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VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI

INTERMEDIATE LEVEL PAPER 4B: INDIRECT TAXES

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Background

What is taxation and why tax should be paid?

Welfare State - Public Expenditure - Fiscal policy to stimulate economic growth.

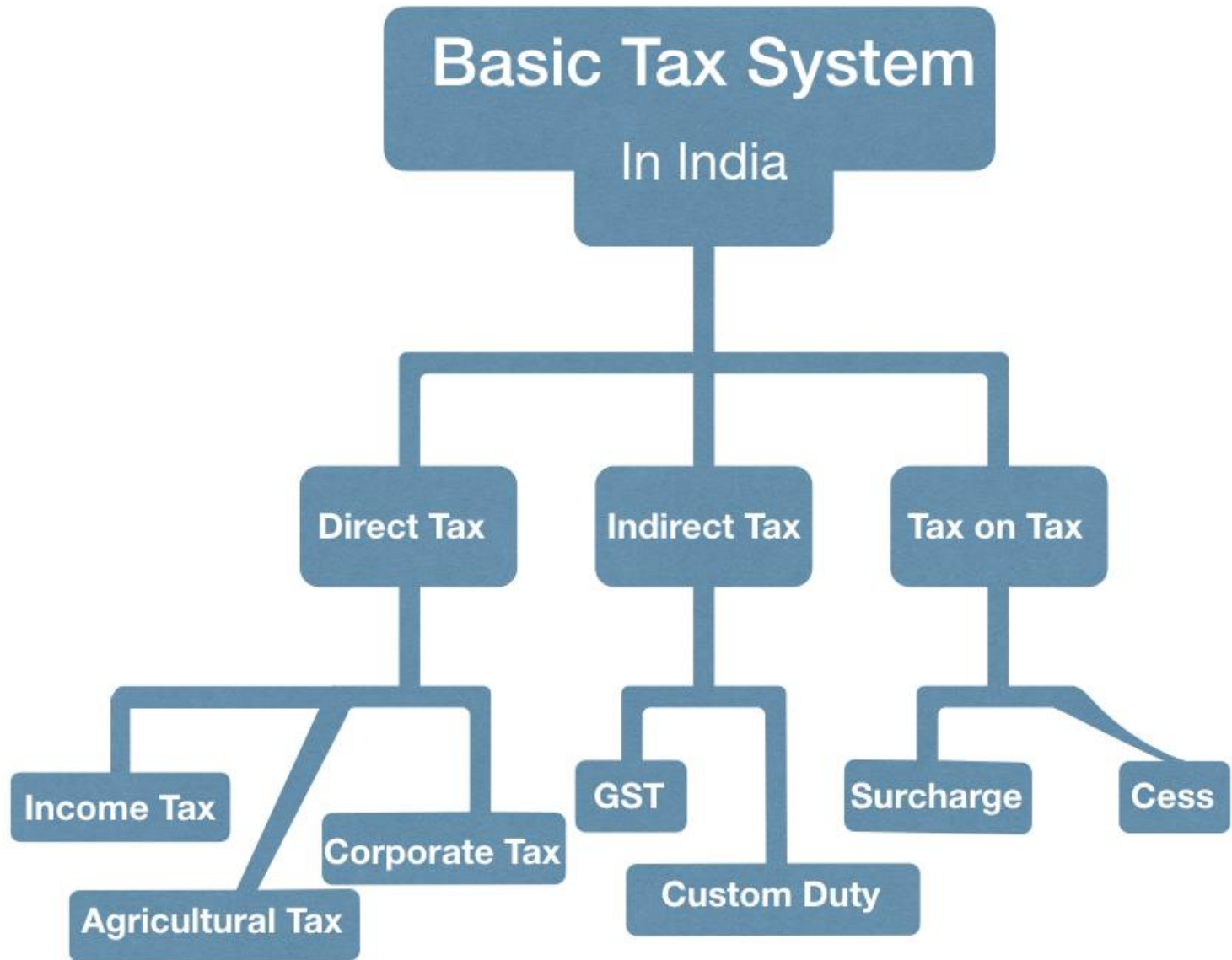
Tax: Tax is a burden, pecuniary burden. Pecuniary – Involving money

Definition of Tax:

Pecuniary Burden laid upon individuals and land owners to support the government, a payment exacted by legislative authority.

