



## Constitutional Provisions Pertaining to Taxes and its Implication for GST

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### ABSTRACT

*A federal set up creates a multiple polity based on divided functions and powers among central, state and local governments. This paper explains the principal theoretical issues involved in financial relations between different layers of the government in a federal set up. It looks at the distribution of taxation powers between the Centre and state governments. It also outlines the special provisions with respect to Goods and Services Tax and sharing of Central taxes. The distribution of taxation powers between the Centre and the States is meant to minimise tax problems in a federal set up such as double taxation, tax rivalry among States, duplicate tax administration, and tax evasion. Constitutional division of taxation powers between the Union and the States in India rests on economic and administrative considerations, which are examined in this paper.*

**Keywords:** *Constitutional provisions; Federal economy; Tax sharing; Goods and Services tax (GST).*

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### 1.0 Introduction

This chapter explains the constitutional provisions pertaining to taxation powers of different tiers of government in India. The Constitution makes elaborate, albeit complex, arrangements relating to the distribution, between the Union and the States, of taxes, the power of borrowing, and provision for grants-in-aid by the Union to the States. The underlying philosophy of these arrangements is to place at the disposal of the two tiers of government adequate financial resources to enable them to discharge their respective responsibilities under the Constitution.

### 1.1 Federal Polity: Conceptual framework

According to the traditional classification followed by political scientists, constitutions are either unitary or federal in nature. A federation means a union of several states brought about by the instrument of a treaty or agreement.

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The modern concept of federalism is associated with the establishment of American federation in 1787. Since there is no agreed definition of a federal state, the model of the US is often taken as the reference point. A federal set up creates a multiple polity based on divided functions and powers among central, state and local governments. This chapter explains the principal theoretical issues involved in financial relations between different layers of the government in a federal set up.

## 1.2 Nature and problems of federalism

Federalism is a dynamic and not a static concept. It can best be understood in terms of its essential features. The consensus of opinion is that a federal system involves the following essential features.

a) *Dual government*: In a unitary state, there is only one Government, namely the national government. However, in a federal state, there are two layers of government—the union government and the state governments. A component state has no right to secede from the federation. This distinguishes a federation from a confederation.

b) *Distribution of powers*: A federal state involves a division of authority between the federal government and the states. The method of distribution may not be alike in different federal constitutions.

c) *Supremacy of the Constitution*: A federal state derives its existence from the constitution. Every power (executive, legislative, or judicial) whether it belongs to the Union or to the State is subordinate to and controlled by the constitution.

d) *Authority of Courts*: The legal supremacy of the constitution is essential to the existence of a federal system. There should be no violation of the provisions of the constitution by any tier of government. This is secured by vesting in the courts a final power to interpret the constitution.

e) *Doctrine of Harmonious Construction*: Harmonious construction means that different entries (stating power/functions) in different lists of the constitution are so interpreted that a conflict between them is avoided. It must be accepted that the constitution does not want to create conflict and make any entry nugatory. Hence, whenever there appears to be a conflict between two entries in the two different lists, the two entries should be so interpreted that each of them is given effect. For this purpose, the scope and meaning of one may be restricted so as to give meaning to the other.

f) *Doctrine of Pith and Substance*: In a federal set up, the Central and the state governments should keep themselves within the respective domain assigned to them. In other words, no government should trespass into the legislative powers reserved for the other. A law made by a government which encroaches upon the field assigned to the other government is invalid. However, before a law is declared invalid, the courts should

apply the rule of pith and substance.

The rule of pith and substance means that a law enacted by a legislature which is competent to enact it shall not become invalid merely because it incidentally touches a matter outside the competence of that legislature. It often happens that a legislation intending to deal with a subject in one list touches also upon a subject in another list. Blind adherence to a strict interpretation would result in a large number of statutes being declared invalid. Thus, where such overlapping occurs, it is asked what in *pith and substance* is the effect of the enactment in question and in which list is the true character to be found.

g) *Rule of repugnancy*: Repugnancy or inconsistency between two pieces of legislation means that conflicting results are produced when both the laws are applied to the same facts. Repugnancy between two legal provisions can arise in a number of ways. Thus, following are the tests of repugnancy:

- An obvious case of repugnancy arises when one statute says ‘do it’ and the other statute says ‘do not do it’. In such a case there is clear and direct inconsistency between the two Acts and the situation is absolutely irreconcilable.
- Even if there is no apparent conflict between the two statutes, yet there may be repugnancy because both cover the same field. For example, when a statute describes an offence already created by another statute, and imposes a different punishment, repugnancy arises between the two.
- When two statutes pertain to the same subject matter, but when Parliament intends to make its enactment a complete code and cover the whole field. In such a case, the State law whether passed before or after would be overruled on the ground of repugnancy.

## 2.0 Nature of Indian Federation

The Constitution of India adopted on November 26, 1949, became operative on January 26, 1950. It provides for two layers of Government, one at the Central level, and the other at the level of the States. A federal polity of this kind requires division of powers and responsibilities between the Centre and the States and generally brings in its wake problems and conflicts in Centre-State relations. Other important countries of the world with federal set up of government are: US, Canada, Australia, Brazil, and Nigeria.

