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GST AND IMPACT ON E-COMMERCE

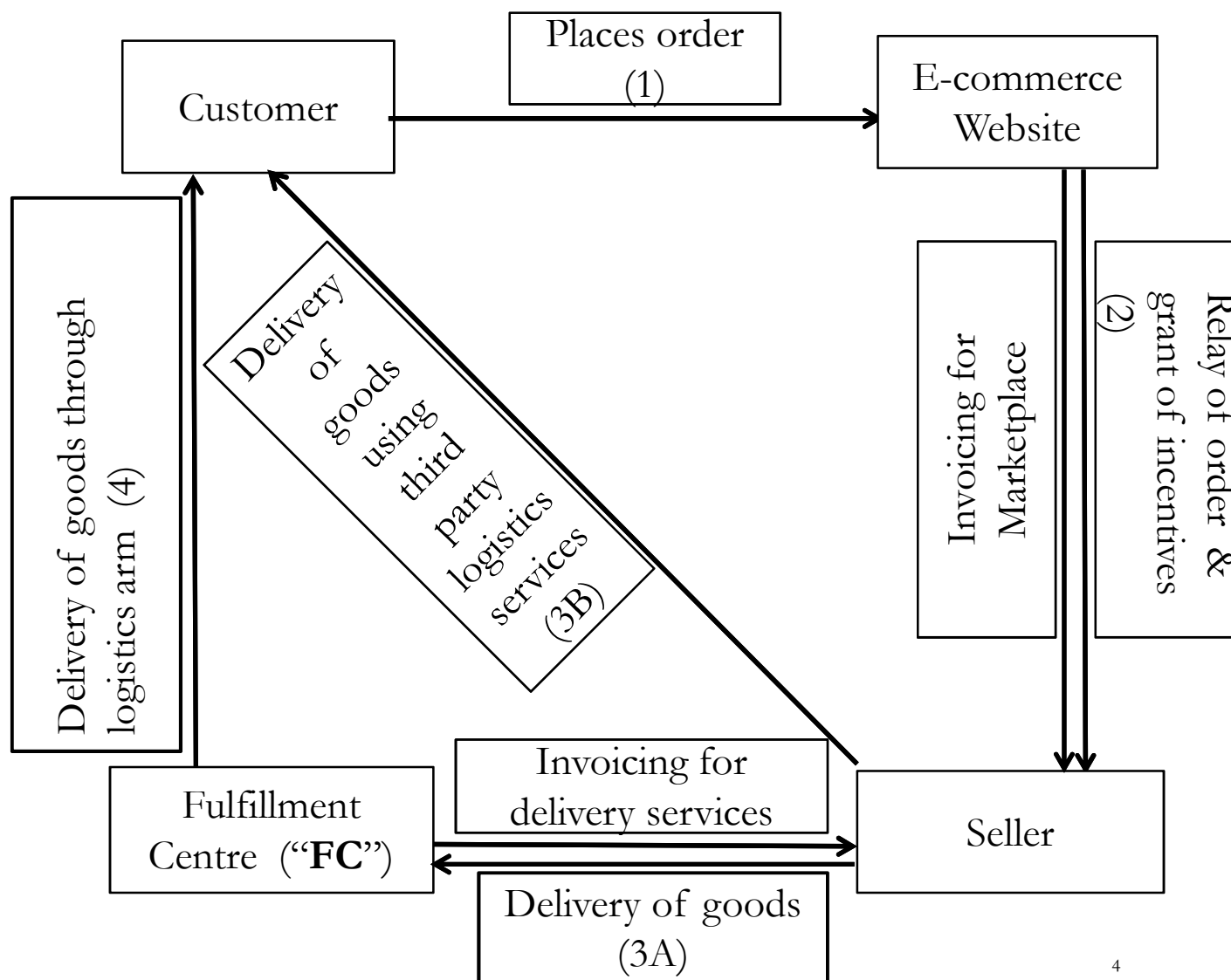
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AGENDA

- **Business Models in E-Commerce**
- **GST – A Game Changer**
- **Salient Features of the Proposed Legislation in relation to E-Commerce**
- **Impact of GST on E-Commerce**
- **GST – Where it Currently Stands**

Business Models in E-Commerce

Marketplace Model



Existing Indirect Taxation of Marketplace Model

Levy of Service tax on

- Market place services provided by E-commerce operator to the seller
- Delivery services provided by the E-commerce operator's FC to the seller
- Logistic services provided by third party logistics service provider to the seller
- Logistic services provided by E-commerce operator's logistics arm to the E-commerce operator

Levy of VAT/ CST on

- Intra-state/ inter-state sale, respectively, of goods by the seller to the customer

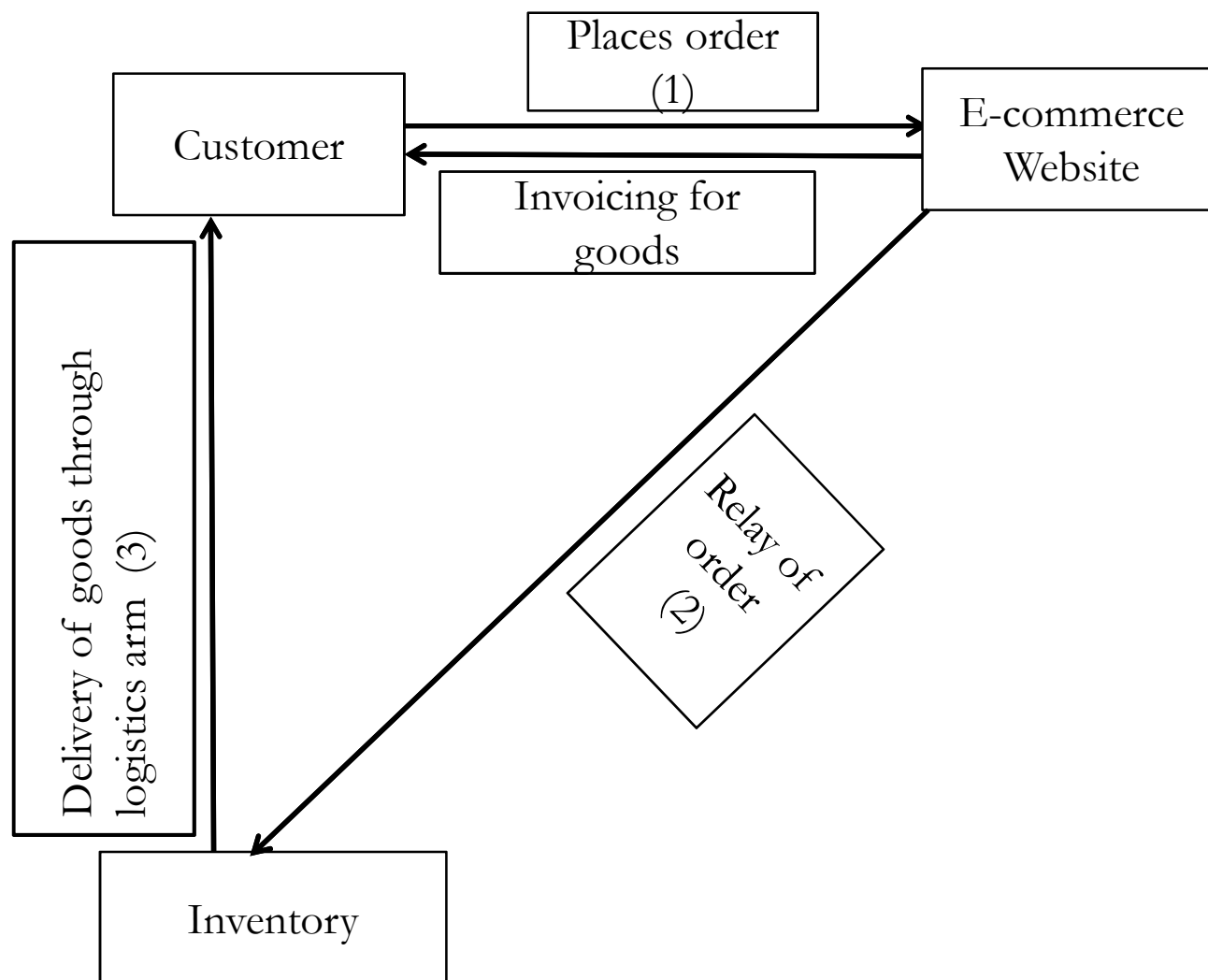
Levy of Entry tax on the importation of goods into a state for delivery by

