

# GS FOUNDATION FOR CSE 2024

## ECONOMY-16

### FISCAL POLICY-6

# CONSTITUTIONAL PROVISIONS ABOUT TAXES

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2. CONSTITUTIONAL PROVISIONS ABOUT TAXES

1) ALLOCATION OF TAXING POWERS BETWEEN CENTER AND STATES

- i. The Parliament has exclusive powers to levy taxes on **13 subjects** enumerated in the Union List (82-91, 92A-92B, 96)
- i. Taxes on Income, other than agriculture income (82)
  - ii. Duties of Customs including export duties (83)
  - iii. **After the 101st amendment**, it includes "**Duties of excise on the following goods manufactured or produced in India**, namely: (84)
    - i. Petroleum crude
    - ii. high speed diesel
    - iii. motor spirit (petrol)
    - iv. natural gas
    - v. aviation turbine fuel
    - vi. tobacco and tobacco products (Note: GST + Central Excise)
- Thus, **petroleum products are now out of ambit of GST** and subject to Union Jurisdiction

<b>Before 101st Constitutional Amendment Act</b>	<del>Duties of excise on tobacco and other goods except alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol</del>
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- iv. Corporate Income Tax (85)
  - v. Taxes on Capital value of the assets (exclusive of agricultural land) of individuals and companies (**capital gain tax**); taxes on the capital of companies (86)
  - vi. Estate Duty in respect of property other than agricultural land (87)
  - vii. Duties in respect of succession to property other than agricultural land (88)
  - viii. Terminal Taxes on goods and passengers, carried by railway, sea or air; taxes on railway fares and freights (89)
  - ix. Taxes other than stamp duties on transactions in stock exchanges and future markets (90)
  - x. **Rates of Stamp duties** in respect of bills of exchange, checks, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts (91).
- |                  |   |
|------------------|---|
| 92 (Deleted now) | <del>92: taxes on sale or purchase of newspapers and on advertisement published therein</del> ( <b>Deleted</b> by 101st Constitutional amendment. |
|------------------|---|
- xi. **92A:** 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**.
  - xii. **92B:** Taxes on consignment of goods in the course of interstate trade and commerce

**92C: Taxes on Services** (deleted by 101st Constitutional Amendment)
  - xiii. Fees in respect of any of the matters in the Union List, but not including fees taken by any court.
- ii. The state legislature has **exclusive power to levy taxes on subjects enumerated in the state list:**
- i. **45:** Land Revenue
  - ii. **46:** Taxes on Agricultural Income
  - iii. **47 and 48:** Succession and Estate duty on agricultural land

- iv. **49:** Taxes on lands and buildings
- v. **50:** Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development
- vi. **51:** Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: -
  - i. alcoholic liquors for human consumption.
  - ii. opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

<b>52:</b> (DELETED BY 101st CONSTITUTIONAL AMENDMENT ACT)	Taxes on entry of goods into a local area for consumption, use or sale therein.
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- vii. **53:** Taxes on the consumption or sale of electricity.
- viii. **54:** (Amended by 101st CAA): **Sales Tax**

Earlier:	In Entry 54, <b>Taxes on sale or purchase</b> of goods other than newspapers, subject to the provisions of Entry 92-A of List 1 has been <u>replaced by</u> ->
<b>After Amendment</b>	<u>Taxes on the <b>sale of petroleum</b> crude, high speed diesel, moto spirit (commonly known as petrol) natural gas, aviation turbine fuel and <b>alcoholic liquor</b> for human consumption, but not including sale in the course of inter-state trade and commerce or sale in the course of international trade or commerce of such goods.</u>

<b>55</b> (deleted by 101st CAA)	Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.
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- ix. **56:** Taxes on goods and passengers carried by road or on inland waterways.
- x. **57:** Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.
- xi. **58:** Taxes on animals and boats.
- xii. **59:** Tolls.
- xiii. **60:** Taxes on professions, trades, callings and employments.
- xiv. **61:** Capitation taxes.
- xv. **62:** (Amended by 101st CAA)

Before 101st CAA	<u>Entry 62 (taxes on luxuries, including entertainments, amusements, betting and gambling) has been replaced by -&gt;</u>
After 101st CAA	<u>Taxes on entertainment and amusements to the extent levied and collected by a Panchayat, or a Municipality, or a Regional Council or a district Council.</u>