Why did the framers of the Constitution opt for a federal set up? Answering this question, the Commission on Centre-State Relations, 1988, observed, “In a country too large and diverse for a unitary form of Government, they envisaged a system which

would be worked in co-operation by the two levels of government—national and regional—as a common endeavour to serve the people. Such a system, it was conceived, would be most suited to Indian conditions as it would at once have the advantages of a strong unified central power, and the essential values of federalism”. (Government of India, 1988, p. 8)

The very first Article of the Constitution defines India as a Union of States. Though the word federation has been deliberately avoided in the Indian Constitution, the fiscal structure created under it is essentially federal in nature. The political system introduced by India’s constitution possesses all the essentials of a federal polity. Indian Constitution is the supreme organic law of our land. Both the Centre and State Governments derive their authority from the constitution. The States are not allowed to secede from the union.

There is a division of legislative, administrative and financial powers and functions between the Union and the State Governments. Under Article 246 read with Seventh Schedule of the Constitution, these powers and functions have been defined through precise entries in the three lists in the Schedule. Thus, the Centre has exclusive powers to legislate in respect of matters contained in List I (Union List) such as defence, foreign affairs, citizenship, railways, posts and telegraph, telephones, broadcasting, airways, banking, coinage and currency. Similarly, the States enjoy the power to legislate on matters mentioned in List II (State List) such as public order, police, public health, local government, agriculture and fisheries. The Parliament and the State Legislatures have concurrent powers to make laws on any matters in List III (Concurrent List). The framers of the Constitution recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the Union or the States. Some of the items included in the Concurrent List are: marriage and divorce, forests, economic and social planning, population control and family planning, legal, medical, and other professions. This list does not contain any head of taxation which means the Centre and the States have no concurrent powers of taxation. Residuary powers of legislation including taxation belong to the Centre as per Entry 97 of List I.

The foregoing three-fold division of subjects of legislation rests on the ground that matters of national concern are placed in the Union List and those of purely State or local significance in the State List. Matters of common Centre-State interest are included in the Concurrent List. The Supreme Court stands at the head of India’s judiciary to guard this distribution of powers and to invalidate any action which violates the limitations imposed by the Constitution.

According to Article 254 of the Constitution of India, if any provision of a State law is repugnant to any provision of a Central law, then the Central law shall prevail and

the law made by the State shall be void to the extent of repugnancy. The most common application of Article 254 arises when both the Central and State Governments enact legislation on the same matter contained in List III (Concurrent List) of the Seventh Schedule of the Constitution. In such a situation, if there is repugnancy then Central law prevails over the State law.

It is, of course, true that the Indian constitution has a strong Central bias. The financial powers of the Central Government are overwhelming. According to some scholars the Constitution of India is neither purely federal nor purely unitary but is a combination of both. India's constitution is sometimes described as federal in times of peace and unitary in times of war.

### **3.0 Centrally-biased Constitution and its Justification**

From its very inception, the Constitution is loaded in favour of the Centre. Constitutional amendments effected subsequently have tilted the balance further in favour of the Centre. The concept of a strong Centre has been incorporated in the anatomy of the Constitution through a variety of devices, among which the following are noteworthy.

#### **3.1 Supremacy of union legislative power**

Article 246 (2) and (3), and Article 254(1) establish the supremacy of Union legislative power. Thus, where with respect to a matter, there is irreconcilable conflict or overlapping as between the three lists of the Seventh Schedule, the legislative power of the States must yield to that of the Union. This is how the non-obstante provisions of clauses (1) and (2) of Article 246 are interpreted. Similarly, Article 254(1) states that a law made by a State legislature, repugnant to a law made by the Parliament or an existing law applicable in that State, in regard to any matter enumerated in the Concurrent List, shall be void to the extent of repugnancy.

#### **3.2 Union control over state legislation**

Articles 200 and 201 establish control of the Union executive over State legislation. Article 200 provides that a Bill passed by a State Legislature shall be presented to the Governor who may give his assent, withhold his assent or return the same for reconsideration by the legislature. However, if it is again passed by the State legislature, with or without amendment, he shall not withhold his assent. The Governor may also reserve the Bill for consideration of the President (in effect the Union Council of Ministers) who may in turn signify his assent, withhold the same or return it for

reconsideration. However, in contrast to the position of the Governor, the President need not give his assent when such a Bill is returned with or without amendment after reconsideration by the legislature of the State (Article 201).

### **3.3 Emergency provisions**

Articles 352 and 360 provide for certain emergency provisions. Article 352 provides for proclamation by the President of a grave emergency whereby the security of India is threatened by war or external aggression or armed rebellion. When such a proclamation is in operation, the Union may assume for its organs all the legislative and executive powers of the States. A proclamation of emergency has the effect of converting the State List into Concurrent List and, therefore, if the Parliament legislates on any subject in the State List, the State laws, to the extent of repugnancy, shall be null and void and the law made by the Parliament shall prevail.

