

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

India

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Act 101 of 2016

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An Act further to amend the Constitution of India Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

1. Received the assent of the President on September 8, 2016 and published in the Gazette of India, Extra., Part II, Section 1, dated 8th September, 2016, pp. 1-6, No. 55

Statement of Objects and Reasons.- The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for -

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services; (b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the

States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;(c)dispensing with the concept of 'declared goods of special importance' under the Constitution;(d)levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;(e)levy of an additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;(f)conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;(g)coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council;(h)compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;(i)creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:-(A)the vote of the Central Government shall have a weightage of one-third of the total votes cast, and(B)the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.IllustrationIn terms of clause (9) of the proposed Article 279-A, the "weighted votes of the members present and voting" in favour of a proposal in the Goods and Services Tax Council shall be determined as under:- $WT = WC + WS$ Where, $WT = WC + WS = (WST/SP) * SF$ Wherein- WT = Total weighted votes of all members in favour of a proposal. WC = Weighted vote of the Union = $\frac{1}{3}$ i.e., 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal. WS = Weighted votes of the States in favour of a proposal. SP = Number of States present and voting. WST = Weighted votes of all States present and voting i.e. $\frac{2}{3}$ i.e., 66.67% SF = Number of States voting in favour of a proposal.(j)Clause 20 of the proposed Bill makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on the commencement of the provisions of the Constitution as amended by this Act within a period of one year.

3. The Bill seeks to achieve the above objects.

1. Short title and commencement.- (1) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

(2)It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Insertion of new Article 246-A.- After Article 246 of the Constitution, the following article shall be inserted, namely:-

"246-A. Special provision with respect to goods and services tax.- (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.(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.- The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article 279-A, take effect from the date recommended by the Goods and Services Tax Council."

3. Amendment of Article 248.- In Article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to Article 246-A, Parliament" shall be substituted.

4. Amendment of Article 249.- In Article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under Article 246-A or" shall be inserted.

5. Amendment of Article 250.- In Article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under Article 246-A or" shall be inserted.

6. Amendment of Article 268.- In Article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

7. Omission of Article 268-A.- Article 268-A of the Constitution, as inserted by Section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

8. Amendment of Article 269.- In Article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in Article 269-A" shall be inserted.

9. Insertion of new Article 269-A.- After Article 269 of the Constitution, the following article shall be inserted, namely:-

"269-A. Levy and collection of goods and services tax in course of inter-State trade or commerce.-
 (1) Goods and services tax 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 purposes 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 of services, or both in the course of inter-State trade or commerce. (2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India. (3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246-A, such amount shall not form part of the Consolidated Fund of India. (4) Where an amount collected as tax levied by a State under Article 246-A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State. (5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

10. Amendment of Article 270.- In Article 270 of the Constitution,-

(i) in clause (1), for the words, figures and letter "Articles 268, 268-A and 269", the words, figures and letter "Articles 268, 269 and 269-A" shall be substituted; (ii) after clause (1), the following clauses shall be inserted, namely:- "(1-A) The tax collected by the Union under clause (1) of Article 246-A shall also be distributed between the Union and the States in the manner provided in clause (2). (1-B) The tax levied and collected by the Union under clause (2) of Article 246-A and Article 269-A, which has been used for payment of the tax levied by the Union under clause (1) of Article 246-A, and the amount apportioned to the Union under clause (1) of Article 269-A, shall also be distributed between the Union and the States in the manner provided in clause (2)."

11. Amendment of Article 271.- In Article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under Article 246-A," shall be inserted.

