

# GST – Constitutional Provisions and Features of Constitution (101<sup>st</sup> Amendment) Act, 2016



# 101st Constitution Amendment Act

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- Under current regime - Centre levies Excise duty on manufacture, Service tax on services etc. while States levy VAT, Entry Tax, Luxury Tax etc.
- **Need for 101<sup>st</sup> Constitution Amendment Act**
  - Create a unified system of taxation by subsuming existing indirect taxes and duties;
  - Assigning concurrent powers to Centre and States to levy GST on all supplies of goods or services or both.



## Timeline

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- Constitution (101st Amendment) Act, 2016 passed on 08.09.2016;
- GOI appointed 16 Sept. 2016 as the date on which the provisions of the Constitution Act shall come into force; and with 1 year deadline for existing provisions to continue till 15<sup>th</sup> Sep, 2017.
- Section 12 of the Act (GST Council Provisions) made effective by GOI on 12<sup>th</sup> September 2016;
- First GST Council met on 22<sup>nd</sup> September 2016.



## Article 246 - Power of Union and State to make laws

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- Article 246 of the Indian Constitution, distributes legislative powers including taxation, between the Parliament of India and the State Legislatures;
  
- Schedule VII enumerates the subject matters on which the Parliament and States have the powers to make laws in three lists:
  - List I (Union List);
  - List II (State List); and
  - List III (Concurrent list)



## Schedule VII

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### List – I (Union List)

• Entailing subjects on which only the Parliament has the exclusive powers to make laws.

### List – II (State List)

• Entailing subjects on which only the State Legislatures are competent to make laws.

### List – III (Concurrent List)

• Entailing subjects on which both the Parliament and the State Legislatures are competent to make laws.



## Article 254

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### **Inconsistency between laws made by Parliament and laws made by the Legislatures of States:**

- If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List:
  - The law made by Parliament shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.



# Article 246A - Power to impose GST [New Provisions]

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246A(1)

Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such state

246A(2)

Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation

In respect of goods and services tax referred to in clause (5) of article 279A, Article 246A will take effect from the date recommended by the Goods and Services Tax Council.'

Goods under  
279A(5)

Petroleum crude, High Speed Diesel, Motor Spirit (commonly known as petrol), Natural Gas and Aviation Turbine Fuel



## Levy and collection of GST in course of inter-State trade or commerce – Article 269A

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- GST shall be levied and collected by the Central Government and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of GST Council.
- Supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply in the course of inter-State trade or commerce
- Parliament will formulate the principles for determining the place of supply, and when a supply takes place in the course of inter-State trade or commerce.





## GST Council – Article 279A

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- Article 279A provides for constituting a council called the Goods and Services Tax council within 60 days from date of commencement of 101<sup>st</sup> Constitution Amendment Act, 2016.
  
- **Members are as follows :-**
  - (a) the Union Finance Minister as Chairperson;
  - (b) the Union Minister of State in charge of Revenue or Finance;
  - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.
  - (d) Vice Chairperson to be chosen among the members.



# GST Council – Recommendations

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## GST Council can make recommendations on the following:

The taxes, cesses and surcharges that may be subsumed;

The goods and services that may be subjected to or exempted from GST;

Model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied under Article 269A and the principles that govern the place of supply;

The threshold limit of turnover below which goods and services may be exempted;

Rates, floor rates, band, special rates;

Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand

Date on which GST be levied on petroleum crude, HSD, Petrol, natural gas and ATF and

Any other matter relating to the goods and services tax, as the Council may decide.



# GST Council Meetings

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## Quorum:

One-half of the total number of Members of the Goods and Services Tax Council.

All decisions by a majority of not less than three-fourths of the weighted votes of the members present and voting

## Weightage of votes:

Central Government – 1/3<sup>rd</sup> of the total votes cast, and

State Governments – 2/3<sup>rd</sup> of the total votes cast.

## Other important roles of GST Council:

The GST Council to be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

GST Council to devise mechanisms to adjudicate disputes arising between the Centre and States.



## Definition of GST

### Constitution (101<sup>st</sup> Amendment) Act, 2017

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**366(12A)**

**“Goods and services tax”** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption



## GST – Other Changes in Definition

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SI No	Definition	Article	Definition
1.	Service	366 (26A)	Anything other than goods
2.	State	366 (26B)	With reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature.
3.	Goods	366 (12)	includes all materials, commodities, and articles [Definition Already Present prior to 101 Constitutional amendment]
4.	Supply	Not Defined!	