- xvi. **63:** Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

- iii. **There are three area provided in concurrent list** where both center and state can levy taxes/fees/duties:
- Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
  - **Stamp duties** other than duties or fees collected by means of judicial stamps, but not including rates of stamp duties.
  - Fees in respect of any of the matters in the concurrent list
  - **However, please note that Article 246A gives concurrent powers to both Centre and the States to impose taxes on GST.**
- iv. **Residuary Powers of Taxation:** The residuary power of taxation (i.e. the power to impose taxes not enumerated in any of the three lists) is vested in parliament. Under this provision, the parliament has imposed gift tax, wealth tax and expenditure tax.

## 2) DEVOLUTION OF TAX REVENUE

1. Devolution of tax means sharing of tax revenue of Centre with the States.
  - **Reason:** Most of the taxes which are capable of yielding more revenue are in the Union list apart from GST. The GST divided the tax jurisdiction of indirect taxes equally between the Centre and the state. However, **all put together, tax revenue of Centre is more than that of the states**. At the same time **socio economic expenditure to be incurred by the states are more** compared to the Centre. It leads to mismatch between own source of revenue and required expenditure. **To overcome this imbalance** the Constitution has mechanism for **Tax devolution from the Centre to the States and distribution of states' shares among all states**. They are, finance Commission, GST Council and the **Parliament**. These institutions and 80th and 101st Constitutional Amendment government the tax devolution mechanism.
2. The parliament also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied and collected.
  - E.g., the income tax is levied and collected by the centre, but its proceeds are distributed between the centre and the states
3. **Distribution of Tax Revenues** : 80th, 88th and 101st CAAs had induced major changes in the scheme of the distribution of tax revenues between Center and State. Before 80th amendment, only few taxes were sharable between Center and States. The taxes like corporation tax, custom duties etc. were not sharable.

## 3) 80<sup>TH</sup> AMENDMENT, 2000

- To give effect to the recommendation of 10th Finance Commission
  - **Alternative Scheme of Devolution:** Out of total income obtained from certain central taxes and duties 29% (41%, beginning April 2021, 15th Finance Commission) should go to states. This came into effect retrospectively from April 1, 1996.

- This amendment has brought several central taxes and duties like Corporation Tax and Customs Duties at par with Income Tax (taxes other than agricultural income) as far as the constitutionally mandated sharing with the states are concerned.

#### 4) 88TH AMENDMENT OF 2003 (REPEALED BY 101ST CAA)

- ~~Added a new **article 268-A** dealing with service tax. It has added a new subject to the Union List — entry 92-C (taxes on services). Service tax is levied by the center but collected and appropriated by both the centre and the states. [repealed by 101st constitutional Amendment]~~

#### 5) 101<sup>ST</sup> CONSTITUTIONAL AMENDMENT ACT, 2016: MAIN PROVISIONS

- i. **New Article 246A**
  - This article provides that both parliament and state legislatures shall have **concurrent powers** to make laws with respect to **goods and services tax (GST)**.
  - The parliament will retain exclusive power to legislate on goods and services tax in case of inter-state trade or commerce.
- ii. **Amendment to Article 248: Residuary Powers of legislation**
  - The residuary power of Parliament under article 248 is now subject to article 246A.
- iii. **Amendment to Article 249: Power of Parliament to legislate with respect to "good and services tax provided under article 246A or" matter in the state List in the national interest.**
  - Article 249 has been changed so that if 2/3rd majority resolution (2/3rd of present and voting) is passed by Rajya Sabha, the Parliament will have powers to make necessary laws with respect to GST in national interest.
- iv. **Amendment to Article 250**
  - Article 250 has been changed so that parliament will have powers to make laws related to GST during emergency period.
- v. **Article 268** has been changed so that excise duty on medicinal and toilet preparation will be omitted from the state list and will be subsumed by GST.
- vi. **Article 268A** has been repealed so now service tax is subsumed in GST.
- vii. **Article 269: Taxes levied and collected by the Union but assigned to the states.**  
It has been amended to make it subject to new article 269A
- viii. **Article 269A** has been introduced (**Very important**)
  - (1) GST on supplies in the course of *inter-State trade or commerce* shall be *levied and collected by the Government of India* 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 the Goods and Services Tax Council*