- A third party logistics service provider
- Logistics arm of the E-commerce operator

Current Issues in the Marketplace Model

- Who is the seller – E-commerce Operator or seller (retailer) – Clarified by Kerala HC in Flipkart judgment.
- Unwarranted compliances and inconsistency in procedures
 - Obtaining registration, filing returns etc. in various states
 - Obtaining forms under entry tax legislations
 - Obtaining road and transit permits in various States.
- Lack of fungibility of tax credits
- Levy of entry tax on importer of goods
 - Gujarat HC judgment in Flipkart case

Inventory Model



Existing Taxation of Inventory Model

Levy of Service tax on

- Logistic services provided by E-commerce operator's logistics arm to the E-commerce operator

Levy of VAT/ CST on

- Intra-state/ inter-state sale, respectively, of goods by the E-commerce operator to the customer

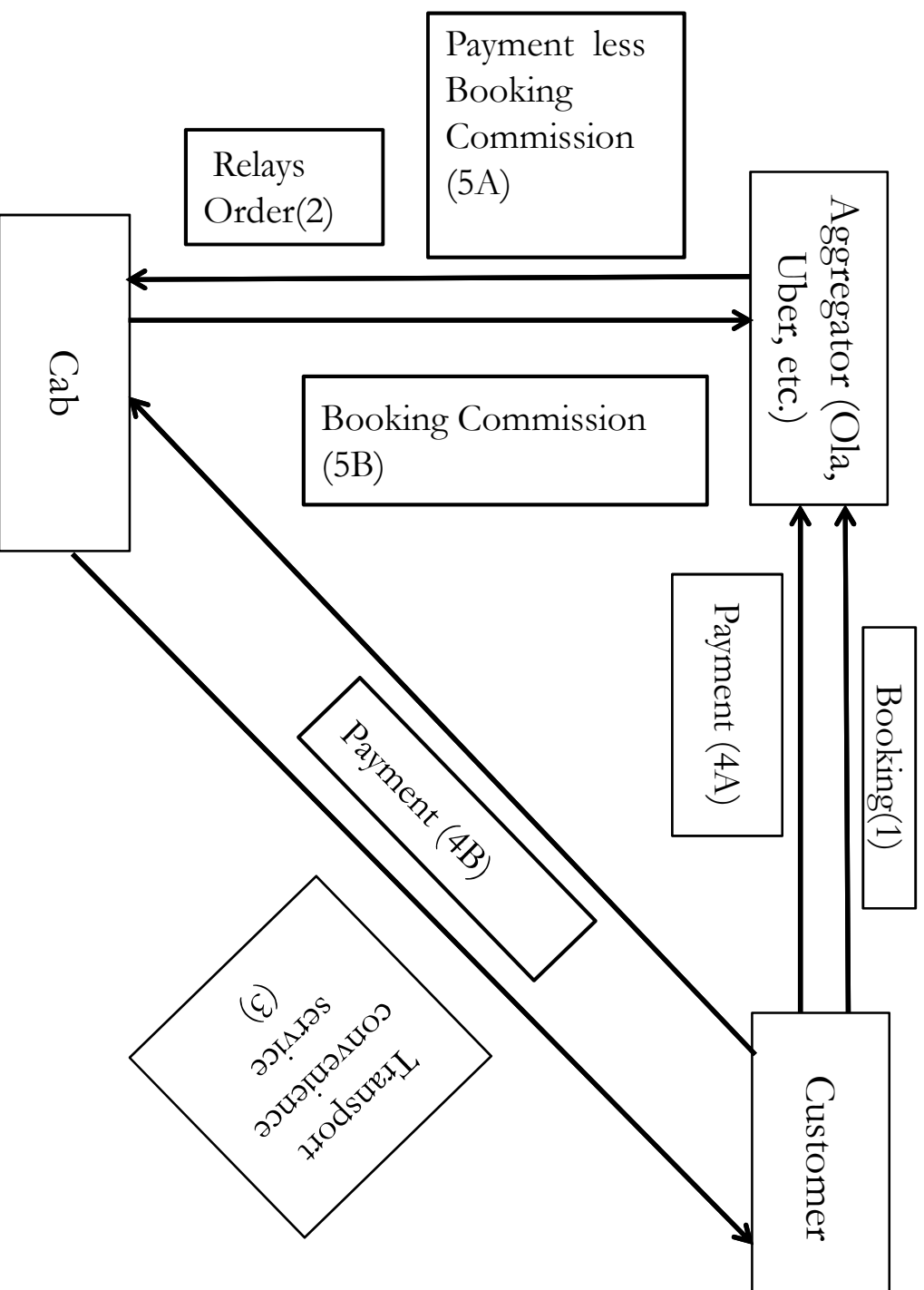
Levy of Entry tax on the importation of good into a state for delivery by

- Logistics arm of the E-commerce operator to the customer

Current Issues in the Inventory Model

- In transit issues on account of unwarranted compliances and inconsistent procedures
 - Obtaining registration, filing returns etc. in various states
 - Obtaining forms under entry tax legislations
 - Obtaining road and transit permits in various States
- Lack of fungibility of tax credits

