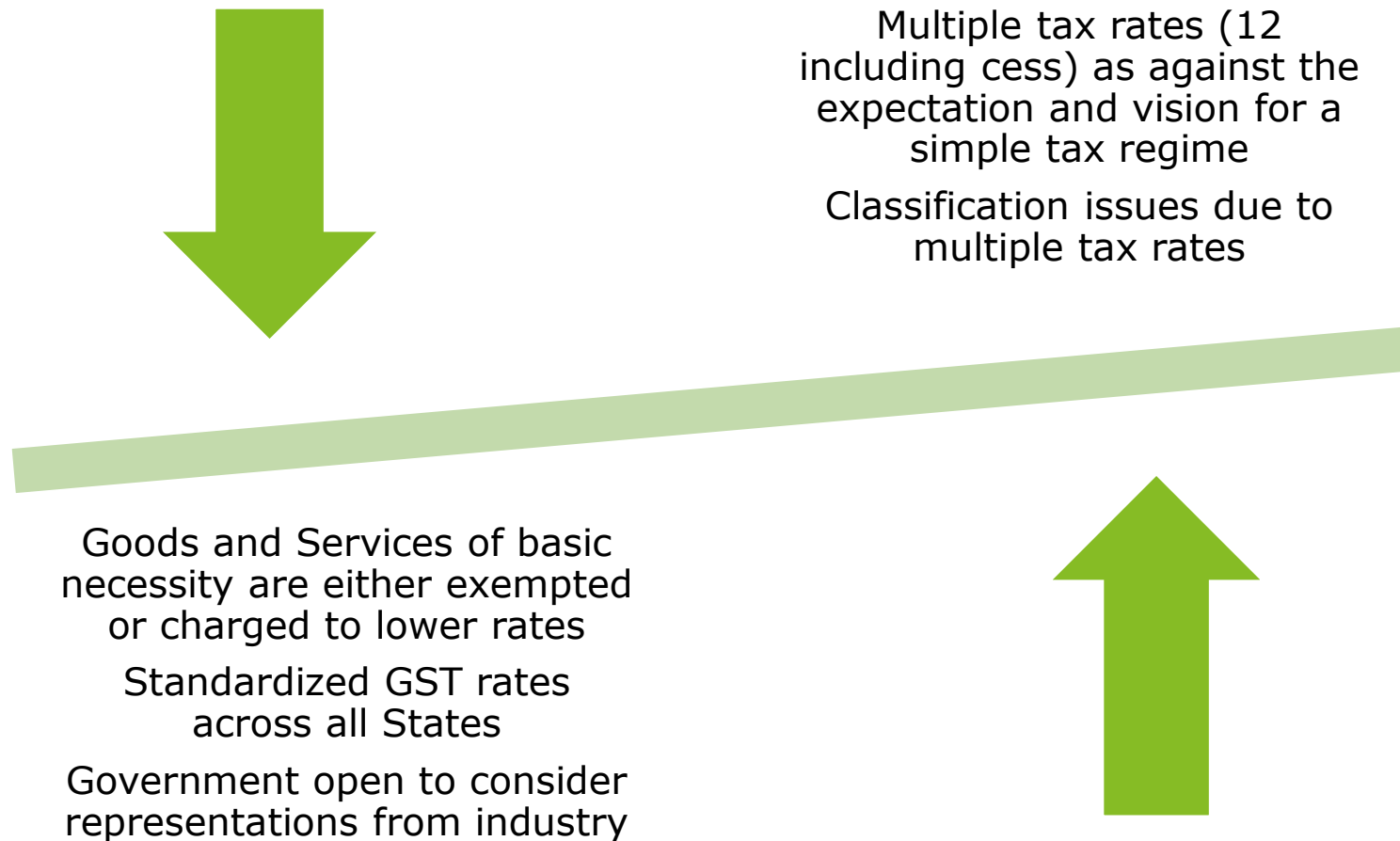
# Post Implementation: Journey so far

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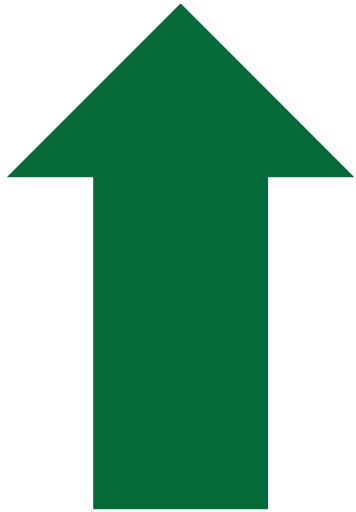
**120 days of GST**

