GST Regime: Impact on Agreements

GST will be the biggest reform in the Indian tax legislature. It can rightly be given nomenclature as the "Sanjeevni" for the ailing Indian Economy. As the business and trade of the country gears up to take in stride a vast array of resultant changes under the forthcoming GST regime, one important aspect to be considered is the contracts and agreements entered into under the new regime. This article prima facie focuses on review of contracts and agreements and the related cumbersome tasks with which the in-house legal teams / corporate legal cells will be flooded with. GST will call upon review of all contracts and agreements entered by the Companies. A number of key points will have to be kept in mind while entering into future agreements since these agreements will spell the taxing point under GST regime. Careful structuring of the agreements in GST scenario may prove out to add savings to organisations and avoid litigations. Read on to know more...

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GST is a comprehensive consumption tax on goods and services. It will cover in its ambit all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

GST will be the biggest reform in the Indian tax legislature. It can rightly be given nomenclature as the *"Sanjeevni"* for the ailing Indian Economy. A game-changer in itself, GST will significantly restructure the power to tax between Union and State Governments and substantially expand the tax-coverage and revenue. It will reduce the cascading effect of tax on the cost of goods and services and will have significant impact on the point of taxation, tax structure, tax computation, tax payment, tax compliance, credit utilisation and reporting. It is expected to bring about a sea change in almost all fields, be it finance function, IT infrastructure or supply chain, and would virtually touch base and have impact on almost all functions of business.

GST is likely to be implemented from 1st July 2017 and in order to make it effective at the earliest, Government has taken a series of speedy decisions and steps. GST council has already been set up and with the announcement of rates (5% being rate for merit goods & Services, 12% for standard goods & services, 18% again being standard rate and 28% for the sin goods or the luxury goods including luxury goods, tobacco products and aerated drinks), initiation of registration process, GST is all set to come to life soon.

Corporates also need to gear up for this radical change and equip themselves with the processes to take into account a number of change areas required under the new tax regime. Many companies have already taken cognisance of the multitude of changes under GST.

Chartered Accountants will have a prominent role under GST regime. They will be required to understand the intricacies of GST in their respective fields and provide professional services to the Companies.

One important area that needs special consideration involves review of contracts and agreements and the related cumbersome tasks with which the in-house legal teams / corporate legal cells will be flooded with. The new regime would require review of all contracts and agreements entered into by the Companies and keep in mind several new aspects while entering into future agreements since these agreements will spell the taxing point under GST regime. Careful structuring of the agreements in GST scenario may prove out to add savings to organisations and avoid litigations.

Alignment of all various clauses in the contract/ agreement with the GST will be a pre-requisite. Each agreement needs to be analysed individually. The whole set of the agreements entered earlier needs to be revisited, so as to derive the GST affected clauses. One needs to classify the agreements as reviewable (those which can be amended) and non reviewable (the terms of which cannot be varied). Following points may be considered in amending the reviewable contracts entered earlier and before entering into new arrangements in the GST environment:

(A) Changes in Purchase Agreements

- **Representation and Warranties Clause:**
  - Representation to be taken from the Vendors that they are registered under GST and compliant of GST provisions so that our taking of input tax credit becomes hassle free.
- **Indemnity Clause:**
  - An indemnity clause to safeguard that in case of non compliance by the Vendor of the GST provisions and blockage of any input tax credit, he shall be liable to indemnify the organisation, should be well provided in the contracts.
- **Provision for raising Debit Notes:**
  - A clause to the effect that in case in future GST liability is to be borne by the recipient, and the same can be claimed from the Vendors by way of raising debit notes, may be provided to safeguard from uncertain events.
- **Review / Audit Right:**
  - A right to review the Vendor/ supplier documents to ensure that they are tax-compliant may be provided in the agreement.

(B) Changes in Sales Agreements

- **Sales Agreement:**
  - Agreements need to set out a clause that the consideration payable by the Party under the agreement represents the taxable supply for which payment is to be made. It needs to specifically provide that the GST will be levied over and above the consideration so as to avoid any ambiguity in receivables.
- **Sales Agreement with Government:**
  - Agreements for Government tenders and other

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supplies are generally all-inclusive contracts. There might be some long term contracts which were in mid of supplies of goods/services by the Company and bearing the taxes under GST could increase the burden. Such contracts hence call for proactively revisiting and making amendments thereof.

- **Stock Transfers to Branch and Consignment Sales:**
  - Agreements with consignment agents need to be redrafted. The very concept of Form F will lose its relevance. The stock transfers to branch or consignment agent from one state to another state will now be regarded as taxable supply. The branch/ Consignment agent will, however, be able to claim the input tax credit under the GST scenario. Thus, the agreement needs to be accordingly amended to bring in this aspect.
- **Dealer Sales Agreements:**
  - Dealership agreements are very common in automobiles, apparels, fast-moving consumer goods, pharmaceutical and chemicals sector. Trade discounts or incentives to wholesalers and agents to push sales targets may not be deducted from turnover to be taxed under the goods and services tax (GST) Act. Such agreements need to be relooked from the angle of bulk discounts/ rebates being provided to the dealers. Hence, review of the existing dealer schemes for GST compatibility and properly wording the agreements to remove scope of doubt or ambiguity will remain crucial.

