

Amendments proposed to the Constitution of India vide the Constitution (122nd) Amendment Bill, 2014

1. New Articles proposed to be inserted in the Constitution of India

- **Article 246A** - The Parliament and State Legislatures shall have power to make laws with respect to goods and services tax (GST) imposed by the Union or by such State. However, the Parliament shall have exclusive power to make laws with regard to GST where supply of goods or services or both takes place in the course of inter-state trade or commerce.

The above provision in as much pertaining to GST levied on petroleum crude, high speed diesel oil, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall take effect from the date recommended by the Goods and Service Tax Council (the Council).

- **Article 269A** – The GST for supplies in the course of inter-state trade or commerce to be levied and collected by the Government of India and shared between the Union and States on the basis recommended by the Council.

For the purpose of the aforesaid, supply of goods or services in the course of import shall be considered as deemed supplies in the course of inter-state trade or commerce.

Further, the principles determining the place of supply and when a supply of goods or services, or both take place in the course of inter-state trade or commerce shall be formulated by the Parliament.

- **Article 279A** – The President to constitute the Council within sixty days from date of commencement of the Constitution (122nd Amendment) Act 2014 (the Act). The Council, while discharging its functions, shall be guided by the need for a harmonised structure of GST for development of a national market.

Key aspects of the Council are as follows:

a. Members:

- Union Finance Minister – Chairperson
- Union Minister of State in charge of Revenue or Finance – Member
- The Minister in charge of Finance or Taxation or any other Minister as nominated by each State Government – Members
- One member as selected amongst the members in (iii) above – Vice Chairperson

b. Objective: To examine issues relating to GST and make recommendations to the Union and the States, on the following:-

- Taxes, cesses and surcharges levied by the Union, States and local bodies, which may be subsumed in GST
- Goods and services to be subjected to or exempted from GST
- Model GST laws, principles of levy, apportionment of Integrated GST and principles governing

- place of supply
 - Threshold limit of turnover below which goods and services may be exempted from GST
 - Rates including floor rates with bands of GST
 - Special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster
 - Special provisions with respect to States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand
 - Date on which GST is to be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel
 - Any other matter relating to GST as the Council may decide
- c. Quorum: One half of the total number of members of the Council
- d. Majority for decision making: A majority of not less than three fourths of the weighted votes of the members present and voting, in accordance to the principles as formulated in this regard.
- e. Proceedings not to be held invalid merely by reason of:
- i. Any vacant or defect in constitution of the Council
 - ii. Any defect in appointment of a person or member of the Council
 - iii. Any procedural irregularity of the Council not affecting the merits of the case.
- f. The Council shall determine the procedure in the performance of its functions and the modalities to resolve disputes arising out of its recommendations

2. Amendment of existing articles of the Constitution of India

Relevant excerpts of existing and amended articles		
Existing articles under the Indian Constitution	Proposed articles under the Indian Constitution	GT view on effect of the change
<p>Article 248 – Residuary powers of legislation (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List</p>	<p>Article 248 - Residuary powers of legislation (1) Subject to Article 246A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List</p>	<p>The residuary power of legislation provided to the Parliament has been made subject to Article 246A, i.e. both Parliament and State Legislature shall frame laws pertaining to GST.</p>
<p>Article 249 – Power of Parliament to legislate with respect to a matter in the State List in the national interest (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of</p>	<p>Article 249 – Power of Parliament to legislate with respect to a matter in the State List in the national interest (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to goods and services tax provided under Article 246A or any matter enumerated in the State List specified in the resolution, it shall</p>	<p>In case a two third majority resolution has been passed by the Council of States, for the national interest, Parliament shall have the power to make necessary laws with respect to GST.</p>