# Gains & Pains : GST Rates



**Clear policy on rates will bring stability and certainty**

## Gains & Pains : Registration



Majority of the taxpayers under various Indirect tax regime were successfully migrated to GST and the process of obtaining new GST registrations was also fairly smooth



No centralized registration option for service providers

No composition scheme for service providers

Functionality for registration by non-resident OIDAR service providers still awaited

# Gains & Pains : Transitional Credit

## Gains

The GST law allows transfer of entire eligible credit from previous law to GST

The law also enable certain taxpayers to claim credit of goods in stock procured in past one year

For ease of taxpayers, the due date for filing of TRAN-1 is extended up to 30 November 2017 and the taxpayers are also allowed to revise the transitional form once

## Pains

Taxpayers faced cash flow issue during the first month of GST implementation due to delay in release of transitional forms

The facility for filing of TRAN-2 to claim deemed credit is not available yet

From law perspective, there is ambiguity over carry forward of credit pertaining to various cess discharged under previous regime

Similarly, taxpayers are not allowed to claim transitional credit of stock older than one year. This has been challenged and the writ petition is pending with Gujarat High Court

The most upsetting aspect has been the letters issued by the tax department for verification of transitional credits

# Gains & Pains : Compliance



- Extension of due dates for return filing
- Option to file a simpler GSTR 3B (which will be followed by detailed return) in initial period of GST implementation
- Validations on GSTN portal to ensure sanitization of data to be filed prior to filing of return. This would help reduce lot of rectification and corrections
- Auto population of data in GSTR 2A based on GSTR 1 of supplier; GSTR 3 based on GSTR 1 and GSTR 2 of the registered person
- No late fee or penalty in case of delay in filing of first quarter GSTR 3B return



- Significant increase in monthly compliances especially for service providers
- Requirement to upload invoice wise data in the return
- Limit in file size and number of invoices that can be uploaded at a time (offline utility only works with maximum of 14 to 15k invoice entries even though the prescribed limit is 19k)
- If a return for a particular month is not filed, then taxpayers cannot file returns for all subsequent months

**Compliance has been time consuming and a major worry for the industry during the initial months**

## Gains & Pains : Compliance



- Single interface and portal for all GST related activities
- Facility to upload data through various sources i.e. the offline utility, GST Suvidha Providers or manually
- Real time matching of inward and outward details for input tax credit



- Limited access to the GST Suvidha Providers (GSP)
- Site crash / downtime and automatic and unexpected log-off
- Functionality for certain registrations (OIDAR etc.), advance ruling applications etc. still not available

**GST Network is the IT backbone of Government and hence, the success of GST is entirely dependent on preparedness and functioning of GST Network**



# GST – a fertile ground for litigation

## Duty Exemption / Remission Scheme Under FTP

- Delhi HC granted interim relief to exporter by allowing imports under Advance Authorisation sans IGST payment
- Subsequently, government issued notification providing exemption from IGST and Compensation cess to EOU's and importers importing against Advance Authorization until 31 March 2018

## Clean Energy Cess

- Petition has been filed against dual levy of cess for stocks of coal on which Clean Energy Cess was already paid and no input tax credit is available and effective 1 July 2017, such stock will attract GST Compensation cess also

## Ocean Freight

- A writ has been filed challenging the levy of IGST payable by an importer on services relating to transportation of goods by a vessel from a place outside India to Indian when provided by a foreign shipping line to a non-resident

## Export of Services – Distinct person

- A writ has been filed by a foreign branch of DBS Bank in India challenging the levy of IGST on the services provided to its Head Office situated abroad. The government has this week promised to look into it and address the issue at the upcoming GST council meeting.

