

Article

Why India needs GST?

Vinod Kothari
vinod@vinodkothari.com
Vinod Kothari & Company

Check at: www.india-financing.com/staffpublications.htm for more write ups.

Copyright:

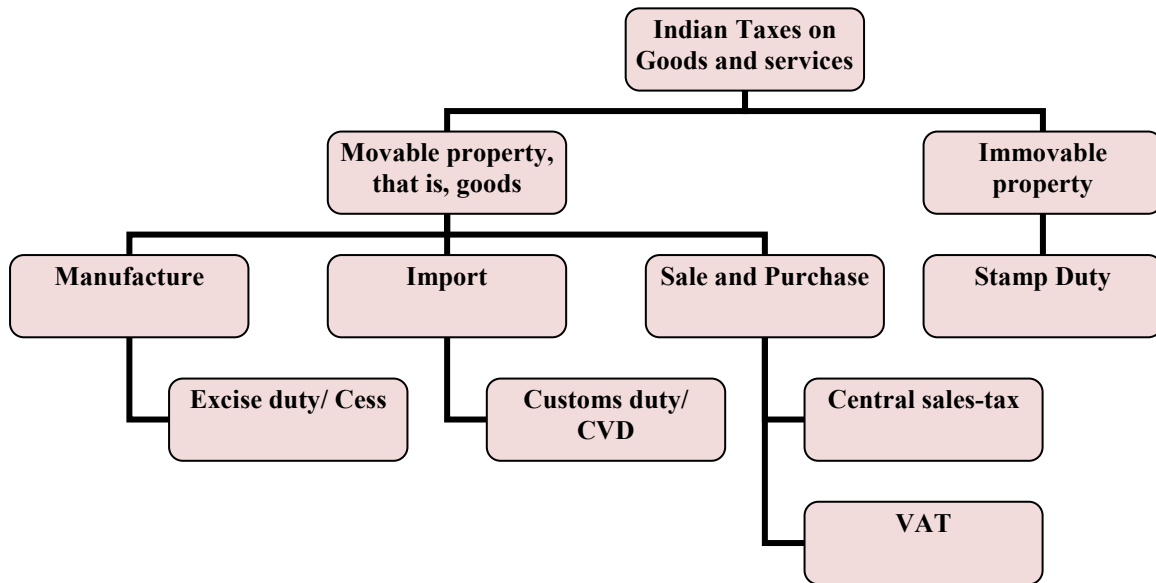
This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.

Article

The current tax system in India is a coat of many colours as shown by the graph below:



There are different taxes through which a commercial transaction of immovable property, goods or services passes. While there are set-offs amidst some of these taxes –for example, central excise and service tax are mutually offsettable, there are no mutual set-offs among most of the other taxes. For example, sales-tax cannot be offset against service tax or vice versa. Sales-tax cannot be offset against excise or customs.

The present tax system has become unduly complex and cumbersome, both for the tax collectors as well as the tax payers. Some of the complexities arising out of the disjointed tax system are as follows:

Confusion as to which tax applicable, duplication of taxes:

The biggest problem of the disjointed tax system is a total confusion as to which transaction is liable to what type of taxes. With complexity of transactions taking place in the present day world, many commercial transactions are not clear as to which domain do they belong to. More and more invisible, technology-assisted goods and services are entering the market. To cite some examples:

Article

- a. A mobile telephone company provides sim cards that connect users to the network. Is this a service? Certainly yes, as it is defined as such in service tax laws. Is it also a sale, since transfer of right to use goods is also liable to sales-tax? The controversy has reached Supreme Court more than once – in the case of Bharat Sanchar Nigam, and in the case of Hutchinson.
- b. Telecom companies provide sharing of telecom cables/ telecom towers. Is this a case of sale? Or is it a case of service?
- c. More mundane transactions like photocopying services – is it a case of service or sale? The matter has been debated by the Supreme court several times – for instance, in the case of Ruby Sales, Tata Consultancy, Imaging Creative, etc.
- d. Lately, Supreme Court has been holding that the same transaction cannot be chargeable to sales-tax and service tax both. However, first of all, it is not clear for many transactions as to whether it falls under sales-tax or service tax, and two, if assuming that a tax payer pays sales-tax believing it to be taxable as such, that does not stop the service tax department from levying service tax. Tax disputes drag for years – so, one may discover after good 10 years that the transaction that one was charging to sales-tax was in fact chargeable to service tax. This takes away the whole sanctity of indirect taxation – which is supposed to be passed on the consumer. In absence of basic clarity as to taxability, there is no way one can pass on such taxes.

Complexity of state-specific taxation and lack of uniformity:

The existing model of states levying sales-tax/VAT and inter-state transactions being charged to CST does not have any uniformity of taxes in the country at all. When VAT was introduced, there were tall promises of federal harmony in taxation. With 7 years of implementation of VAT, there is no harmony whatsoever. Rates of taxes differ on the same goods in different states. Complexities and technical provisions also differ. Besides, CST remains as a sunk cost adding to the total price of goods.

*Article***Cascading burden of taxes:**

As there is no set off of central excise or service tax, goods that have passed through chains of manufacturing or provision of services would have already suffered these taxes. On sale of these goods, there is a cascading burden of taxes.

In short, the system of taxation in India is extremely complicated and full of uncertainty.

Lot of overseas investments have entered India and the world sees India as an attractive destination. For most persons who get into business in India, indirect taxation remains a nightmare. Most overseas players cannot digest the fact that the tax officers or tax consultants should not have definitive views about matters.

It is, therefore, of utmost importance that India moves to a unified goods and services tax.

Links:

- **Article by the author on Supreme Court ruling breaking barrier between sale and service:**
<http://www.stvat.com/strvat/pages/article/arhart/scruling.htm>

Contact us:

Vinod Kothari & Company

1012, Krishna

224, AJC Bose Road

Kolkata -700 017

Ph: 033-2281-7715/3742/1276

Email Ids- vinod@vinodkothari.com; nidhi@vinodkothari.com