<p>the territory of India with respect to that matter while the resolution remains in force</p>	<p>be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force</p>	
<p>Article 250 – Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List</p>	<p>Article 250 – Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to goods and service tax provided under Article 246A or any of the matters enumerated in the State List</p>	<p>The Parliament shall have the power to make the necessary laws, relating to GST, for whole or part of the territory of India, during the period when a proclamation of Emergency is in operation.</p>
<p>Article 268 – Duties levied by the Union but collected and appropriated by the States (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected-</p> <p>(a) In the case where such duties are leviable within any Union territory, by the Government of India, and</p> <p>(b) In other cases, by the states within such duties are respectively leviable</p>	<p>Article 268 – Duties levied by the Union but collected and appropriated by the States (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected</p> <p>(a) In the case where such duties are leviable within any Union territory, by the Government of India, and</p> <p>(b) In other cases, by the states within such duties are respectively leviable</p>	<p>Excise duty on medicinal and toilet preparations has been omitted from the State List and subsumed in GST.</p>
<p>Article 268A – Service tax levied by the Union and collected and appropriated by the Union and the States (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States, in the manner provided in clause (2). (2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be –</p> <p>(a) collected by the Government of India and the States;</p> <p>(b) appropriated by the Government of India and the</p>	<p>Article 268A – Service tax levied by the Union and collected and appropriated by the Union and the States Article has been omitted</p>	<p>Subsumation of Service tax in GST.</p>

<p>States, in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.</p>		
<p>Article 269 – Taxes levied and collected by the Union but assigned to the States (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the State on or after the 1st day of April, 1996 in the manner provided in clause (2) Explanation.—For the purposes of this clause,— (a) the expression “taxes on the sale or purchase of goods” shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce; (b) the expression “taxes on the consignment of goods” shall mean taxes on the consignment 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</p>	<p>Article 269 – Taxes levied and collected by the Union but assigned to the States (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods except as provided in Article 269A shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the State on or after the 1st day of April, 1996 in the manner provided in clause (2) Explanation.—For the purposes of this clause,— (a) the expression “taxes on the sale or purchase of goods” shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce; (b) the expression “taxes on the consignment of goods” shall mean taxes on the consignment 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.</p>	<p>GST on supplies in the course of inter-State trade or commerce shall be collected by Government of India and apportioned between Union and States.</p>
<p>Article 270 – Taxes levied and distributed between the Union and the States (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2)</p>	<p>Article 270 – Taxes levied and distributed between the Union and the States (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in Articles 268, 269 and Article 269A respectively, surcharge on taxes and duties referred to in Article 271 and any Cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2)</p>	<p>Insertion of Article 269A as an exception to taxes levied and collected by Union and distributed between States.</p>

	<p>(1A)The goods and service tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of the Article 269A, shall also be distributed between the Union and the State in the manner provided in clause (2).</p>	<p>GST levied and collected by Government of India, over and above GST under Article 269A, shall be distributed amongst Union and States as per the mechanism prescribed.</p>
<p>Article 271 – Surcharge on certain duties and taxes for purposes of the Union Notwithstanding anything in Articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred in those Articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part the Consolidated Fund of India</p>	<p>Article 271 – Surcharge on certain duties and taxes for purposes of the Union Notwithstanding anything in Articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred in those articles except the goods and services tax under Article 246A by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part the Consolidated Fund of India</p>	<p>Non-levy of surcharge on GST.</p>
<p>Article 286 – Restrictions as to imposition of tax on the sale or purchase of goods (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place (a) outside the State; or (b) in the course of the import of the goods into, or export of the goods out of, the territory of India (2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1) (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub clause (b), sub clause (c) or sub clause</p>	<p>Article 286 – Restrictions as to imposition of tax on the sale or purchase of goods (1) No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or of services or both where such sale or purchase takes place (a) outside the State; or (b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India (2) Parliament may by law formulate principles for determining when a supply of goods or of services or both in any of the ways mentioned in clause (1) (3) Omitted</p>	<p>Restriction on imposition of tax, on supply of goods or services or both, by States where such supply takes place: (a) outside the State; (b) in the course of import/ export out of India. Parliament to frame provisions relating to supply of goods or services, or both, in case of (a) and (b) above. Dispensing with the concept of ‘declared goods of special importance’ under the Constitution. Withdrawal of restrictions and conditions on the power of States for taxing the sale or purchase of goods falling under the following sub clauses of Article 366(29A):</p>