Aggregator Model



Existing Taxation of Aggregator Model

Levy of Service tax on

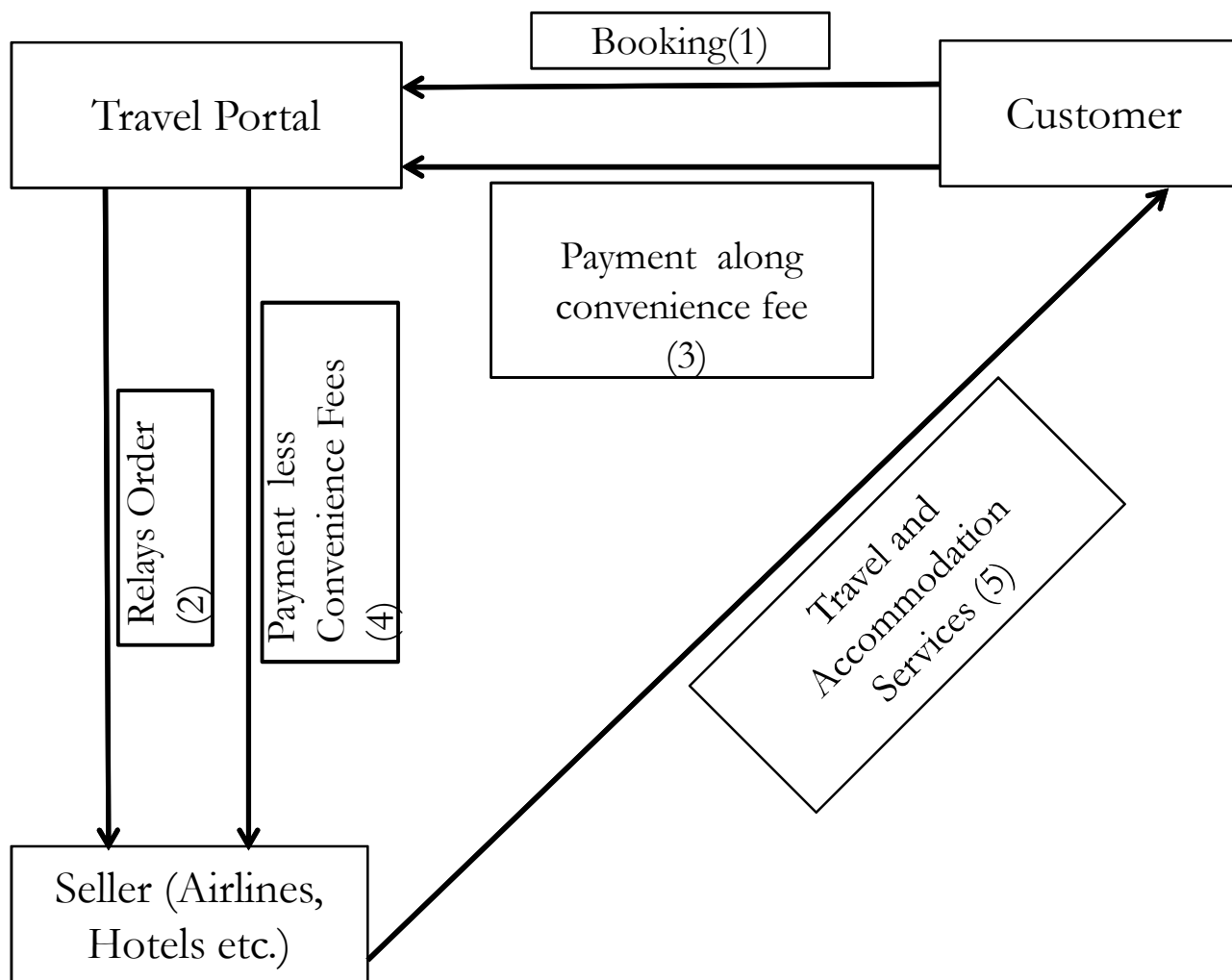
- Transport convenience service provided by cab driver.
- Booking commission charged by the aggregator.



Current Issues of Aggregator Model

- Value at which service tax is payable by the Aggregator?
- Whether the commission retained by the Aggregator gets taxed twice?

Online Travel Portal Model



Existing Taxation of Online Travel Portal Model

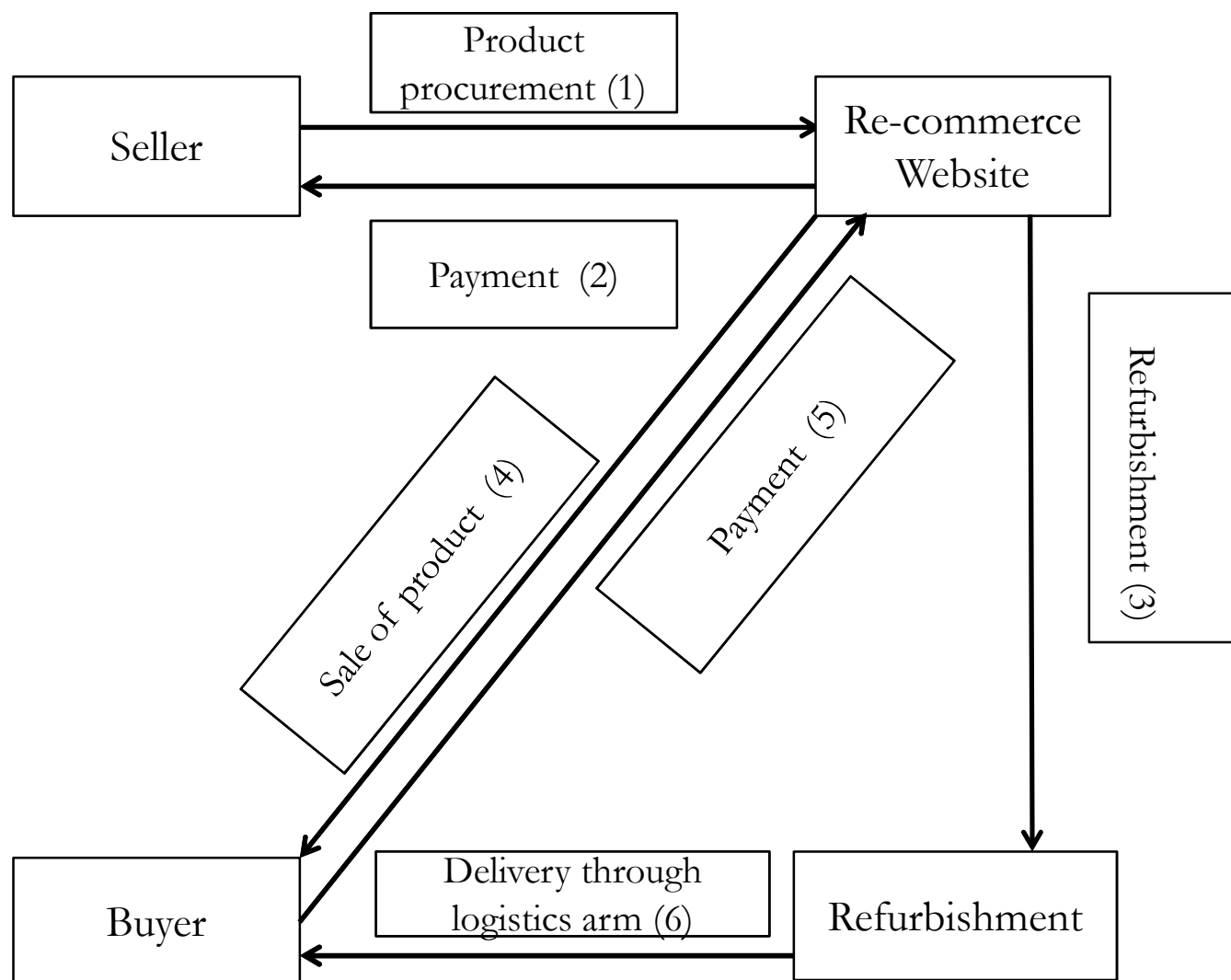
Levy of Service tax on

- Convenience fees collected by the E-commerce operator from the customer.
- Payments for travel, accommodation charges charged by the Seller.

Current Issues in the Online Travel Portal Model

- Who is the service provider? – The Travel Portal or the Seller (Airline/Hotels)
- The service tax authority demands service tax on the entire amount including the actual price of airline tickets/hotel

Re-Commerce – Procure, Refurbish and Sell Model



Existing Taxation of Procure, Refurbish and Sell Model

Levy of Service tax on

- Refurbishing of product (in case it does not qualify as manufacture)

Levy of VAT/ CST on

- Inter-state/ intra-state sale, respectively, of goods by the seller to the re-commerce operator.
- Raw material procured for refurbishing.
- Sale of refurbished goods to buyer.