It is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority.







Direct Tax

Incidence of Tax borne directly

Progressive in Nature

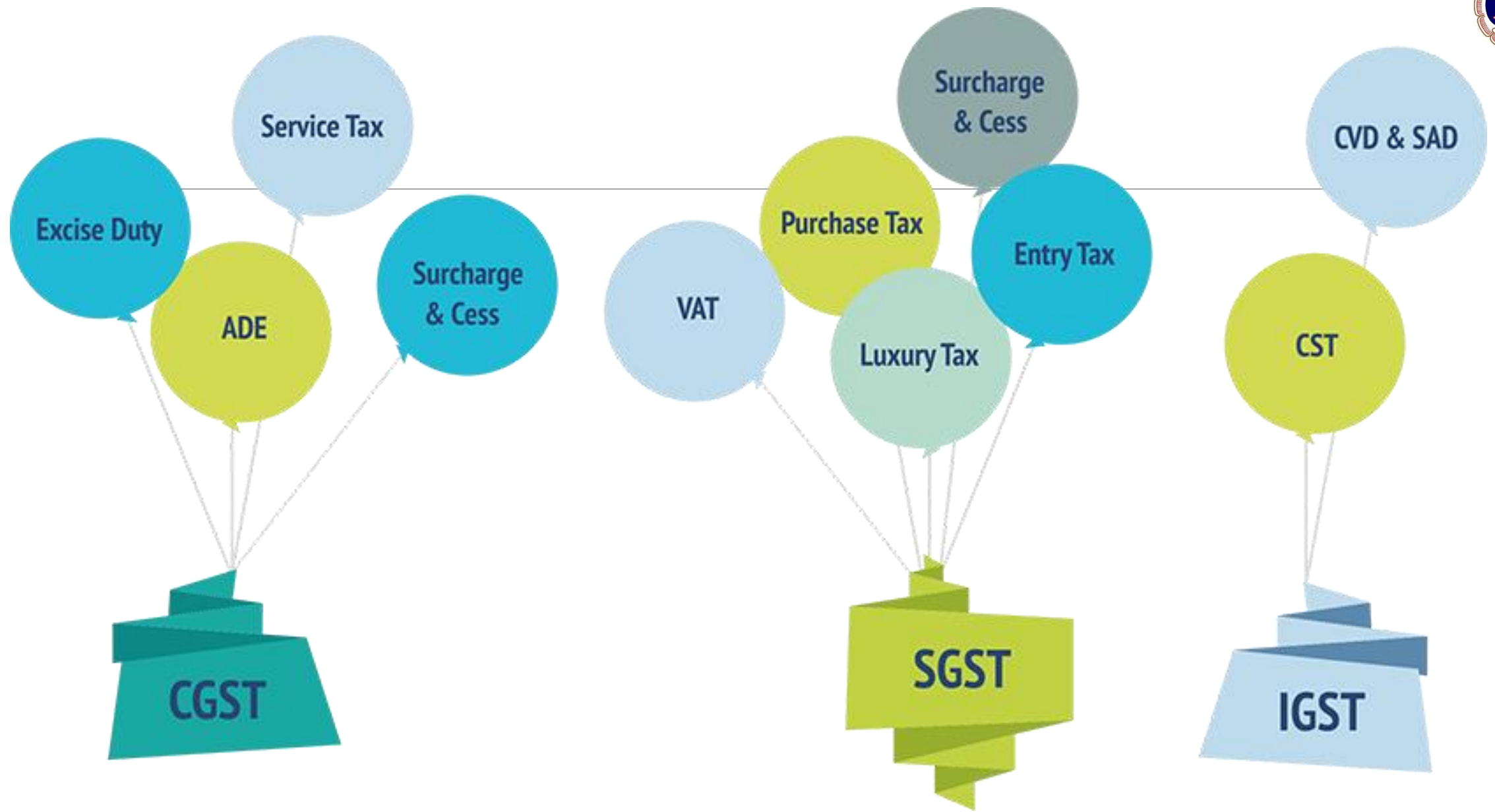
Income Tax