Article 360 envisages yet another type of emergency, i.e. financial emergency. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of its territory is threatened, he may proclaim a financial emergency. When such an emergency is in operation, the executive authority of the Union extends to directing any State for the purpose of securing observance of canons of financial propriety.

### **3.4 Restrictions on taxation powers of the states**

Constitution also imposes certain restrictions on the taxation powers of the States. Although a State legislature enjoys the power to levy Goods and Services Tax (GST) under Article 246A and any of the taxes mentioned in List II (State List) of the Seventh Schedule, in the case of certain taxes, this power is subject to restrictions imposed by substantive provisions of the Constitution. Some examples of these restrictions are as follows.

i) *Restriction on states to impose tax on the supply of goods or services or both:* Article 286 ensures that taxes imposed by the States do not interfere with imports and exports or inter-State trade and commerce which are matters of national importance. The Article reads as under:

“286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply 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 takes place in any of the ways mentioned in clause (1).

ii) *Exemption from state taxes on electricity consumed by the Government of India (Article 287)*: The Article reads: “287. Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or (b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

(iii) *Monetary limit on taxes on professions etc.*: A State legislature is empowered to levy a tax on professions, trade, calling or employment vide Entry 60 of List II. However, the total amount payable in respect of any one person to the State by way of such tax is not to exceed ` 2,500 per annum [Article 276(2)].

### **3.5 Restrictions on borrowing powers of the states**

Under Article 292 the executive power of the Centre extends to borrowing, either within or outside India, upon the security of the Consolidated Fund of India, within such limits, if any, as may from time to time be fixed by Parliament. However, the borrowing power of a State (Article 293) is subject to a number of restrictions: (i) it cannot borrow outside India; (ii) it can borrow within the territory of India subject to the following conditions: (a) limitations as may be imposed by the State Legislature, (b) consent of the Union Government to raise fresh loan if the Union has guaranteed an outstanding loan of the State, and (c) consent of the Union to raise fresh loan if a Union loan to the State remains outstanding. Since all the States are in debt to the Centre, they have to obtain Centre’s permission for raising loans. These restrictions are meant to avoid uncontrolled borrowings by the States and thus to prevent the possibility of any State becoming defaulter or insolvent.

In short, the Centre enjoys almost unlimited powers to borrow from internal and external sources while the borrowing powers of the States are subject to various restrictions.

### **3.6 President's rule**

Lastly, there is the controversial Article 356. According to it, if the President on receipt of a report from the Governor of a State, or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may by proclamation assume to himself all or any of the functions of the State Government. He may also declare that the powers of the Legislature of the State shall be exercised by or under the authority of the Parliament.

In view of the above provisions of the Constitution, some experts call it unitary in extraordinary situations, such as war (or emergency), and federal in normal times. It is also called as a quasi-federal Constitution. Why is there a need for a strong Centre? According to the Commission on Centre-State Relations, 1988, "The primary lesson of India's history is that, in this vast country, only that polity or system can ensure and protect its unity, integrity and sovereignty against external aggression and internal disruption, which ensures a strong Centre with paramount powers, accommodating, at the same time, its traditional diversities. This lesson of history did not go unnoticed by the framers of the Constitution. Being aware that, notwithstanding the common cultural heritage, without political cohesion, the country would disintegrate under the pressure of fissiparous forces, they accorded the highest priority to the ensurance of the unity and integrity of the country". (Government of India, 1988, p.7) Moreover, the founding fathers were aware that several regions or areas of India were economically and industrially far behind in relation to others, a situation which exists even today. Revenue-raising capacities and revenue needs of various States also differ. To reduce these economic disparities, a policy of regional balanced development was necessary, and which could be effectively implemented by a financially and otherwise strong Centre.

## **4.0 Constitutional Provisions pertaining to Taxes**

### **4.1 Distribution of taxation powers**

Article 265 of the Constitution specifically states that no taxes shall be levied or collected except by the authority of law. As already noted, Article 246 (read with Seventh Schedule of the Constitution) mentions the matters on which the Centre and the States can legislate. Thus, the Centre has exclusive powers to legislate in respect of matters contained in List I (Union List) of the Seventh Schedule. Entries 82 to 92C of this list refer to taxation powers of the Union Government (Table 1). Similarly, the States have exclusive powers to legislate in respect of matters contained in List II (State List) of the Seventh Schedule. Entries 45 to 63 of this list refer to taxation powers of the States (Table 2). Furthermore, the Centre and the States have concurrent powers to make



laws on any matter contained in List III (Concurrent List) of the Seventh Schedule. However, this list does not contain any head of taxation.