Levy of Entry tax on the importation of good into a state for delivery by

- Logistics arm of the re-commerce operator to the customer

Excise on

- Packaging/ re-packaging/ labeling/ re-labeling of the goods by re-commerce operator.
- Refurbishing of product, in case of manufacture.

Current Issues in Re-furbishment/re-sale model

- No output service tax liability, so Excise duty, if applicable, becomes a cost
- Where job-worker employed for refurbishment, service tax becomes a cost
- Compliance hurdles and cost- procurement of goods inter-state (check posts, transit slips etc.)

GST – A Game Changer

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Unified Tax

Promotes Trade

Comprehensive
levy on goods
and services

Consolidated
legislation

Subsuming
multiplicity of
current taxes

Taxes only value
addition

Consumer to
bear final cost

Greater IT interface
for verification

Comprehensive
Credit Mechanism

Broad base for tax
collection

Decrease in
effective rate of
tax

Smoother Administration

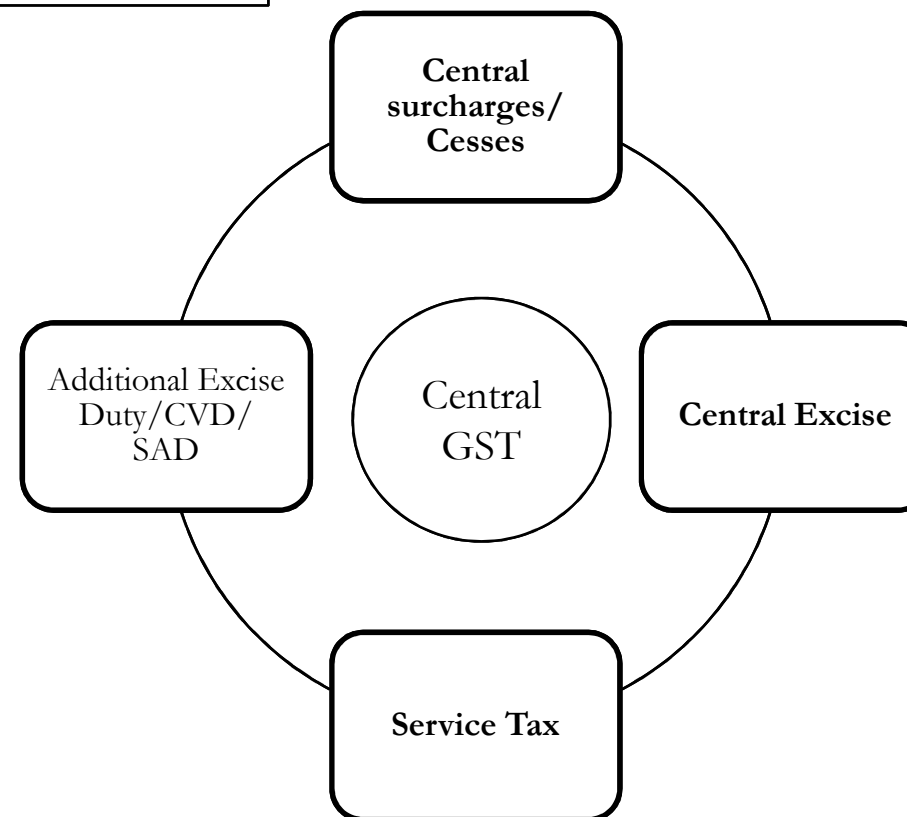
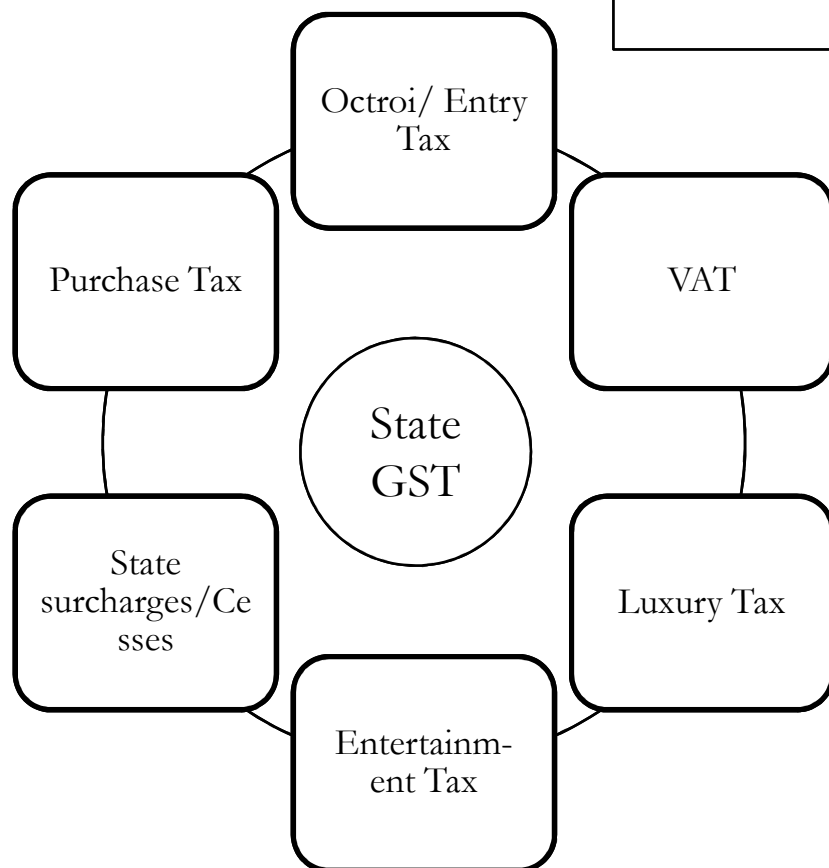
Reduction in
Disputes