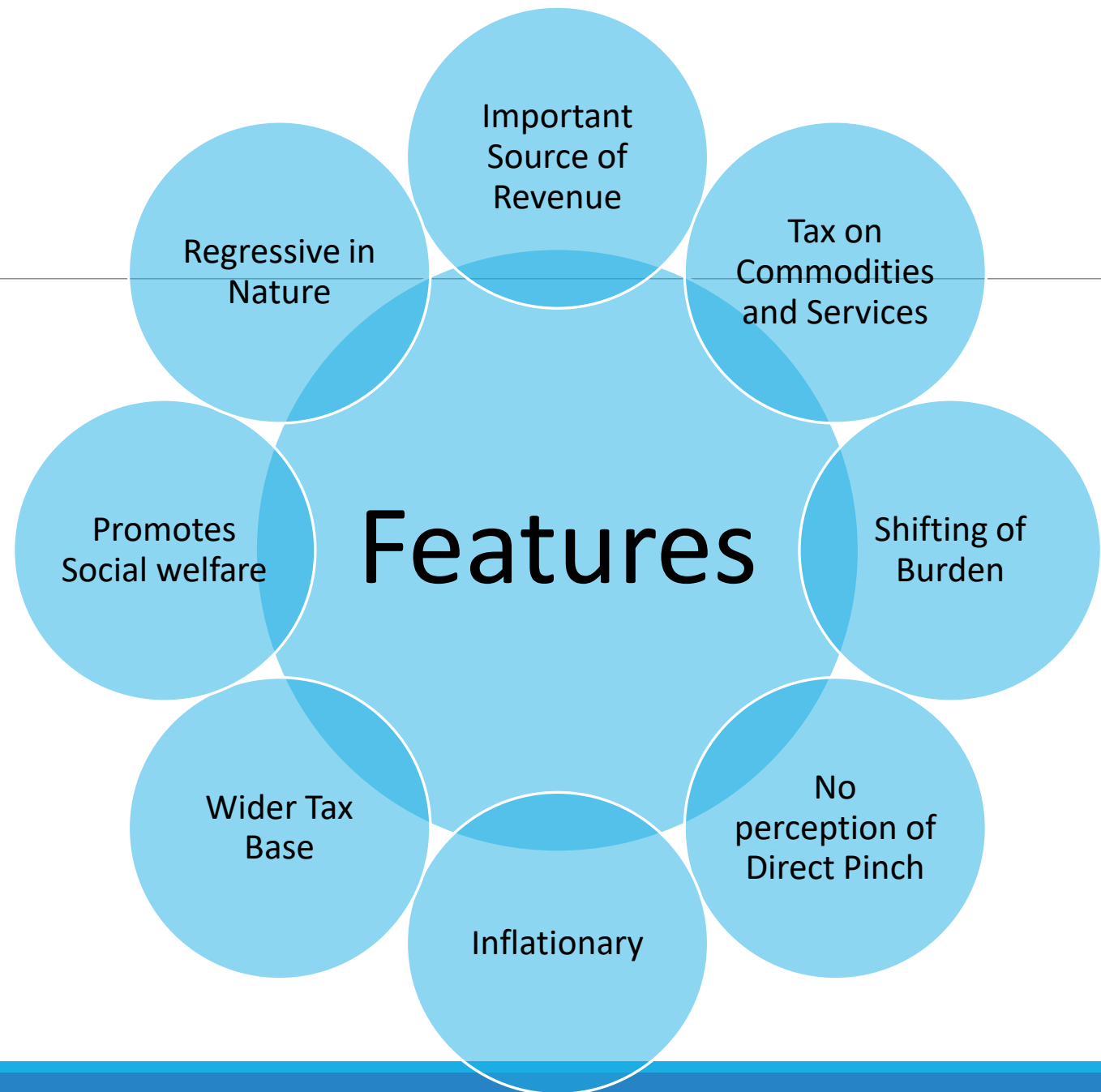
Indirect Tax

Incidence of Tax is shifted to another person

Regressive in Nature

GST
Customs Duty





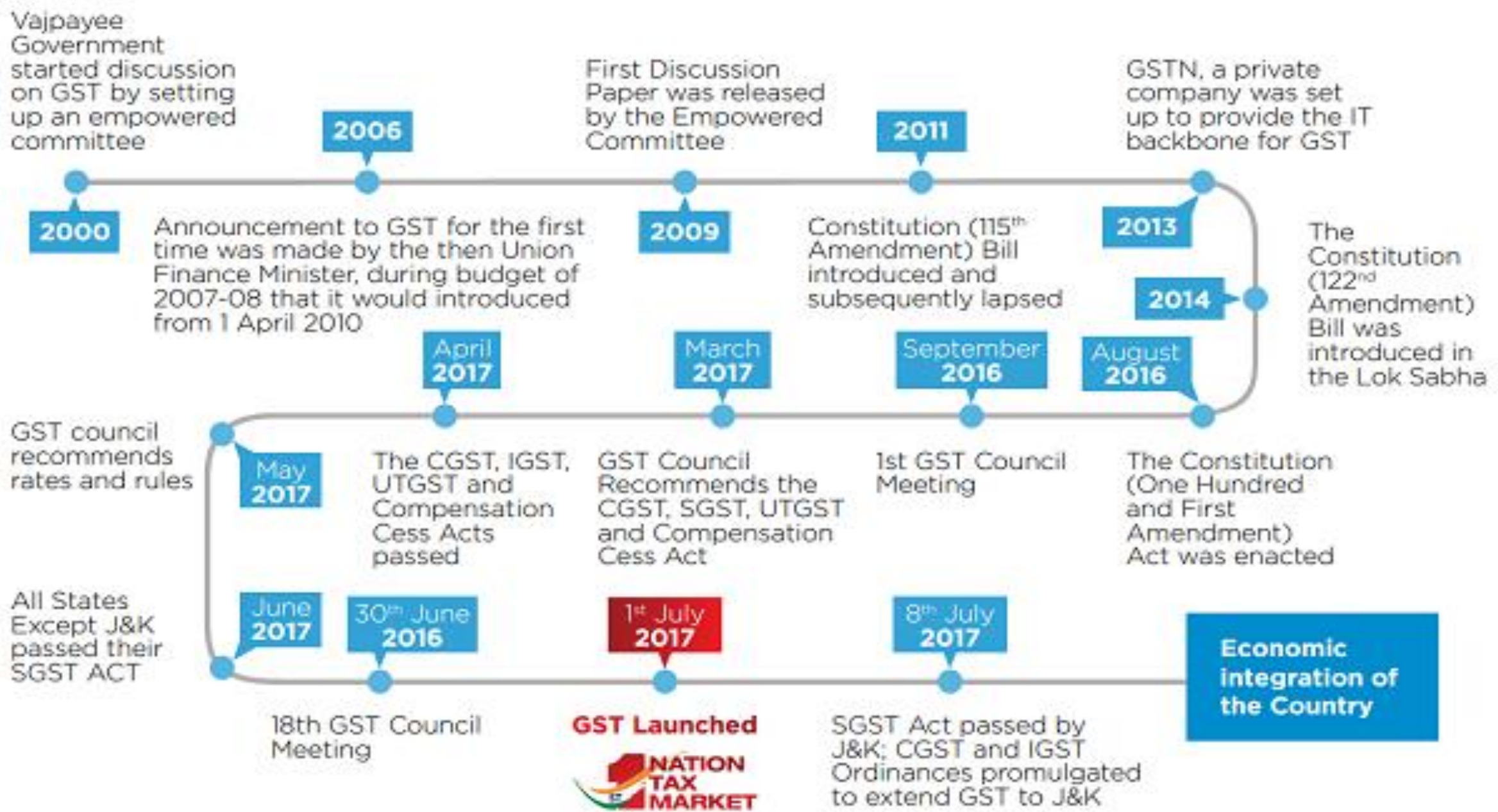


Figure 5: The Journey to GST



More about GST

GST is also called as VAT in some countries.

GST is introduced in around 160 countries.

France was pioneer in introducing GST in 1954.