## Transitional credit in respect of stock older than one year

- The petitioners have challenged the condition contained in clause (iv) of sub-section (3) of section 140 of the Central GST Act i.e. transitional credit cannot be claimed for goods procured prior to 1 July 2016

# **Key impact on Entertainment and Media sector**

# Exhibition of Films

## Pre-GST

- Movie tickets:
- Service tax or VAT was not levied on sale of movie tickets. However, state specific Entertainment tax ranging from 15% to 110% (with an average of 30%) was levied on sale of movie tickets
- Television:
- There was dual levy of service tax (15%) and Entertainment tax (in the range of 8-12%) on broadcasting services (D2H / Cable TV services)

## Post GST

- Movie Tickets:
- GST rate of 18% in case where price of tickets is INR 100 or less
- GST rate of 28% in case where price of tickets more than INR 100
- Television:
- Broadcasting services attract GST rate of 18%

## **Impact:**

### Entertainment tax subsumed under GST and fungibility of input tax credits:

Before GST regime, the tickets of films used to attract Entertainment Tax based on the State laws. No set off was provided for Entertainment Tax against Service Tax or VAT paid by the exhibitors on procurements and so the levies were cumulative and the ultimate customer used to bear the burden of taxes. With the introduction of GST, the entertainment tax levied by the State Government is subsumed, which may reduce the final cost of movie tickets to consumers in states where Entertainment tax was higher than GST rate

### Power provided to Municipality to Tax on entertainment and amusement:

Under GST regime, an authority is given to local bodies to levy and collect taxes on entertainment and amusement. This appears to be a backdoor entry of entertainment tax and if levied by the local bodies, would increase the cost to consumers.

For instance, Entertainment tax is levied in Tamil Nadu at the rate of 8% on Tamil Films and 20% on other films which results in significant increase in taxes on movie tickets. Also, levy of Entertainment tax leads to cascading effect of taxes since Entertainment tax amount would be included in the base value for levy of GST

# Exhibitors – Food & Beverages (F&B)



## **Pre-GST**

- There was an issue of dual levy of VAT and Service tax on supply of F&B at theatre counters. Though F&B were purchased outright by exhibitors and sold at counters, in certain cases there is an element of preparation involved (like preparing pop-corns, coffee etc.) and hence, service tax demands were raised on supply of F&B



## **Post GST**

- Supply of F&B over the counter at theaters is to be treated as restaurant services and levied to GST rate of 18% (A/c counters) and 12% (non- A/c counters)

## **Impact:**

Issues as regards classification of an activity as a sale of goods or services and levy of VAT or Service tax will go away

# Film Distribution

## Pre-GST

- Transfer of copyright for exhibition of movies in Theatre:
- Temporary transfer or permitting use or enjoyment of copyright relating to cinematograph films for exhibition in a cinema hall or theatre was chargeable to Service tax.
- IPR such as trademarks, copyrights were also treated as goods and attracted state VAT
- Grants of license for theatrical release was exempt from service tax
- Due to exemption from Service tax and VAT, producers incurred significant tax cost on procurement of goods/services including service tax charged by actors, technicians etc.
  
- Transfer of copyright for exhibition on Television:
- In case of certain lease of film/television content rights, there was a controversy as to whether the transactions were that of a sale of goods or provision of service and hence, there was an issue of dual levy of Service tax and VAT on transfer of copyright for exhibition on television

## Post GST

- Transfer of copyright for exhibition in Theatre and Television:
- Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods is to be treated as supply of services attracting GST rate of 12%

## **Impact:**

Issue on levy of service tax or VAT on license to use the copyright will go away and thereby the effective tax rate on such services will reduce

Levy of GST on grant of license for exhibition in theatre will necessitates an increase in working capital requirement but will also allow smooth flow of input tax credit in the value chain

# Advertisers

## Pre-GST

- Print media was exempt from service tax
- All other advertisement services were subject to service tax of 15%

## Post GST

- Selling of space for advertisement in print media attracts GST rate of 5%
- All other advertising services attract GST rate of 18%

### **Impact:**

No tax exemption to print media which enables them to now claim input credit on all services procured by them.