(C) Changes in Service Agreements for Service Providers:

- **All Exclusive GST Clause:**
  - Over half the nation's GDP comprises the services sector. GST will drastically impact the services sector. In GST Regime, most of the services which were exempted are expected to be phased out. Further, services which were taxed mostly at 15% are expected to be increased under the GST regime as most services will be taxed at Standard GST rate expected to be around 18% except a few at 12%. It must be clearly mentioned in the contract that the tax imposed under GST would be charged and recovered separately. Hence, a clause to the effect that in future GST liability is to be borne by the recipient of the services must be provided to safeguard the service providers from bearing the tax burdens.
- **Service Agreements with Government:**
  - Agreements entered with Government are generally long-run. Existing contracts of long-run nature with Government Parties which are mostly all tax inclusive contracts, may face the very question of viability. In such cases, it will be needed to properly evaluate the agreements and discuss with the counterpart and come up with proper amendments in the running agreements.
- **Changes in export service agreements:**
  - All existing contracts need to be relooked in the backdrop of changes in GST. Though exports will be exempted under GST, there will be change in timing difference. Some of the transactions may cease to be export of services under GST legislature. The importer of service outside India will not be interested to bear the additional expense on account of tax until the agreements are beforehand amended.

(D) Changes in Other Contracts

- **Job Work Contract**
  - The job work process is the backbone of most of the industry operations. The proposed GST law treats 'job work' as a service and seeks to maintain the existing excise procedures for job work transactions, i.e. non-taxability of job work transaction and providing credits to the principal for supplies to job worker, prescribed period for bringing back goods after job work, etc. Further, the works contract currently are the most complicated of all as they have an

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- **Business Transfer Asset (BTA) Contract:**
  - Definition of supply under GST includes transfer of business assets where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as to no longer form part of these assets, whether or not for a consideration. Business assets transferred for private/non business or without consideration or transfer of assets for recovery of debts constitute supply and will thus attract GST. The BTAs entered under the GST regime need a closer look on the relevant clauses in this regard.
- **No consideration / In Kind contribution Agreements:**
  - In GST Regime, transactions where in-kind contributions are being made or received, also form part of the Consideration for a supply and may also be subject to GST. Where no value is attached to these contributions, a commercial valuation must be used to account for GST. Hence, such agreements may now not necessarily remain "FREE" and will have an add-on cost of tax liability associated with them. Hence, the agreements relating to such transactions need to specifically spell the liability in the agreement and the Party expected to bear the same.
- **Hire Purchase Contract:**
  - Hire Purchase arrangements are essential for business houses for acquiring assets with lower pumping of cash. Hire Purchase Agreement is same as a "Conditional Sale Agreement" wherein the ownership of the goods does not pass until payment of last instalment. Hire Purchase transactions are currently taxable under Section 66 of Finance Act, 1994. Such agreements need to be relooked and suitably amended to suit the GST provisions.
- **High Sea Sales Agreement:**
  - Most of the high sea sales agreements will lose their relevance in the post GST scenario. The very concept of tax advantage which gives rise to the high sea sales agreements in import of goods will no more be the case in GST regime, where tax credit will be available to the traders/ non-manufacturers as well. Thus, there will be a need to revisit all the existing high sea sales agreements and to do away with the unnecessary ones.

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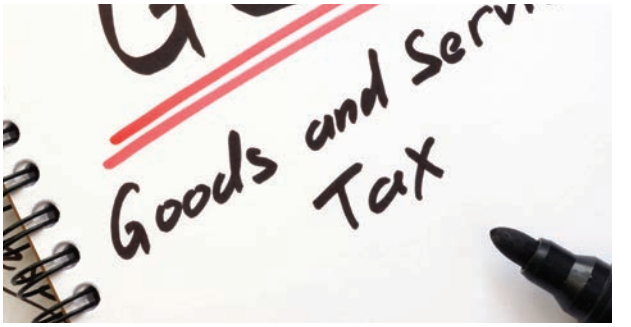

To sum up, GST will provide ample opportunities to professionals, both working with corporates and having their own practice. For professional colleagues in practice, this new tax regime will offer lot many new areas to act upon. After the *"One India, One Tax"* rule is applicable, Indian accountants' professional horizons will broaden to a great extent. Since the Act is not related to any particular state but the rules and regulation are all similar across the nation, it will surely provide a wider platform for accounting professionals to perform. There will be opportunities ranging right from consulting clients on analysing impact of GST to helping them seek registration, filing returns or conducting special audits referred to in Model GST Laws.

For professionals linked with corporates, there exist multiple opportunities in the form of adding value to the entire value chain, partnering in taking critical decisions of single or multiple registration requirement, filing of the returns and dealing with transitional issues.

Last but not the least, reviewing the existing agreements will surely be a pre-requisite as we soon step into the GST environment. At the same time, due diligence also needs to be exercised at the time of entering into the new agreements in the GST regime. ■