12. Insertion of new Article 279-A.- After Article 279 of the Constitution, the following article shall be inserted, namely:-

"279-A. Goods and Services Tax Council.- (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council. (2) The Goods and Services Tax Council shall consist of the following members, namely:-

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| (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 Minister nominated | ... Members. |

by each State Government

(3)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.(4)The Goods and Services Tax Council shall make recommendations to the Union and the States 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 goods and services tax;(c)model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under Article 269-A and the principles that govern the place of supply;(d)the threshold limit of turnover below which goods and services may be exempted from goods and services tax;(e)the rates including floor rates with bands of goods and services tax;(f)any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;(g)special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and(h)any other matter relating to the goods and services tax, as the Council may decide.(5)The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.(6)While discharging the functions conferred by this article, the Goods and Services Tax Council shall 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.(7)One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.(8)The Goods and Services Tax Council shall determine the procedure in the performance of its functions.(9)Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:-(a)the vote of the Central Government shall have a weightage of one-third of the total votes cast, and(b)the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast,in that meeting.(10)No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of-(a)any vacancy in, or any defect in, the constitution of the Council; or(b)any defect in the appointment of a person as a Member of the Council; or(c)any procedural irregularity of the Council not affecting the merits of the case.(11)The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute -(a)between the Government of India and one or more States; or(b)between the Government of India and any State or States on one side and one or more other States on the other side; or(c)between two or more States, arising out of the recommendations of the Council or implementation thereof."

13. Amendment of Article 286.- In Article 286 of the Constitution,-

(i)in clause (1),-(A)for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;(B)in sub-clause (b), for the word "goods", at both the places where it occurs, the words "goods or services or both" shall be substituted;(ii)in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;(iii)clause

(3) shall be omitted.

14. Amendment of Article 366.- In Article 366 of the Constitution,-

(i)after clause (12), the following clause shall be inserted, namely:-“(12-A) "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;”;(ii)after clause (26), the following clauses shall be inserted, namely:-“(26-A) "Services" means anything other than goods;(26-B) "State" with reference to Articles 246-A, 268, 269, 269-A and Article 279-A includes a Union territory with Legislature;”.

15. Amendment of Article 368.- In Article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "Article 162 or Article 241", the words, figures and letter "Article 162, Article 241 or Article 279-A" shall be substituted.

16. Amendment of Sixth Schedule.- In the Sixth Schedule to the Constitution, in Paragraph 8, in sub-paragraph (3),-

(i)in clause (c), the word "and" occurring at the end shall be omitted;(ii)in clause (d), the word "and" shall be inserted at the end;(iii)after clause (d), the following clause shall be inserted, namely:-“(e) taxes on entertainment and amusements.”.

17. Amendment of Seventh Schedule.- In the Seventh Schedule to the Constitution,-

(a)in List I - Union List,-(i)for Entry 84, the following entry shall be substituted, namely:-"84. Duties of excise on the following goods manufactured or produced in India, namely:-(a)petroleum crude;(b)high speed diesel;(c)motor spirit (commonly known as petrol);(d)natural gas;(e)aviation turbine fuel; and(f)tobacco and tobacco products.";(ii)Entries 92 and 92-C shall be omitted;(b)in List II - State List,-(i)Entry 52 shall be omitted;(ii)for Entry 54, the following entry shall be substituted, namely:-"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 of international trade or commerce of such goods.";(iii)Entry 55 shall be omitted;(iv)for Entry 62, the following entry shall be substituted, namely:-"62. 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.".

18. Compensation to States for loss of revenue on account of introduction of goods and services tax.- Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and

services tax for a period of five years.

19. Transitional provisions.- Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

20. Power of President to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.(2)Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.[The Constitution (One Hundred and First Amendment) Act, 2016, instituted a nationwide Goods and Services Tax (GST) in India on July 1, 2017. It is the Constitution of India's One Hundred and Twenty-Second Amendment Bill. GST is a Value Added Tax (VAT) proposed at the national level to be a comprehensive indirect tax levy on the manufacture, sale, and consumption of goods and services. It would replace all indirect taxes levied by the Indian Central and state governments on goods and services. It is intended to be comprehensive for the majority of goods and services. In the past, a person was required to pay a significant amount of taxes, including Central Excise Duty, Additional Excise Duty, Service Tax, Additional Customs Duty, State VAT, Entertainment Tax, and Entry Tax. The calculation of tax was significantly simplified with the introduction of the Goods and Services Tax. The Constitution Amendment Bill 122, often known as the 101 Amendment to the Indian Constitution, advocated for the implementation of GST. To prevent tax escalation and establish a single market for goods and services, the goods and services tax will replace numerous indirect taxes levied by the federal and state governments.Also Refer]