**Table 1: Taxes within Union Jurisdiction as Enumerated in List I (Union List) in the Seventh Schedule (Read with Article 246) of the Constitution of India**

Entry No. in List I	Description of the Tax/Duty	
	Before Constitution (One Hundred First Amendment ) Act, 2016	After Constitution (One Hundred First Amendment ) Act, 2016
82	Taxes on income other than agricultural income.	Same
83	Duties of customs including export duties.	Same
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 subparagraph (b) of this entry.	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.
85	Corporation tax.	Same
86	Taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies.	Same
87	Estate duty in respect of property other than agricultural land.	Same
88	Duties in respect of succession to property other than agricultural land.	Same
89	Terminal taxes on goods or passengers carried by railway, sea or air; taxes on railway fares and freights.	Same
90	Taxes other than stamp duties on transactions in stock exchanges and future markets.	Same

91 <sup>1</sup>	Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies, and receipts.	Same
92	Taxes on the sale or purchase of newspapers and on advertisements published therein.	Omitted
92A <sup>2</sup>	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.	Same
92B <sup>3</sup>	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.	Same
92C <sup>4</sup>	Taxes on services.	Omitted
97 <sup>5</sup>	Any other matter not enumerated in List II or List III including any tax not enumerated in either of these lists.	Same

Notes: 1. To be read with Article 268.

2. Inserted by the Constitution (Sixth Amendment) Act, 1956. To be read with Article 269.

3. Inserted by the Constitution (Forty-sixth Amendment) Act, 1982. To be read with Article 269.

4. Inserted by the Constitution (Eighty-eighth Amendment) Act, 2003.

5. To be read with Article 248.

Source: Government of India, Ministry of Law, Justice and Company Affairs, *The Constitution of India, Seventh Schedule, List I (Union List)*.

**Table 2: Taxes within State Jurisdiction as Enumerated in List II (State List) in the Seventh Schedule (Read with Article 246) of the Constitution of India**

Entry No. in List II	Description of the Tax/Duty	
	Before Constitution (One Hundred First Amendment ) Act, 2016	After Constitution (One Hundred First Amendment ) Act, 2016
45	Land revenue, including the assessment and collection of revenue, the	Same

	maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues	
46	Taxes on agricultural income.	Same
47	Duties in respect of succession to agricultural land.	Same
48	Estate duty in respect of agricultural land.	Same
49	Taxes on lands and buildings.	Same
50	Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.	Same
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 (a) alcoholic liquors for human consumption; (b) 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.	Same
52	Taxes on the entry of goods into a local area for consumption, use or sale therein.	Omitted
53	Taxes on the consumption or sale of electricity.	Same
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.
55**	Taxes on advertisements other than advertisements published in the	Omitted

	newspapers (and advertisements broadcast by radio or television).	
56	Taxes on goods and passengers carried by road or on inland waterways.	Same
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.	Same
58	Taxes on animals and boats.	Same
59	Tolls.	Same
60***	Taxes on professions, trades, callings and employment.	Same
61	Capitation taxes.	Same
62	Taxes on luxuries, including taxes on entertainment, 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.
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.	Same

\*Substituted by the Constitution (Sixth Amendment) Act, 1956: \*\* The words ‘and advertisements broadcast by radio or television’ inserted by the Constitution (Forty-second Amendment), Act, 1976: \*\*\* The scope of these taxes is spelt out in Article 276, the clause (2) of which fixes the amount payable by a person on account of these taxes.

Source: Government of India, Ministry of Law, Justice and Company Affairs, *The Constitution of India, Seventh Schedule, List II (State List)*.

The residual powers of taxation, as in general legislation, belong to the Union vide Article 248 read with Entry 97 of List I (Union List) in the Seventh Schedule. The Article reads, “248. (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.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.”

For example, gift tax was imposed by the Union Government in 1958 under these residual powers (gift tax was abolished in 1998). Similarly, prior to the Constitution (Eighty-eighth Amendment) Act, 2003, service tax was imposed under these residual powers.

As regards Union Territories, the Parliament has the power to impose any tax included in the State List. A scrutiny of the taxation powers contained in List I (Union List) and List II (State List) of the Seventh Schedule of the Constitution reveals that major and elastic sources of tax revenue belong to the Centre while relatively inelastic sources of revenue come under the purview of State Governments.

#### **4.2 Special Provisions with respect to Goods and Services Tax (GST)**

Article 246A of the Constitution<sup>1</sup> makes special provision with respect to goods and services tax by the Centre and the States. It reads, "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. (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 279A, take effect from the date recommended by the Goods and Services Tax Council."

#### **4.3 Exemption of property of the Union from state taxation**

The property of the Centre is exempt from State taxation under Article 285(1) which reads as follows: "285. (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. (2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

#### **4.4 Exemption of property and income of a state from union taxation**

Under Article 289 the property and incomes of the States are exempt from Union taxes, except that Parliament may by law provide for Central taxation of any trading activities of a State which are not incidental to the ordinary functions of Government. Article 289 reads as follows: "289. (1) The property and income of a State shall be exempt from Union taxation. (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any

property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith. (3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

#### **4.5 Sharing of central taxes**

All the taxes and duties levied by the Union are not meant entirely for the purpose of the Union. In fact, revenues from certain taxes and duties leviable by the Union are totally assigned to States or shared with them to supplement their revenues in accordance with their needs. It is a tribute to the foresight of the founding fathers that they realised that the sources of revenue allocated to the States may not prove sufficient in view of their growing welfare, maintenance, and developmental activities. Hence, specific provisions were made to set apart a portion of Central revenues for the benefit of States. These provisions indicate the flexibility of India's Constitution in terms of distribution of financial resources between different layers of the Government. They also make a distinction between the legislative power to *levy* a tax and the power to *appropriate* the proceeds of a tax so levied.