Uniform
compliance
requirements

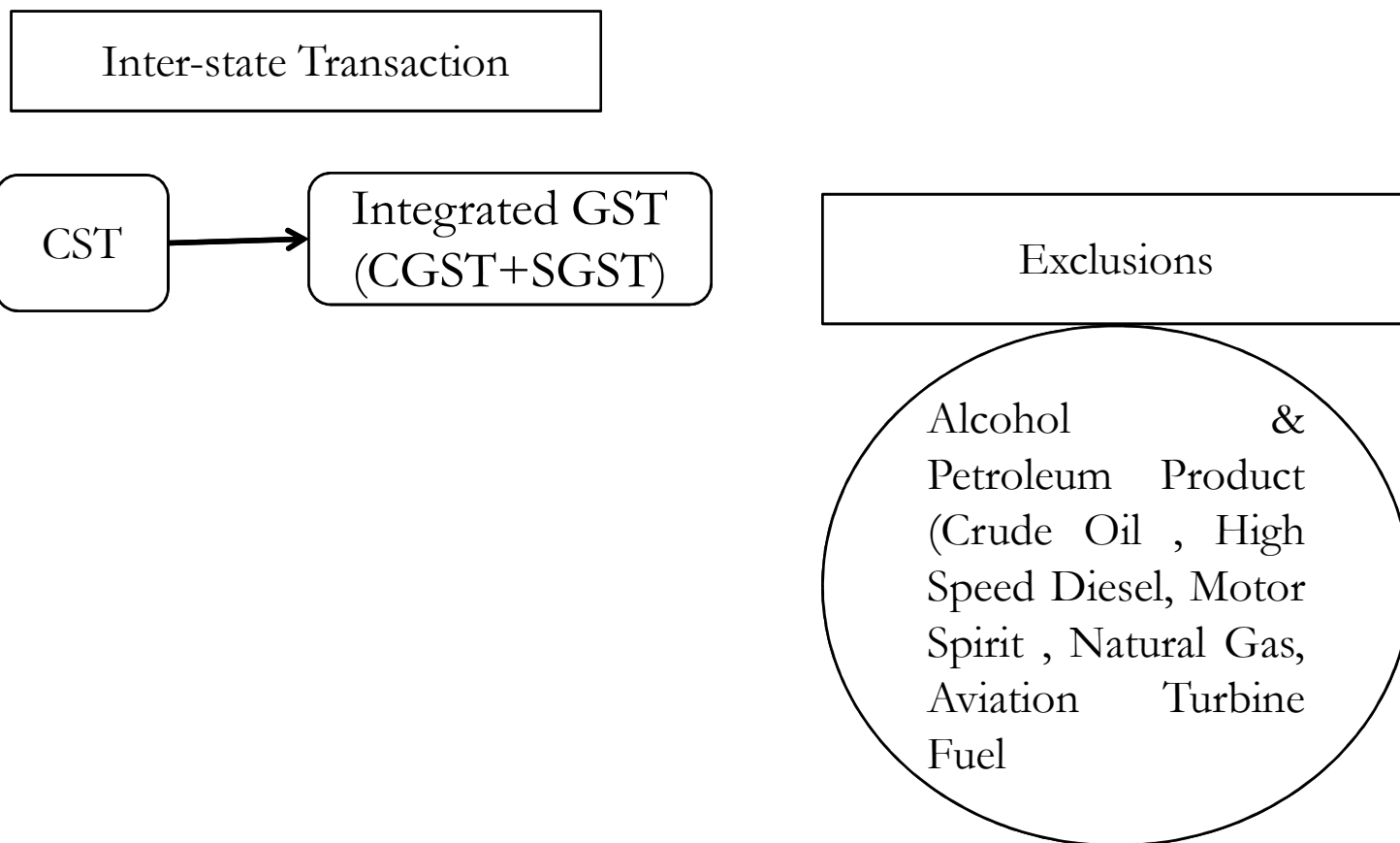


GST

Intra-state transaction



GST



Taxable Event: Supply

<p>All form of supply of goods/services for consideration</p> <ul style="list-style-type: none"> • Sale • Barter • Transfer • Exchange • License • Rental • Lease • Disposal 	<p>Importation of services for a consideration</p> <ul style="list-style-type: none"> • In course of or in furtherance of business, or • Otherwise 	<p>Supply without a consideration</p> <ul style="list-style-type: none"> • Permanent transfer of business asset • Related party transaction • Transaction between Principal agent • Importation of supply from related party
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Composite/Mixed Supply

Composite supply

Two or more supply naturally bundled and supplied in conjunction with each other in ordinary course of business

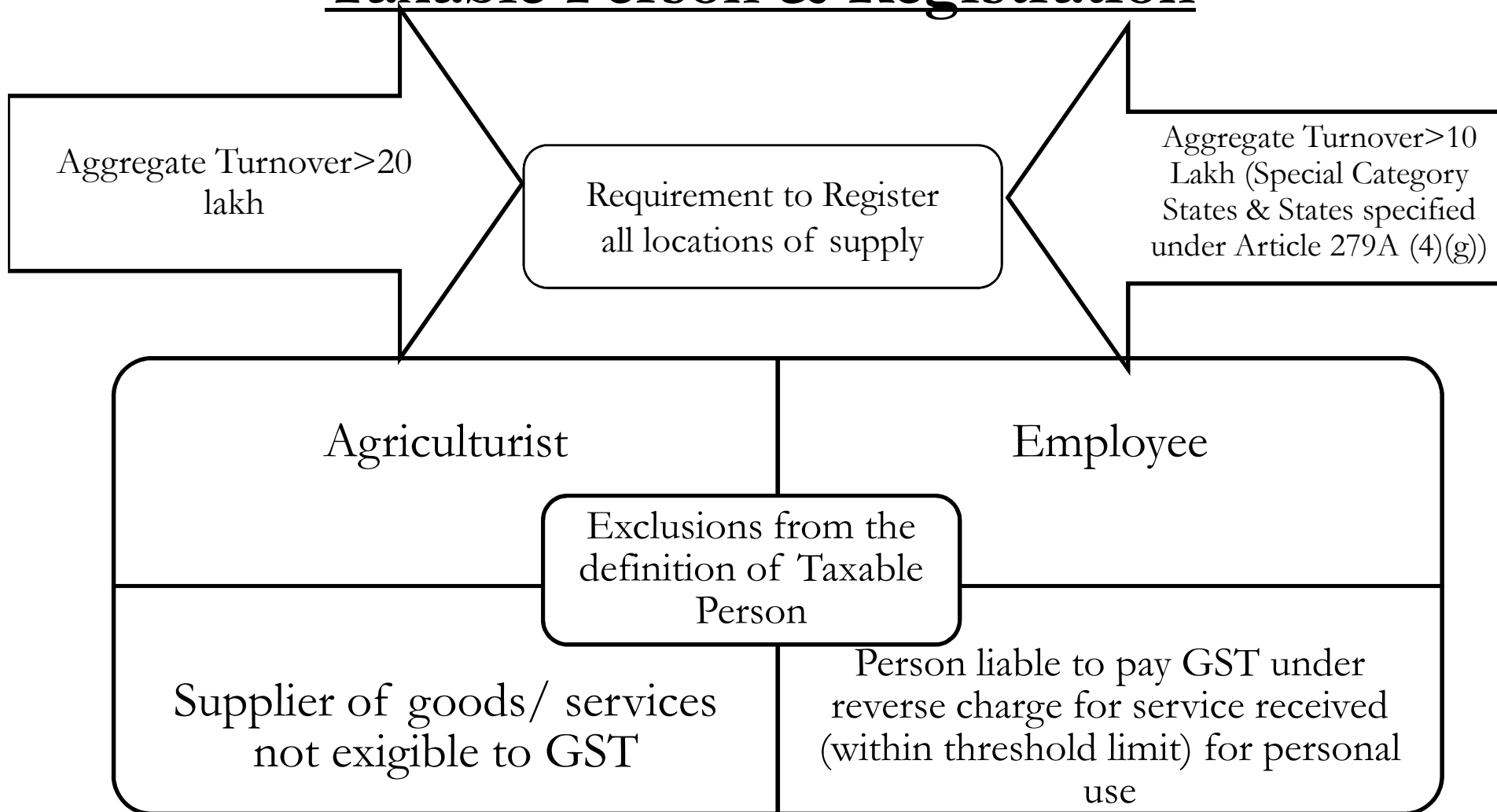
To be treated as supply of principal supply (i.e. dominant element of composite supply)

Mixed Supply

Two or more individual supply or combination thereof and supplied in conjunction with each other for a single price

To be treated as supply of that particular supply which attracts the highest rate of tax