GST is in addition to the equalization levy introduced on online/digital advertising

# Artistes/Sponsorship/Brand Promotion

## Pre-GST

- Services of film artistes were liable to a service tax of **15% on forward charge basis**
- Sponsorship services, subject to certain exceptions attracted service tax
- Brand Promotion were also liable to service tax

## Post GST

- Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like, to be taxed at **18% GST on reverse charge basis**
- Supply of services by artistes other than above, to be taxed at **18% GST on forward charge basis**
- Sponsorship/Brand Promotion services will be liable to GST.

# Amusement Parks

- Indian amusement and theme park industry to be taxed at 28% under GST as against service tax of 15% along with entertainment tax of 1.5% to 110% previously
- The move to tax amusement parks at the highest rate appears to equate the sector with luxury entertainments like casinos, betting, race courses
- This move is overlooking the industry's role in creating social infrastructure and attracting tourism for the country





# Other Challenges and Open Issues

## **Registration**

- Facility of centralized registration is done away with which necessitates business to take state wise GST registration. Multiple registrations not only leads to increase in compliances but also complicate the transfer of services among offices of the same company

## **Input tax credit restrictions and accumulation**

- Production houses are not able to claim input tax credit on cost incurred at outdoor shooting locations where its does not have a GST registration. For instance, renting of immovable properties (shooting locations)
- ITC in respect of F&B, outdoor catering etc.is specifically restricted under GST which results in significant cost for production houses
- One more important issue is that in a case of a film producer or a television content producer, GST rate for films or television content is 12%. The major portion of input in a film or a TV serial is services given by artists, technicians and other persons and various rentals paid which attract 18% GST. So major inputs are received with 18% GST credit but the output is charged at 12% GST rate. In case a film does not fair well or could not be exploited to the extent of a breakeven level, ITC of GST paid will remain unutilized and may have to be written off. Similarly, in a case of TV serials, which cannot be sold at a remunerative price, ITC may remain unutilized

# Other Challenges and Open Issues

## **Value of supply for barter and exchange transactions**

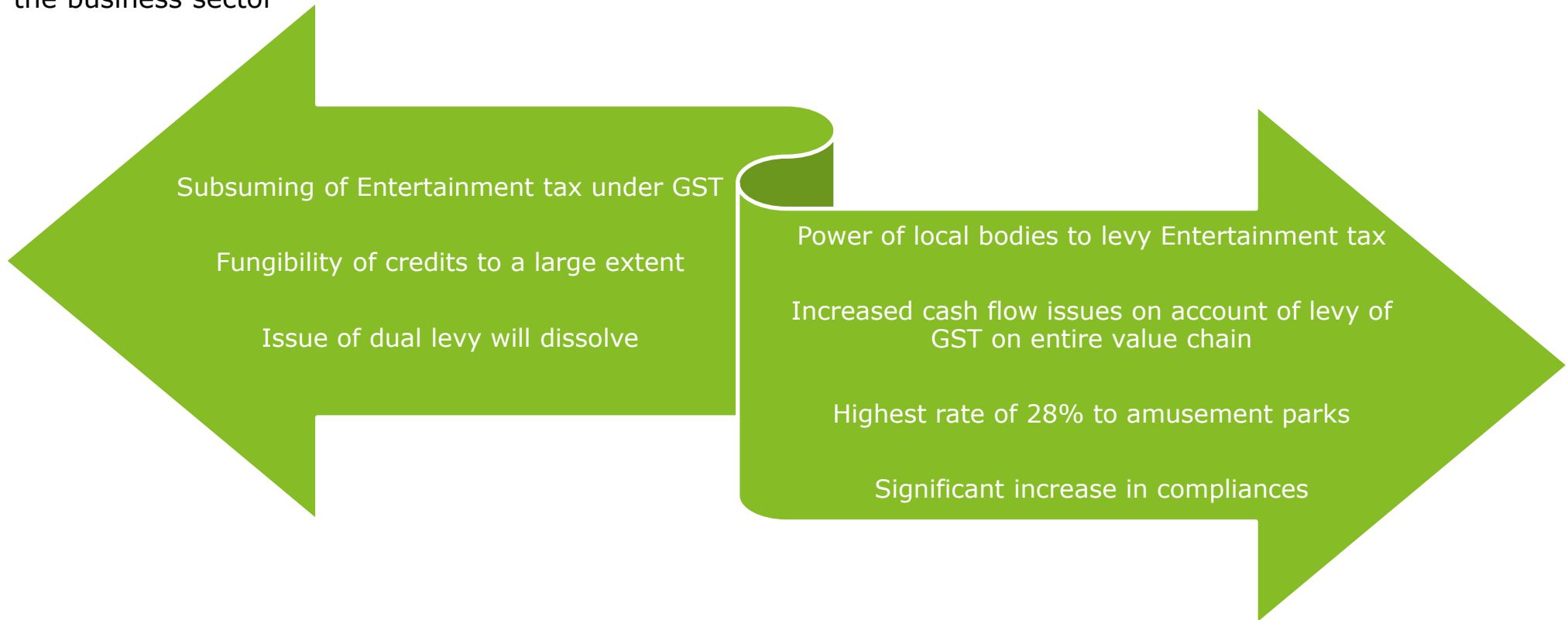
- Barter and exchange transactions are a common arrangement in Media and Entertainment Industry wherein the production houses often take free movie ticket codes from exhibitors for promotional activity against transfer of copyright of films.
- As per the valuation rules, the value of free ticket codes at the time of supply is to be included in the value of transfer of copyright. However, it is difficult to determine the value of free movie ticket codes at the time of supply since, typically, the recipients who are given the free movie tickets (as promo codes) can use the same to book a movie show for any time at multiple locations. The ticket rates fixed by the exhibitor for different show timings and different locations would differ and hence, it is difficult to determine the value of free movie ticket codes at the time of supply