Prior to the Constitution (Eightieth Amendment) Act, 2000, two main Central taxes were shared with the states, namely income tax (other than corporation tax) and the Union excise duties. The sharing of the income tax was mandatory under Article 270 while that of the Union excise duties was discretionary under Article 272. There were also two tax rental arrangements with the States, where the Union Government collected the tax on behalf of the States and then distributed the proceeds among the States on the basis of criteria recommended by the Finance Commission. These were: (i) additional duties of excise in lieu of sales tax on textiles, tobacco and sugar, and (ii) grant in lieu of tax on railway passenger fares.

The Constitution (Eightieth Amendment) Act, 2000, significantly changed the manner of distribution of Central tax collections between the Central and State Governments. It substituted a new Article for Article 270 and omitted the old Article 272. The new Article 270 provides for the sharing of the net proceeds of all Union taxes and duties with the States, subject to the provisions of Article 271 (explained below). In other words, all central taxes were brought into a shareable pool and it became mandatory to assign a share from each central tax to the States. Eleventh Finance Commission was the first to make recommendations in accordance with the new provisions of the Constitution.

It is noteworthy that only *net proceeds* are to be shared, and as such *cost of collection* has to be deducted to obtain the net proceeds as prescribed under Article 279.

The proceeds are to be distributed among the States where the central taxes are *leviable in that year*.

Article 270 reads as follows: “270. (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 269 and 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).

(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, “prescribed” means—(i) until a Finance Commission has been constituted, prescribed by the President by order, and (ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.”

The objective of the Constitution (Eightieth Amendment) Act, 2000 was to construct a pool of all central taxes for sharing so that a holistic view could be taken and both sides could share in the aggregate buoyancy of the central tax revenues.

#### **4.6 Surcharge on Certain Duties and Taxes for the Purposes of the Union (Article 271)**

The Article reads, “271. Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles [except the goods and services tax under article 246A]<sup>2</sup> by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.”

#### **4.7 Duties levied by the union but collected and appropriated by the states (Article 268)**

These include such stamp duties as are mentioned in Entry 91 of List I (Union List) of the Seventh Schedule. The Article reads as follows: “268. (1) Such stamp duties as are mentioned in the Union List shall be levied by the Government of India but shall be collected (a) in the case where such duties are leviable within any Union Territory by the Government of India, and (b) in other cases, by the States within which such duties are respectively leviable. (2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.”

Stamp duties are leviable on bills of exchange, cheques<sup>3</sup>, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies, and receipts. These documents are executed in the course of business and trade and they find place in the Union List to ensure uniformity of rates throughout the country for the smooth conduct of commercial and related transactions. Inter-State disparities in their rates and tax regulations can hinder, and even disrupt, the free flow of trade and commercial activities. The levy and collection of stamp duty is governed by the Indian Stamp Duty Act, 1899 which was last amended in 1976 when rates of stamp duty on certain instruments were revised<sup>4</sup>.

#### **4.8 Taxes levied and collected by the union but assigned to the states (Article 269)**

Article 269 reads as follows: “269. (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 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.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with



such principles of distribution as may be formulated by Parliament by law.

(3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce.

The above two taxes correspond to Entries 92A and 92B in List I (Union List) of the Seventh Schedule<sup>5</sup>.

*It is noteworthy that out of these two taxes only one was being levied till recently, viz. inter-State sales tax (Entry 92A). Central Sales Tax (CST) on inter-State sales was subsumed under GST.*

Taxation arrangements under Articles 268 and 269 of the Constitution are of special importance. They place under the charge of the Union the taxes and duties which have inter-State character and require uniformity in rate structure for the smooth conduct of business and trade activities throughout the country. These two Articles mention taxes/duties which shall be levied by the Centre but assigned completely to the States within which they are leviable<sup>6</sup>.

#### **4.9 Levy and collection of Goods and Services Tax in the course of inter-state trade or commerce (Article 269A)**

Inserted by section 9 of the Constitution (One Hundred and First Amendment) Act, 2016 this new Article reads as follows: “269A. (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 246A, 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 246A 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.”

#### **4.10 Goods and Services Tax Council (GST Council) (Article 279A)**

Section 12 of the Constitution (One Hundred and First Amendment) Act, 2016 inserted a new Article 279A in the Constitution to provide for the constitution of Goods and Services Tax Council (GST Council) to make recommendations to the Union and the States on various aspects of the Goods and Services Tax (GST). The new Article reads as follows: “279A. (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—(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 by each State Government...Members.

(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 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 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.”

Section 15 of the Constitution (One Hundred and First Amendment) Act, 2016 also amended Article 368 of the Constitution which pertains to power of Parliament to amend the Constitution and procedure therefore. Thus, Article 279A (pertaining to GST Council) was included in the list of items amendments to which require ratification by the legislatures of not less than one-half of the States.