Taxable Person & Registration

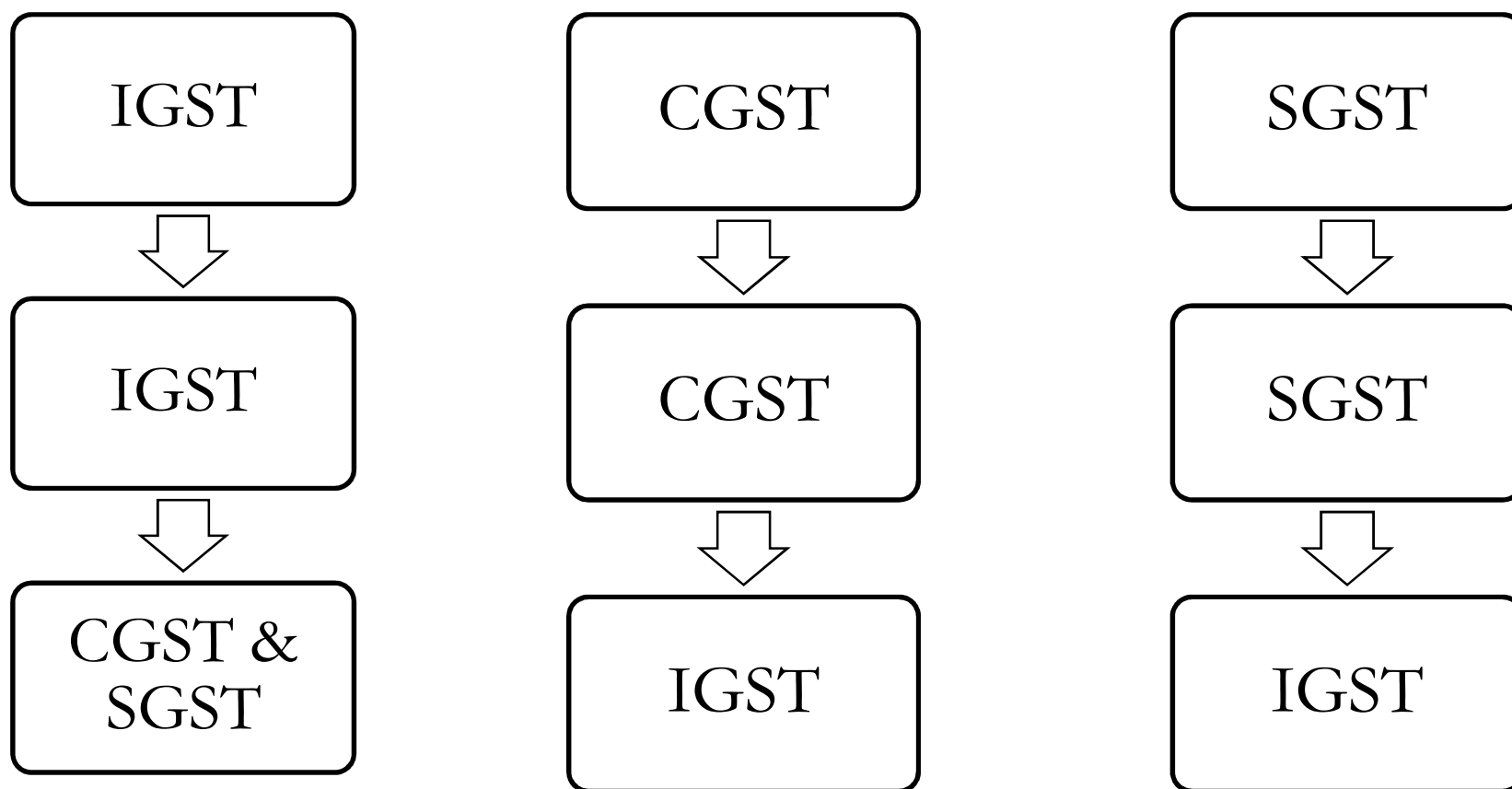


Levy of Tax

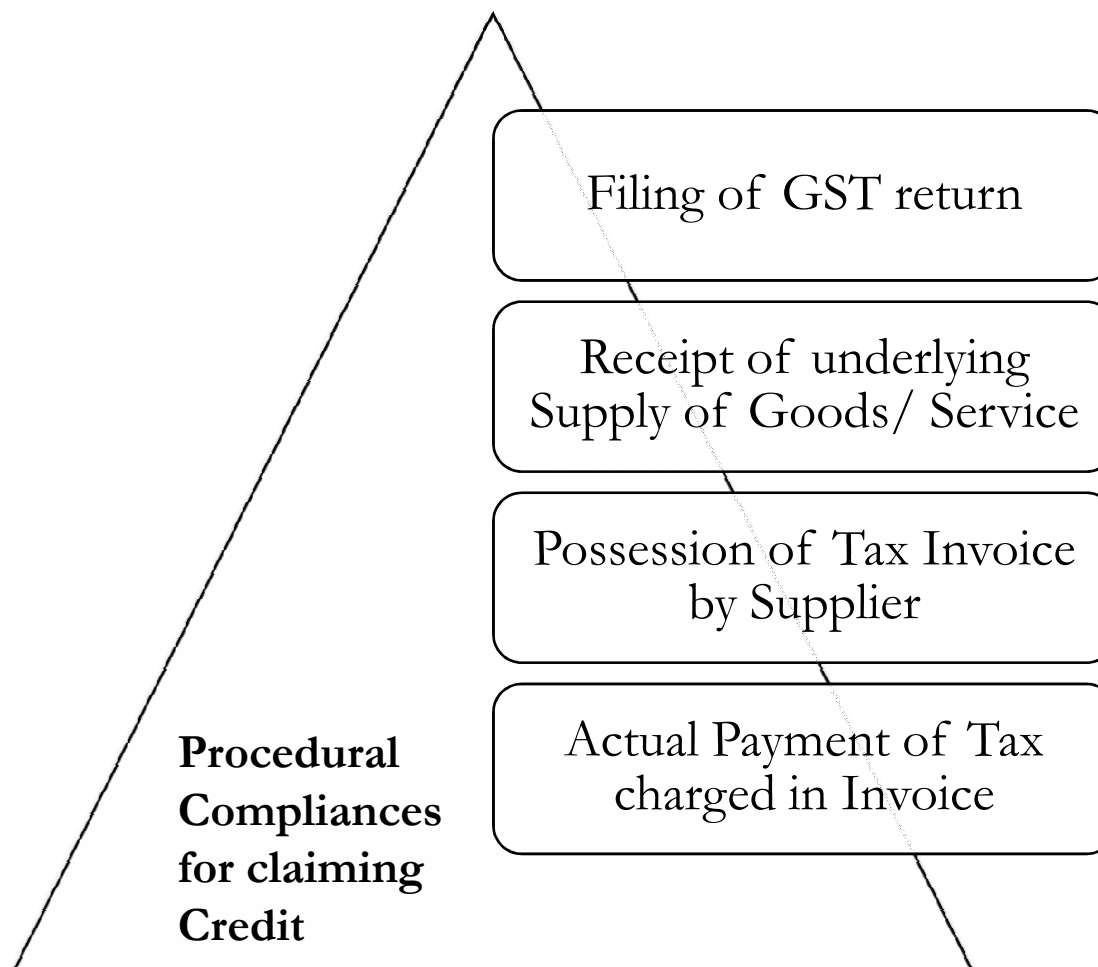
- On value of supply at the rate to be notified by the Government
- Rate of tax capped at 14% under Revised Model GST Law
- GST Council proposes to introduce multiple slab rates for GST ranging from 5% - 28%
- Composition Levy
 - Lump-sum tax in lieu of tax payable
 - Available to person having aggregate turnover of less than fifty lakh Rupees
 - Excludes person engaged in supply of services, inter-state supply of goods, supply of non-taxable goods, supply through E-Commerce or other supplies as notified