<p>(d) of clause 29 A of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify</p>		<p>(b) works contract (c) hire purchase (d) right to use.</p>
<p>Article 366 – Definition</p>	<p>Article 366 – Definition (12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on supply of the alcoholic liquor for human consumption; (26A) "Services" means anything other than goods; (26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;</p>	<p>'GST' defined to align with the concept of one tax on supply of goods and services. However, alcoholic liquor kept out of its purview and continues to be a State subject. 'Services' has been clarified to mean anything other than goods States and Union territories aligned with reference to certain articles.</p>
<p>Article 368 – Power of Parliament to amend the Constitution and procedure therefore (2)..... Provided that if such amendment seeks to make any change in - (a) Article 54, Article 55, Article 73, Article 162 or Article 241</p>	<p>Article 368 – Power of Parliament to amend the Constitution and procedure therefore (2)..... Provided that if such amendment seeks to make any change in - (a) Article 54, Article 55, Article 73, Article 162, Article 241, or Article 279A</p>	<p>Any proposed amendment in relation to the Council needs to be ratified by resolutions passed by the Legislatures of one half of the States, before being presented to the President for his assent.</p>
<p>Article 244(2) and 275(1) Sixth Schedule – Provisions as to the administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram Paragraph 8 – Powers to assess and collect land revenue and to impose taxes (3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say— (a) (b) (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and (d) taxes for the maintenance of schools, dispensaries or roads</p>	<p>Article 244(2) and 275(1) Sixth Schedule – Provisions as to the administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram Paragraph 8 – Powers to assess and collect land revenue and to impose taxes (3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say— (a) (b) (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and (d) taxes for the maintenance of schools, dispensaries or roads and (e) taxes on entrainment and</p>	<p>Power to levy tax on entertainment and amusements given to District Council located in tribal areas of Assam, Meghalaya, Tripura and Mizoram.</p>

<p>Article 246 Seventh Schedule List – I (Union List) Entry 84. Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry</p> <p>Entry 92. Taxes on the sale or purchase of newspapers and on advertisements published therein</p> <p>Entry 92C. Taxes on services</p>	<p><i>amusements.</i></p> <p>Article 246 Seventh Schedule List – I (Union List) Entry 84. Duties of excise on the following goods manufactured or produced in India, namely:- (i) petroleum Crude (ii) high speed diesel (iii) motor spirit (commonly known as petrol) (iv) natural gas (v) aviation turbine fuel; and (vi) tobacco and tobacco products</p> <p>Entry 92. Omitted</p> <p>Entry 92C. Omitted</p>	<p>Coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of GST. However, petrol and petroleum products shall not be subject of GST levy till a date notified on the recommendation of the Council.</p>
<p>Article 246 Seventh Schedule List – II (State List) Entry 52. Taxes on the entry of goods into a local area for consumption, use or sale therein.</p> <p>Entry 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List I.</p> <p>Entry 55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.</p> <p>Entry 62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling</p>	<p>Article 246 Seventh Schedule List – II (State List) Entry 52. Omitted</p> <p>Entry 54. 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 international trade or commerce of such goods</p> <p>Entry 55. Omitted</p> <p>Entry 62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a</p>	<p>Omission of entry tax from the State List.</p> <p>Omission of tax on advertisement other than advertisement published in newspaper and advertisement broadcast by radio or television from the State list.</p> <p>Insertion of Entry 62 in the State list.</p>

3. Compensatory Amendments for addressing the revenue deficit of States

- An additional tax not exceeding 1% on supply of goods in the course of inter–state trade or commerce to be levied and collected by the Government of India for two years or such period as recommended by the Council. The said tax shall be assigned to the State from where supply originates except for the amount attributable to Union territories.

In this regard, the Parliament shall formulate principles for determining the place of origin from where supply of goods takes place in the course of inter-state trade or commerce. Further, in public interest, some goods may be exempted by the Government of India from the said tax.

- As per recommendations of the Council, Parliament to prescribe a moratorium period for loss of revenue to States on account of implementation of GST. However, this period shall not extend beyond 5 years.

4. Transitional provisions

- Existing provisions of law pertaining to goods or services or both, in States, to remain in force until amended or repealed by a competent Legislature or other competent Authority or until one year from expiration of commencement of this Act, whichever is earlier
- The President may by order, make necessary provisions for removing difficulties arising out the amendments of this Act. However, no such order to be made upon expiry of three years from the date of assent of this Act. Further, every such order to be placed before each house of Parliament

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