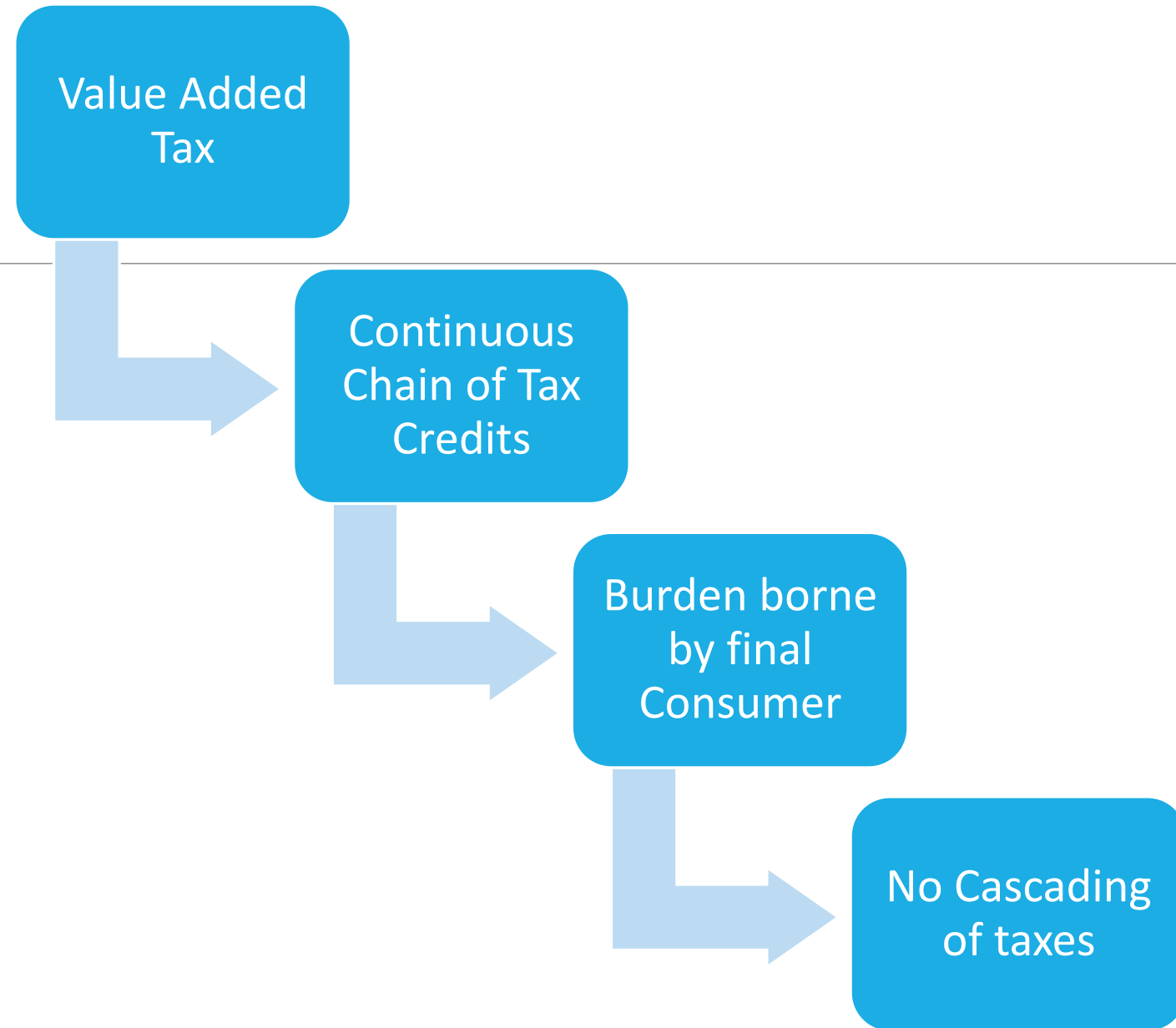
Most countries follow unified GST.

Brazil, Canada follow dual GST model.

India too has dual GST due to unique federal nature.