Input Tax Credit

Fungibility of Credit



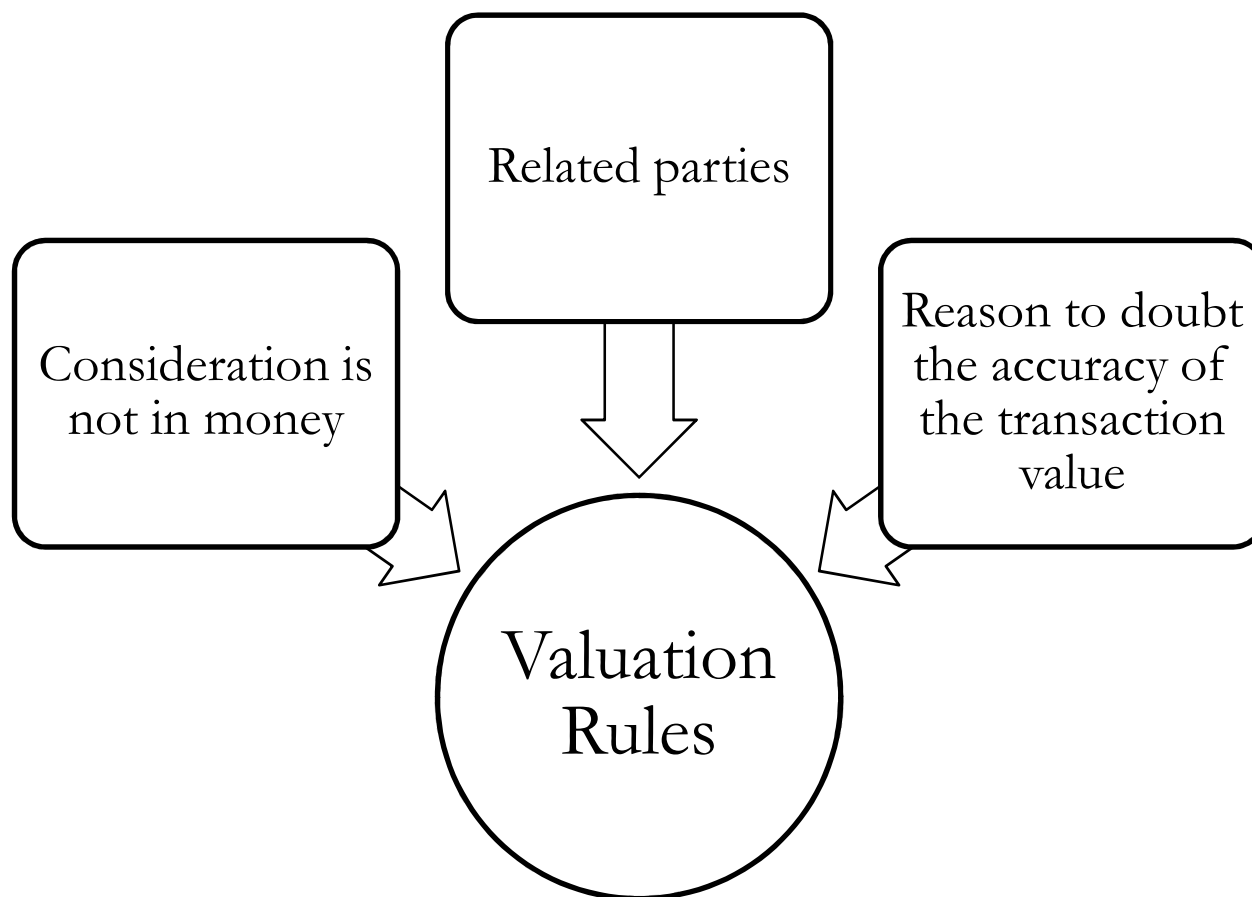
Input Tax Credit



Valuation

- Tax to be paid on the transaction value
- Includes-
 - taxes, duties, cesses, fees and charges levied under any statute
 - Free supplies to the supplier,
 - incidental expenses
 - Interest/ late fee/ penalty for delayed payment of any consideration
 - Subsidies
- Excludes
 - Discounts given before or at the time of the supply duly recorded in invoice
 - Post-supply discounts which are linked to invoice or discount on which input tax credit has been reversed

Valuation Rules



Salient Features of the Proposed Legislation in relation to E-Commerce

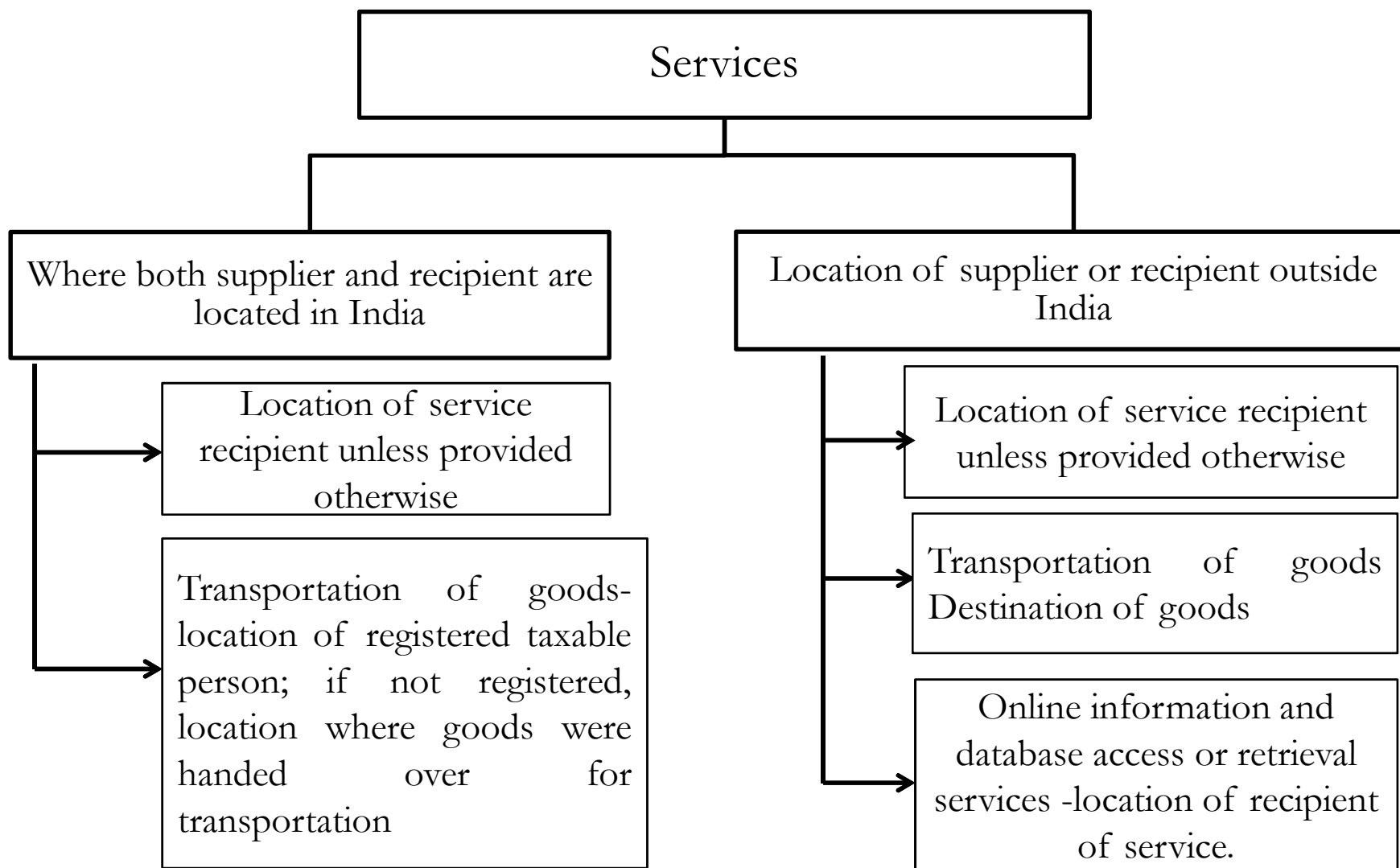
Key Definitions

- Goods:
 - every kind of movable property
 - includes actionable claim, growing crops, grass and things attached to or forming part of the land
 - excludes money and securities
- Services:
 - anything other than goods
 - excludes money and securities
 - Includes activities relating to use of money or its conversion by cash or other mode from one denomination/ form/ currency to another, for a consideration