# Amendments to List I vide 101st Constitutional Amendment Act

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Entry	Provision prior to amendment	Amendment
Entry 84	<p>Duties of excise on tobacco and other goods manufactured or produced in India except:</p> <p>(a) alcoholic liquors for human consumption;</p> <p>(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in subparagraph (b) of this entry</p>	<p>Duties of excise on the following goods manufactured or produced in India, namely:</p> <p>(a) petroleum crude;</p> <p>(b) high speed diesel;</p> <p>(c) motor spirit (commonly known as petrol); (d) natural gas;</p> <p>(e) aviation turbine fuel; and</p> <p>(f) tobacco and tobacco products."</p>



## Amendments to List I Cont...

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Entry	Provision prior to amendment	Amendment
Entry 92	Taxes on sale or purchase of newspaper and advertisements published therein	Omitted
Entry 92 C	Taxes on services	Omitted
Entry 92 A	Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.	No Change
Entry 92 B	Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.	No Change



## Amendments to List II

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Entry	Provision prior to amendment	Amendment
Entry 52	Taxes on the entry of goods into a local area for consumption, use or sale therein. (Octroi / Entry Tax)	Omitted
Entry 55	Taxes on advertisements other than advertisements published in the newspapers [and advertisements broadcast by radio or television].	Omitted





## Amendments to List II

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Entry	Provision prior to amendment	Amendment
Entry 54	Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.	Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods
Entry 62	Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.	Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.



## Article 286 – Restrictions on the States to impose tax

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- Prior to amendment, the clause restricted the states to impose taxes on sale or purchase of goods.
- Now it has been amended to provide that the state shall not impose any tax on the supply of the goods or services or both, where such supply takes place:
  - a. Outside the State
  - b. in the course of the import of the goods into, or export of the goods out of, the territory of India
- Further, the Parliament will formulate the principals for determining when a supply constitutes a supply as mentioned in the point above.
- **Marginal Note to the Section has not been amended.** It still reads *“Restrictions as to imposition of tax on the sale or purchase of goods”*



## Other Amendments

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SI No	Article	Provision as it stood prior to 101 <sup>st</sup> Constitutional Amendment	Amendment
1.	248	Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.	The Power of the Parliament has been made subject to Article 246A. In other words, residuary power of the Parliament will not affect the State's power to levy Goods and Service Tax under Article 246A.
2.	249	If Rajya Sabha has declared by resolution in national interest that Parliament should make laws with respect to any matter enumerated in the State List, Parliament can make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.	The resolution of Rajya Sabha can mandate the Parliament to make laws with respect to GST as provided in Article 246A also and not just restrict the same to matters specified in State List.



## Other Amendments

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SI No	Article	Provision as it stood prior to 101 <sup>st</sup> Constitutional Amendment	Amendment
3.	250	Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws with respect to any of the matters enumerated in the State List	This Power of the Parliament has been extended to Goods and Service Tax under Article 246A
4.	268	Stamp duties and excise duty on medicinal and toilet preparations shall be levied by the Government of India but shall be collected by states where such duties are levied within a state	Duties of excise on medicinal and toilet preparations has been deleted from this Article as GST subsumes the same
5.	268A	Taxes on services shall be levied by the Government of India	Service tax subsumed under GST and so Article 268A omitted



## Other Amendments

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SI No	Article	Provision as it stood prior to 101 <sup>st</sup> Constitutional Amendment	Amendment
6.	269	Taxes on the sale or purchase of goods / consignment of goods in the course of inter-state trade shall be levied and collected by Central Government but shall be assigned to the States.	This Article has been amended to exclude Goods on which is GST will be levied under Article 269A in the course of inter-state trade or commerce. Thus this Article will be effective for goods kept out of GST viz. crude, Petrol, HSD, ATF etc.
7.	270	Article 270 provides that a portion of all taxes and surcharges on such taxes that are levied and collected by the Central Government shall be distributed to the states in the manner that is prescribed.	This article has been amended to provide that the taxes collected by the Central Government under Article 246A(1) [CGST] shall also be distributed between the states in the manner prescribed. Further, the taxes collected IGST which has been used in payment of CGST and the amount apportioned to central government in IGST shall also be distributed to the states.



## Other Amendments

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SI No	Article	Provision as it stood prior to 101 <sup>st</sup> Constitutional Amendment	Amendment
8.	271	Parliament has been provided with the power to levy surcharge on any of taxes and duties levied by it.	The power to levy a surcharge has not been extended to GST levied under Article 246A.
9.	368	Any amendment to the Constitution that seeks to make any changes that will affect the rights of states as enumerated in <i>Proviso</i> to Article 368(2) shall require ratification of state assemblies of not less than 50% of the states.	Article 279-A has been inserted in the <i>proviso</i> . Thus, any change that is sought to be made in relation to GST Council will require the ratification of not less than 50% of the states.



## Other Important Clauses

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- Parliament shall on the recommendation of the GST Council, provide for compensation to the States for loss of revenue arising on account of implementation of the GST for a period of five years.
- Any law relating to tax on goods or services in force in any State before the commencement of 101<sup>st</sup> Constitutional Amendment Act shall continue to be in force until amended or repealed by a competent Legislature or until expiration of one year from such commencement, whichever is earlier.