#### **4.11 Taxes and duties in List I (Union List) of the Seventh Schedule not being levied at present**

These taxes/duties are discussed below individually along with the logic for retaining them with the Centre.

a) *Entries 87 and 88*: These two entries pertain to estate duty, and succession duty in respect of property other than agricultural land respectively. Since the incidence of both estate duty, and succession duty is on the same object, viz. property passing on the death of the owner to his successors, they are essentially similar in nature. However, while in the case of the estate duty, the value of the whole estate, even if situated in more than one State, is the base for taxation, the succession duty is relatable to the value of individual shares (i.e. parts of an estate) passing on to the successors.

The desirability of retaining both these duties with the Centre is self-evident. An individual may have properties located in more than one State and a total assessment of his estate can better be undertaken by the Union Government. Similarly, if succession duty is levied by the States, the persons inheriting properties in different States will have to deal with different tax rates and procedures. Moreover, if estate/succession duties are levied by the States, it may trigger unhealthy competition among the States, resulting into harassment of the assesseees and hence litigation. On efficiency criterion (i.e. cost of collection) also it is desirable if these duties are levied and administered by the Union, thus avoiding duplication of tax administration. Moreover, the Union has better access to information and otherwise also it is in larger national interest to ensure uniformity with respect to these duties. It may be noted that estate duty was first imposed in India in 1953 when the Estate Duty Act of that year imposed a duty on the capital value of all property passing on the death of any person on or after October 15, 1953. It was abolished with effect from March 16, 1985.

b) *Entry 89*: It relates to terminal taxes on goods and passengers carried by railway, sea or air. However, under Entry 56 of List II, States are empowered to levy taxes on goods and passengers carried by road or on inland waterways. Thus, the taxation powers in regard to the services of the major means of transport rest with the Union.

In a developing and diversifying economy like India, the importance of transport sector is self-evident. The growth of this vital infrastructure enlarges the size of the market and determines, *inter alia*, the level of private enterprise. Lest the free flow of inter-State trade should be hampered by differential State levies, the taxation of transport services is, by and large, with the Union Government. The Fifth and the Eighth Finance Commissions examined the scope for levying these taxes but expressed themselves against their imposition on grounds of administrative difficulties and meagre revenue potential. It is noteworthy that there already exists a terminal tax on passengers carried by railway from or to certain places of pilgrimage or where fairs or exhibitions are held. The proceeds of the tax are credited to the Consolidated Fund of the concerned States. The tax is restrictive and limited in scope and not a general terminal tax on passengers carried by railways to all places.

Entry 89 also refers to taxes on railway fares and freights. The Eighth Finance Commission favoured levying tax on railway passenger fares but not until the present arrangement of giving grants in lieu of such a tax continues to exist.

c) *Entry 90*: It pertains to 'taxes other than stamp duties on transactions in stock exchanges and future markets'. Since stock exchanges and future markets<sup>7</sup> are at a formative stage and have an inter-State character therefore it is desirable to retain these taxes with the Union. The Eighth Finance Commission did not think it advisable to levy

taxes on transactions in stock exchanges and future markets.

d) *Entry 92*: It refers to ‘taxes on the sale or purchase of newspapers and on advertisements published therein’. This tax is retained with the Union to protect the freedom of the press, and avoid undue tax burden on newspaper industry, particularly the regional language newspapers. Since newspaper reading habit is not sufficiently developed and widespread in the country, it is not desirable to impose a tax on the sale or purchase of newspapers. Both the Fifth and the Eighth Finance Commissions did not recommend a tax on the sale or purchase of newspapers. However, both the Commissions opined that there was scope for tax on advertisements published in newspapers. The Eighth Commission cautioned that a tax on advertisement, if levied, should be borne by the advertisers themselves and not passed on to the newspapers and journals. It is noteworthy that Entry 92 was omitted by section 17 of the Constitution (One Hundred and First Amendment) Act, 2016).

#### **4.12 Taxation powers to local governments**

The Constitution does not provide for any taxation powers to local governments. However, the implication of Article 276 is that the taxes on professions, trades, callings or employment are for the benefit of a State or of a municipality, district board, local board or any other local authority. The States on their own may assign any of the taxes in the State List to the local bodies. The taxes generally assigned to local governments are property taxes, and taxes on vehicles.

#### **4.13 Powers of district councils to levy taxes in tribal areas**

Sixth Schedule of the Constitution [read with Articles 244 (2) and 275 (1)] pertains to provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Sub-paragraph (3) of paragraph 8 of the Sixth Schedule relates to powers of the District Council for an autonomous district to levy and collect all or any of the following taxes within such district: (a) taxes on professions, trades, callings and employments; (b) taxes on animals, vehicles and boats; (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; (d) taxes for the maintenance of schools, dispensaries or roads; and (e) taxes on entertainment and amusements.

#### **4.14 Freedom as to payment of taxes for promotion of any particular religion**

According to Article 27 of the Constitution of India, “No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination”.