Concept of GST in India



Example - [VAT & GST Calculation](#)



Deficiencies in VAT System – CENVAT + S.VAT

- Double Taxation of single transaction as goods and services
 - Eg. Software, Construction contracts
- No CENVAT after manufacturing stage
- No set-off of CENVAT and VAT
- Non integration of VAT & Service tax
- Non-inclusion of local levies in State VAT – luxury tax, Entertainment tax, etc
- Cascading of Taxes –
 - A. levy of non VATable CST
 - B. inclusion of CENVAT in the value for imposing VAT

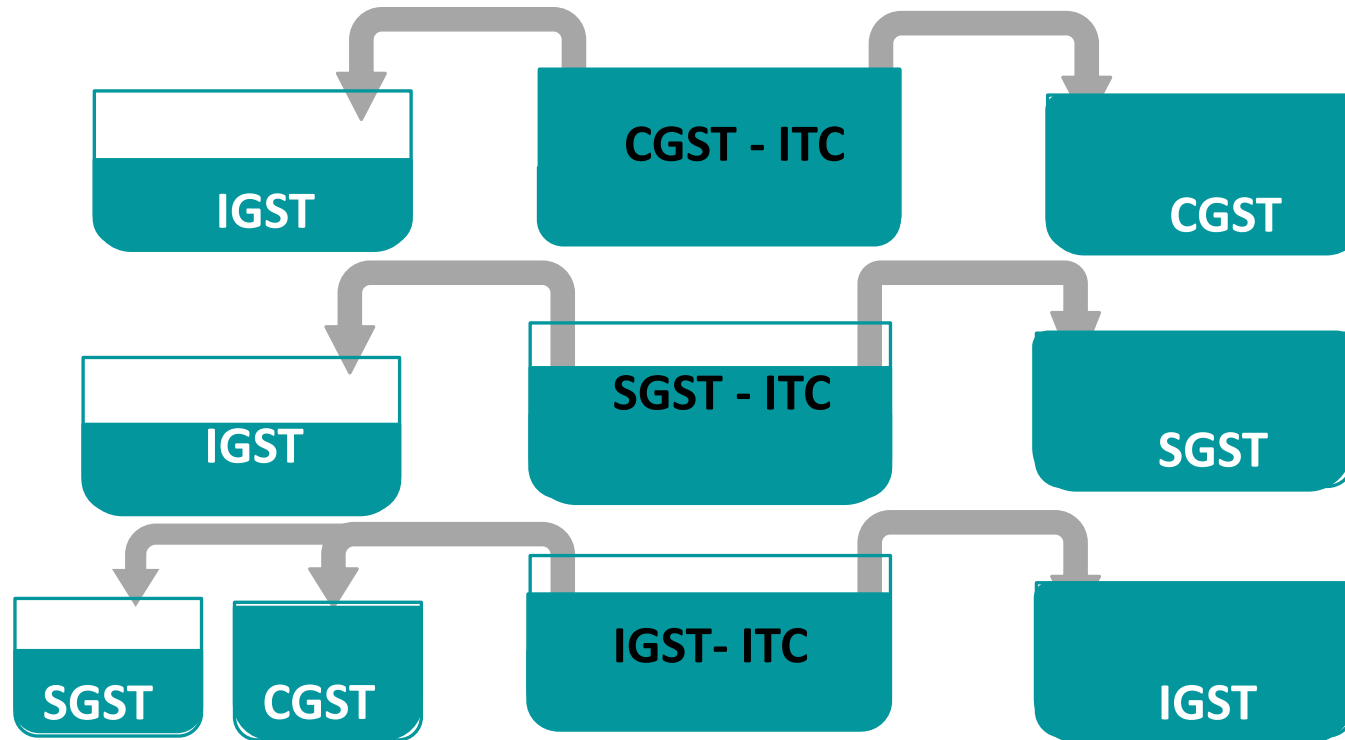


Framework of GST in India

1. Dual GST
2. CGST / SGST / UTGST / IGST
3. Legislative Framework
4. Classification of goods and services
5. Registration
6. Composition Scheme
7. Exemptions
8. Seamless flow of Credit



Flow of credits



Example - [Flow of Credit](#)