## **States not entitled to grant tax exemption Status**

- It has been a practice of many States to give an exemption for regional films as well as films spreading positive messages to Society to give relief of entertainment tax or to grant an exemption for a period. This power of the State will get abolished as GST will be levied and the State may not be able to give relief to such films

# Overall Impact

The impact of GST on the entertainment industry can be both positive and negative, depending on the state and the business sector



The film industry stands to benefit significantly with the introduction of GST. The overall reduction of cascading effect of taxes should have a positive effect on the cost of production / distribution and exhibition of films. However, concerns remain on specific areas such as increased cash flow issues on account of levy of GST on entire value chain and significant increase in compliances (like registration, return filing and tax payment).

Additionally, one need to wait to see, the extent of power exercised by local bodies / municipality to levy Entertainment tax to analyze the exact impact of GST on the industry

On the other hand, amusement parks which is one of the major source of entertainment is on the receiving end of the new tax due to increase in the rate of tax

# Advocacy

- Input tax credit restriction – due to non-availability of local GST registration
- Inter branch supply of services – determining the place of supply as well as the valuation
- States should not be given right to levy local taxes post GST implementation
- Anti-profiteering – how can the industry substantiate that the benefit of GST has been passed on

# Anti-profiteering

# India's GST Anti-Profiteering Framework

## Overview

- Anti-Profiteering provisions in the CGST Law (s171) and state laws envisage restrictions on "passing on":
  - Reduction in rate of taxes and/or
  - Benefit of input tax creditby way of commensurate reduction in prices
- The Ministry of Finance has recently released the "Anti-Profiteering Rules" providing an administrative framework, but has NOT YET defined a methodology by which Anti-Profiteering behavior is to be defined
- The Rules envisage the setting up of a 'National Anti Profiteering Authority' to examine whether the reduction in tax rates or benefit of input tax credits have actually resulted in reduction in prices
  - Calculation methodology and protocols are awaited
- Anti Profiteering Authority can act in following situations and ask for details
  - On the basis of any one's complaint against any seller earning out of GST
  - In the course of their supervision, they are of the view that seller is making gains out of GST credit and is not "passing on" these by reducing prices.

# Anti-profiteering challenges and its impact on revenue

## Practical Challenges

Anti-profiteering at

- i. Organization level or
- ii. SKU level ?

Profits could be compared in absolute terms or percentage terms?

MRP of products is not being increased by industry players atleast for transition period to avoid attention of authorities

Transition inventory with dealers / distributors - brands intend to share losses borne by distributors in some proportion by providing rebates etc.

# Questions





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