- Explanation- For the purpose of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or over services, or both in course of inter-state trade or commerce

ix. **Amendment to Article 270**

- It provides that GST collected by centre shall also be distributed between centre and state.

x. **Amendment to Article 271**

- The amendment puts restriction on the powers of Parliament to levy surcharge for on the GST.
  - In other words, it provides that **goods and services on which GST is levied shall not be subject to any surcharge under article 271.**

xi. **Article 279A has been introduced.**

- Provides for the constitution of a **GST council** by president within sixty days from this act coming into force.
- The GST council shall consist of the following members, namely;
  - a. The Union Finance Minister (**Chairperson**)
  - b. The Union Minister of State in charge of Revenue or Finance (Member)
  - c. The Minister in charge of finance or taxation or any other nominated by each state government (and UT with legislative assemblies) (Members)
- *The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the **Vice-Chairperson of the Council** for such period as they may decide.*
- **GST council shall make recommendations on:**
  - a. The taxes, cesses and surcharges levied by the Union, the states and the local bodies which may be subsumed in the goods and services tax.
  - b. The goods and services that may be subjected to, or exempted from the GST.
  - c. Model GST Laws, principles of levy, apportionment of goods and services tax levied on supplies in the course of inter-state trade or commerce under article 269A and the principles that govern the place of supply.
  - d. The **threshold limit** of turnover below which goods and services may be exempted from GST.
  - e. The **rates including floor rates** with bands of GST.
  - f. Any special rate or rates for specified period, to raise additional resourced during a natural calamity or disaster.
  - g. **Special Provisions** with respect to states of Arunachal Pradesh, Assam, J&K, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.
  - h. Any other matter related to GST as the council may decide.

- The GST council shall recommend the date on which the GST be levied on petroleum crude, High speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

- **Quorum:** one half of the members
- **Procedure:** The GST council shall determine the procedure in the performance of its functions
- **Majority Decision (not less than 3/4th of the weighted votes of the members present and voting)**

- Vote of central government shall have a weight of one-third of the total votes cast.
- The votes of state government taken together shall have a weight of two-thirds of the total votes cast.

## 6) CURRENT SCENARIO OF THE POWER TO LEVY TAX, COLLECT TAX AND APPROPRIATION OF TAXES

- i. **Article 268: Taxes Levied by Center but Collected and Appropriated by the States**
  - Stamp duties on bills of exchange, checks, promissory notes, policies of insurance, transfer of shares and others.
  - ~~Excise duties on medicinal and toilet preparations containing alcohol and narcotics~~ **[101st amendment subsumed it under GST]**.
  - The proceeds of above duties levied within any state do not form part of the Consolidated Fund of India but are assigned to the state.
- ii. ~~**Article 268A: Taxes Levied by center but collected and appropriated by both center and states**~~ **[by 101st amendment Service tax has been subsumed under GST]**
  - The principles of their collection and appropriation is formulated by the Parliament.
- iii. **Article 269: Taxes levied and collected by Center but assigned to 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 states on or after 1st of April, 1996 in the manner provided in clause (2)

**(2):** The net proceeds of these taxes don't form part of Consolidated fund of India. They are assigned to the concerned states in accordance with the principles laid down by the parliament.
- iv. **Article 269A (introduced by 101st constitutional amendment Act)**
  - **Article 269A: Levy and Collection of Goods and Services Tax in course of inter-state trade or commerce.**
  - **(1)** GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India 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 the Goods and Services Tax Council
    - Explanation- For the purpose of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to by supply of goods, or over services, or both in course of inter-state trade or commerce
- v. **Article 270: Taxes levied and collected by the center but distributed between center and the states.**
  - **(1)** This category includes all taxes and duties referred to in the Union List **except the following**
    1. Duties and taxes covered under **268, 269, 269A**.
    2. **Surcharge on taxes and duties** referred to in Article 271; and
    3. Any cess levied for specified purposes.

- **(1A)** The tax levied and collected by Union under GST shall also be distributed between the union and the states.
- **(1B)** The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

vi. **Article 271: Surcharge on certain Taxes and Duties for Purposes of Center**

- The parliament can at any time levy the surcharges on taxes and duties referred to in **Article 269 and 270**.
  - The proceeds of such surcharges go to the Center Exclusively. In other words, the states have no share in these surcharges.
- **Surcharge can't be levied on taxes under article 246A** (GST)