#### **4.15 Rationale for constitutional arrangements**

The distribution of taxation powers between the Centre and the States is meant to minimise tax problems in a federal set up such as double taxation, tax rivalry among States, duplicate tax administration, and tax evasion. Constitutional division of taxation powers between the Union and the States in India rests on economic and administrative considerations. Taxes with an inter-State base, and those in the case of which uniformity in rates is desirable, are vested in the Central Government. Also, taxes which the taxpayer can evade by shifting his habitat, or where the place of residence is not a correct guide to the true incidence of the tax, belong to the Centre. Taxes which are location-specific and relate to subjects of local consumption are with the States.

Commenting upon the soundness of the constitutional arrangements regarding division of taxation powers, the Commission on Centre-State Relations, 1988, observed, “A well balanced distribution of heads of taxation based on economic and administrative rationale between the Union and the States and adequate arrangements for sharing of resources is vital for the proper functioning of the two-tier polity. We are of the firm view that the basic scheme of the Constitution dividing the field of taxation between the Union and the States and incorporating adequate arrangements for sharing of resources between them, is sound and no major modifications in it are called for”. (Government of India, 1988, p. 271)

Similarly, the Sixth Finance Commission made the following observations in this regard, “We must bear in mind that the country as a whole and every part thereof has gained significantly from the maintenance of a vast unified market within which there is free movement of goods and men. Having regard to the trends all over the world even for independent political entities to come together to forge closer economic links in the form of common markets and economic groupings, our best hopes of accelerated economic development lie in the further strengthening of our national market and in the promotion of fiscal arrangements that are most conducive to the effective functioning of this market. Given this basic fact, there can be no room for argument that the levy and administration of taxes with wide economic base such as income tax, corporation tax, Union excise duties and of course also import and export duties will have to remain with the Union Government. In fact the architects of our Constitution drew on the experience of some of the other federations in which the assignment of taxes with wide economic base to units had led to intractable problems of conflicting tax jurisdictions. They wisely averted the possibility of such conflicts by assigning such taxes right from the beginning to the Union Government. At the same time, the framers of our Constitution rightly allocated to the States’ subjects such as agriculture, education, medical care, public

health, irrigation and law and order that touch intimately the lives of the people. These can be efficiently administered in a vast country only by the State Governments which are closer to the people and are more keenly alive to their problems and needs. The heads of revenue and responsibilities were distributed on the basis of whether the Centre or the State was better equipped to deal with the particular head". (Government of India, 1973, p.5)

#### 4.16 Definitions

In relation to taxation, the Constitution provides the following definitions:

*Goods:* According to clause 12 of Article 366 of the Constitution, *goods* includes all materials, commodities, and articles.

*Goods and Services Tax:* According to clause 12A<sup>8</sup> of Article 366 of the Constitution, 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.

*Services:* According to clause 26A<sup>9</sup> of Article 366 of the Constitution, *services* means anything other than goods.

*State:* According to clause 26B<sup>10</sup> of Article 366 of the Constitution, *State* with reference to Articles 246A, 268, 269, 269A and Article 279A includes a Union Territory with legislature.

#### 5.0 Summary of Constitutional Provisions Pertaining to Taxes

Provisions regarding taxes in Constitution of India are summarised in Table 3.

**Table 3: Constitutional Provisions Pertaining to Taxes**

Article	Brief description
27	Freedom as to payment of taxes for promotion of any particular religion:
246 (read with Seventh Schedule of the Constitution)	Subject-matter (including taxes) of laws made by Parliament and by the Legislatures of States.
246A	Special provisions with respect to Goods and Services Tax (GST)
248 [read with Entry 97 of List I (Union List) of the	Residuary powers of legislation, including taxes.

Seventh Schedule]	
265	No tax shall be levied or collected except by authority of law.
268 [read with Entry 91 of List I (Union List) of the Seventh Schedule]	Duties levied by the Union but collected and appropriated by the States.
269 [read with Entries 92A and 92B of List I (Union List) of the Seventh Schedule]	Taxes levied and collected by the Union but assigned to the States.
269A	Levy and collection of Goods and Services Tax (GST) in the course of inter-State trade or commerce.
270	Taxes and duties levied and collected by the Union but distributed between the Union and the States.
271	Surcharges on certain duties and taxes for the purpose of the Union.
276 (2)	Monetary limit on taxes on professions, trade, calling or employment.
279A	Goods and Services Tax Council (GST Council)
285 (1)	Exemption of property of the Union from State taxation.
286	Restriction on States to impose tax on the supply of goods or services or both, where such supply 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.
287	Exemption from State taxes on electricity consumed by the Government of India.
289	Exemption of property and income of a State from Union taxation.
244 (2) and 275 (1) [read with sub-paragraph (3) of paragraph 8 of the	Powers of District Councils to levy taxes in tribal areas.