Key Definitions

- Electronic Commerce (“**E-Commerce**”)-
 - Supply of goods/services over digital or electronic network
 - Includes supply of digital products
- E-Commerce Operator
 - Owner/ operator/manager of digital or electronic facility/ platform for e-commerce

Place of Supply



GST - Place of Supply (OIDAR)

“Online Information and Database Access or Retrieval Services”

- Place of supply of the OIDAR shall be location of recipient of service
- In case of supplier of OIDAR located outside India and service recipient is in India, liability to pay on service provider
- In case of B2C – specific provisions to make OIDAR service provider liable to pay tax

Time of Supply of Service

- Earliest of-
 - date of issue of invoice
 - last date on which supplier is required to issue the invoice
 - date on which the supplier receives the payment
- For tax payable on reverse charge, earliest of
 - the date on which the payment is made, or
 - the date immediately following 60 days from the date of issue of invoice
 - If it is still not determined, then date of entry in the books of account of the recipient of supply
- For supply of voucher
 - the date of issue of voucher, if the supply is identifiable at that point; or
 - the date of redemption of voucher, in all other cases;

Time of Supply of Services

- If still not determinable, the time of supply shall
 - in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - in any other case, be the date on which the CGST/SGST is paid

Returns

- Return for E-Commerce Operators required to Deduct Tax at Source - within 10 days after the month in which deduction is made
- Various Returns to be filed
 - First Return -To be filed for the period of first quarter in which registration has been granted, starting from the date of liability for registration
 - Annual Return - for every financial year on or before December 31 following the end of the Financial Year
 - Final Return - Filed within 3 months from the date of cancellation of registration or cancellation order
- Rectification of Return to be done within the time prescribed.
- E-Commerce Operator required to furnish statement of details of outward supplies effected /returned through it, and the TCS during a month within ten days after the end of such month.

Other Provisions on E-commerce

- E-Commerce Operator to collect tax at source (“**TCS**”) on money payable to the supplier
 - TCS payable on aggregate value less value of taxable supplies returned to suppliers
 - In case details of outward supplies furnished by the E-Commerce Operator do not match with the corresponding details furnished by the supplier, communication of such discrepancy to be made to both the parties
- Compulsory registration of supplier, operator
- Supplier listed on E-commerce not eligible for composite levy
- Central Government or State Government to notify specific categories of services, wherein, tax shall be levied and collected from the e-commerce operators where such services are provided by the suppliers through them.
- TCS provisions not provided under GST.
 - Is TCS applicable on inter-state transactions?

Impact of GST on E-Commerce

Taxability under GST – Marketplace Model

Levy of IGST/CGST + SGST

- Market place services supplied by E-commerce operator to seller.
- Delivery services supplied by the E-commerce operator's FC to the seller.
- Logistic services supplied by third party logistics service provider to the seller.
- Logistic services supplied by E-commerce operator's logistic arm to the E-commerce operator.
- Intra-state/ inter-state supply of goods by the seller to the customer.

Levy of TCS on

- Supplies made through E-commerce operator where consideration is collected by it.

Taxability under GST – Inventory Model

Levy of IGST/CGST + SGST

- Logistic services supplied by E-commerce operator's logistics arm to the E-commerce operator.
- Supply of goods by the E-commerce operator to the customer.

Credit of GST available to

- The E-commerce operator on the IGST/ CGST + SGST paid by it on the logistics services received by it
- The seller on the TCS collected by the E-commerce operator

Taxability under GST – Aggregator Model

Levy of IGST/CGST + SGST

- Transport convenience service provided by cab driver.
- Booking commission charged by the aggregator for web hosting.

Levy of TCS on

- Supplies of web hosting service made through the E-commerce aggregator where consideration is collected by the E-commerce operator.

Taxability under GST – Online Travel Portal Model

Levy of IGST/CGST + SGST on

- Convenience fees collected by the E-commerce operator from the customer.
- Travel, accommodation charges charged by the Seller.

Levy of TCS on

- Supplies made through the E-commerce operator where consideration is collected by it

Taxability under GST - Re-commerce Procure, Refurbish and Sell Model

Levy of IGST/CGST + SGST

- Refurbishing of product service supplied to Re-commerce website.
- Inter-state supply of goods by the seller to the re-commerce operator.
- Raw material procured for refurbishing by the Re-commerce operator.
- Supply of refurbished goods to buyer.

Levy of TCS on

- Supplies made through E-commerce operator where the consideration is collected by it.

Impact of GST on E-Commerce

- Streamlining the framework for e-commerce
 - Uniform tax rates and compliance procedures for supply in all States
 - Enhanced input credit availability
 - Reduction in cascading effect
 - No double taxation or separate levy by States
- End to end compliance requirements relating to registration, reporting and reconciliation, thereby leading to reduced window for error
 - Reduced litigation
- Value of free-of-cost supplies or subsidies to supplier to be included in the value of supply.

Impact of GST on E-Commerce

- Rationalization of logistics/ warehousing networks
 - Reduction in in-transit costs
 - Phasing out of entry tax, octroi, etc.
 - Quicker movement and increased operational efficiency on account of elimination of border check posts
 - Need to maintain warehouses in each State, done away with.
 - Enhanced Credit availability on account of GST

Impact on E-Commerce

- Issues:
 - Multiple registration requirements
 - Stock transfers to be treated as supply in the course of inter-state trade and commerce
 - Cash-flow issue due to stringent compliance in relation to credit availment.
 - Costs on account of varied compliances in relation to payments, returns and refunds
 - Additional compliances such as filing of monthly TCS statements, correlating the details with suppliers, rectification of discrepancies, etc., for an E-commerce operator in relation to supplies effected through it

GST – Where it Currently Stands

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- Rates of GST decided – Multiple slab rates for different goods and services (*contemplated*). Classification of various goods and services into the said rate buckets, is yet to be decided
- Draft rules and formats approved for returns, payment, registration, refund and invoices/debit notes/ credit notes
- Goods and Services Tax Network (“GSTN”) migration initiated in most States for tax payers registered under State VAT, Central Excise and Service Tax.
- Consensus reached on the issue of dual control of assessee, at GST Council Meeting on January 16, 2017
- Arrest and penal provisions sought to be toned down under GST

GST – Where it Currently Stands

- GST compensation law for States, formally approved by the GST Council – to be put up before Parliament in the second half of the Budget session
- GST council to consider updated revised draft GST Laws in the next meeting on March 04, 2017 to March 05, 2017.
- GST Council recommendation to postpone introduction of GST till July 01, 2017
- September, 2017 deadline for implementation of GST under the 101st Constitutional Amendment Act, 2016



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THANK YOU