Sixth Schedule	
366 (12)	Definition of <i>goods</i>
366 (12A)	Definition of <i>goods and services tax</i>
366 (26A)	Definition of <i>services</i>
366 (26B)	Definition of <i>state</i> with reference to Articles 246A, 268, 269, 269A and 279A

### Endnotes

1. Article 246A was inserted in the Constitution by section 2 of the Constitution (One Hundred First Amendment) Act, 2016.
2. Inserted by section 11 of Constitution (One Hundred and First Amendment) Act, 2016.
3. Stamp duty was payable on cheques prior to 1927 but was withdrawn in that year.
4. *Indian Stamp Act*: The Indian Stamp Act, 1899 is a fiscal statute laying down the law relating to tax levied in the form of stamps on instruments recording transactions and stamp duties on instruments specified in Entry 91 of List I (Union List) of the Seventh Schedule of the Constitution. Because of large scale changes in the usage of the instruments since the Indian Stamp Act, 1899 was introduced, a need to amend a good number of provisions of this Act is being felt for quite some time. Law Commission in its 67th report submitted in 1976 made extensive recommendations in this regard. Serious efforts are now being made to bring in large scale amendments in Indian Stamp Act, 1899 to bring this law in tune with the times. Stamp duties on instruments other than those mentioned in Entry 91 of List I above are levied by the States as per Entry 63 of List II (State List). Thus, stamp duty and registration fees are levied on the registration of property or other conveyances. Provisions other than those relating to rates of duty fall within the legislative power of both the Union and the States by virtue of Entry 44 of List III (Concurrent List) of the Seventh Schedule. Stamp duties on all the instruments are collected and kept by the concerned States. Till recently, the stamp duty rates were quite high in most states and the procedures for evaluating the conveyances were also complicated. In this context, the Tenth Five Year Plan (2002-07) remarked, "Stamp duty needs to be paid on all documents which are registered and the rate varies from state to state. With stamp duty rates of 13 percent in Delhi, 14.5 percent in Uttar Pradesh and 12.5 percent in Haryana, India has perhaps one of the highest levels of stamp duty. Some states even have double stamp incidence, first on land and then on its development. In contrast the maximum rate levied in most developed markets whether in Singapore or Europe is in the range of 1-2 percent. Even the National Housing and Habitat Policy, 1998, recommended a stamp duty rate of 2-3 percent. Most of the methods to avoid registration are basically to avoid payment of high stamp duty. Another fall out of high stamp duty rates is the understatement of the proceeds of a sale. This is also linked to payment of income tax and capital gains tax. When registration has not been effected, a transfer is not deemed to have taken place and hence capital gains tax can be

totally avoided. Thus, the present provisions in various laws and their poor implementation have led to a situation where there is considerable financial loss to the exchequer on account of understatement of sale proceeds, non-registration and consequent non-payment of stamp duty and avoidance of capital gains tax". [ Government of India, Planning Commission, *Tenth Five Year Plan (2002-07)*, Volume II, p. 833-834.]

Of late, states have undertaken reforms by reducing the duty rates and streamlining procedures for evaluation of property. After the reduction of rates, the general experience has been revenue-augmenting due to improved compliance of law.

5. Prior to the Eightieth Amendment of the Constitution, provisions of Article 269 were as follows.

*Taxes Levied and Collected by the Union but Assigned to the States (Article 269):* These were: (a) duties in respect of succession to property other than agricultural land, (b) estate duty in respect of property other than agricultural land, (c) terminal taxes on goods or passengers carried by railway, sea or air, (d) taxes on railway fares and freights, (e) taxes other than stamp duties on transactions in stock exchanges and future markets, (f) taxes on the sale or purchase of newspapers and on advertisements published therein, (g) 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, and (h) 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. These taxes corresponded to Entries 87, 88, 89, 90, 92, 92A and 92B in the Union List.

6. *Assignment of Taxes:* Assignment of a tax means transfer of taxation power from a higher level to a lower level of government. Taxation power includes the following: the right to levy the tax, collect the tax, and appropriate the proceeds from the tax. Thus, there can be three interpretations of assignment of a tax. In the first case, the higher level government may levy and collect a tax but handover the entire proceeds to a lower level government. Taxes levied by the Government of India under Article 269 of the Constitution are a case in point. Secondly, the higher level government may levy a tax but allow the lower level government to collect it and retain fully the proceeds therefrom. Taxes levied by the Government of India under Article 268 of the Constitution fall under this category. Finally, the higher level government may transfer a tax to a lower level government lock, stock and barrel, a situation which defines assignment of a tax in its strictest sense.

Assignment of taxes should not be unconditional. Along with the determination of tax domain for a state, the central government ought to prescribe conditions so that the underlying purpose of assignment is adequately served. Thus, it should be obligatory on the part of a state to levy the tax assigned to it. Not only this, the state should not have powers to alter the basic structure of the assigned tax. The state may enjoy flexibility in fixing the tax rates within a minimum and maximum range prescribed by the central government. Tax exemptions/concessions should be minimum because a state is not expected to serve national objectives through its tax policy. As at other levels, tax default through disputes should be

discouraged by requiring full payments prior to disputing an assessment.

7. Future trading refers to contracts for sale and purchase of goods at a future date primarily with a view to avoid price fluctuations. Presently, future trading is allowed at specific centres in respect of four commodities, viz. jute products, paper, turmeric, and *gur*.
8. Inserted by section 14 of the Constitution (One Hundred First Amendment) Act, 2016.
9. *Ibid*.
10. *Ibid*.

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