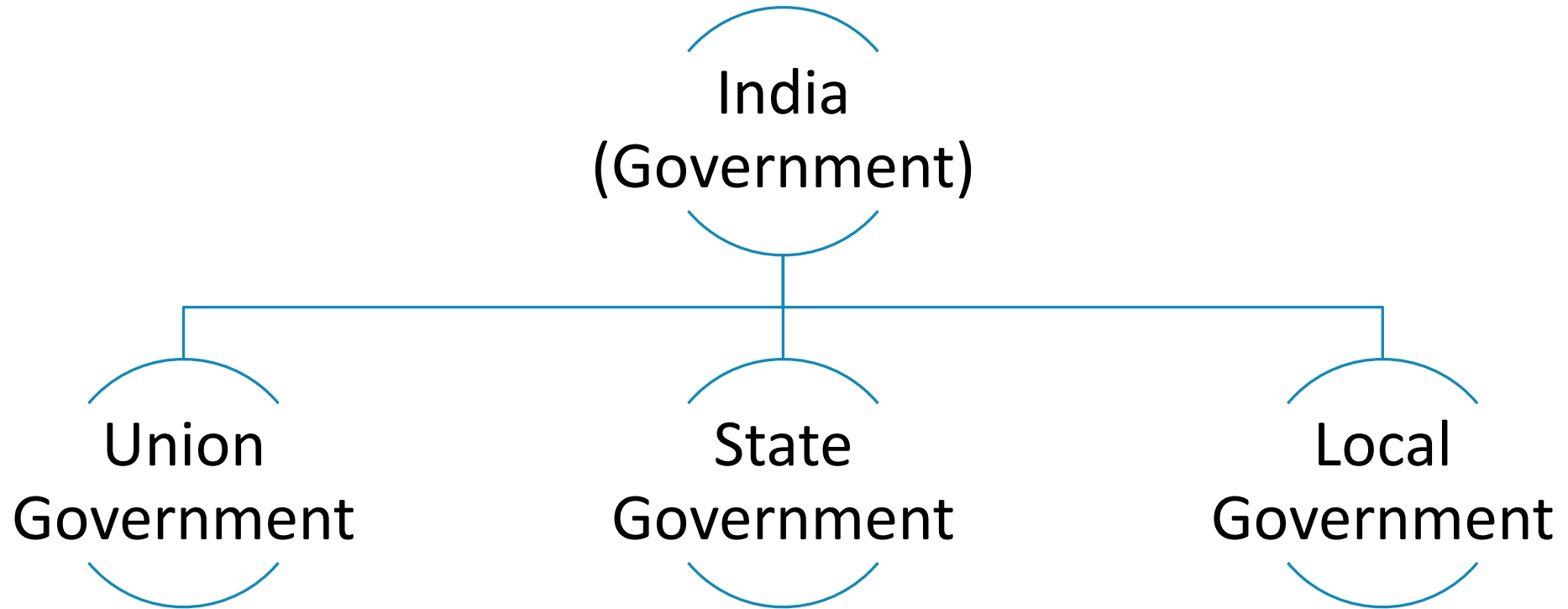
Framework of GST in India ...contd

9. GST Common Portal
10. GSPs/ASPs
11. Compensation Cess
12. Tax on Goods and Services, exception to levy of GST
 - i. Alcoholic liquor for human consumption (state Excise)
 - ii. Petroleum Crude, diesel, petrol, ATF and natural gas (Central Excise duty + VAT/CST)
 - iii. Tobacco (Central Excise duty + GST)
 - iv. Opium, Indian hemp and narcotic drugs (State Excise + GST)
 - v. Immovable Property (No GST)





Constitutional Provisions



Constitution – Preamble, 25 parts – 448 Articles & 12 Schedules



Constitutional provision

Meaning of *ultra vires*

Article 265 – Prohibits Arbitrary Tax collection. **“No Tax shall be levied or collected except by the authority of law”**

In the case, [*Lord Krishna Sugar Mills v. UOI*](#), sugar merchants had to meet some export targets in a promotion scheme started by the government but if they fell short of the targets then an additional excise duty was to be levied on the shortfall. The government on its own cannot levy this tax by itself because it has not been passed by the Parliament.

In the case [*Tangkhul v. Simirei Shailej*](#), all the villagers were paying Rs 50 a day to the head man in place of a custom to render free a day's labour. The Court, in this case, held that the amount of Rs. 50 was like a collection of tax and no law had authorized it, and therefore it violated Art 265.



Constitutional provision

‘Levy’ refers to ‘imposition’ of tax when all taxing ‘ingredients’ are found to be present in a transaction

- Event / Tax measure / Rate of Tax / Person who shall pay

Article 245 -

Parliament (CG) may make laws for whole or any part of India

Legislature of a State (SG) may make laws for whole or any part of the respective State.

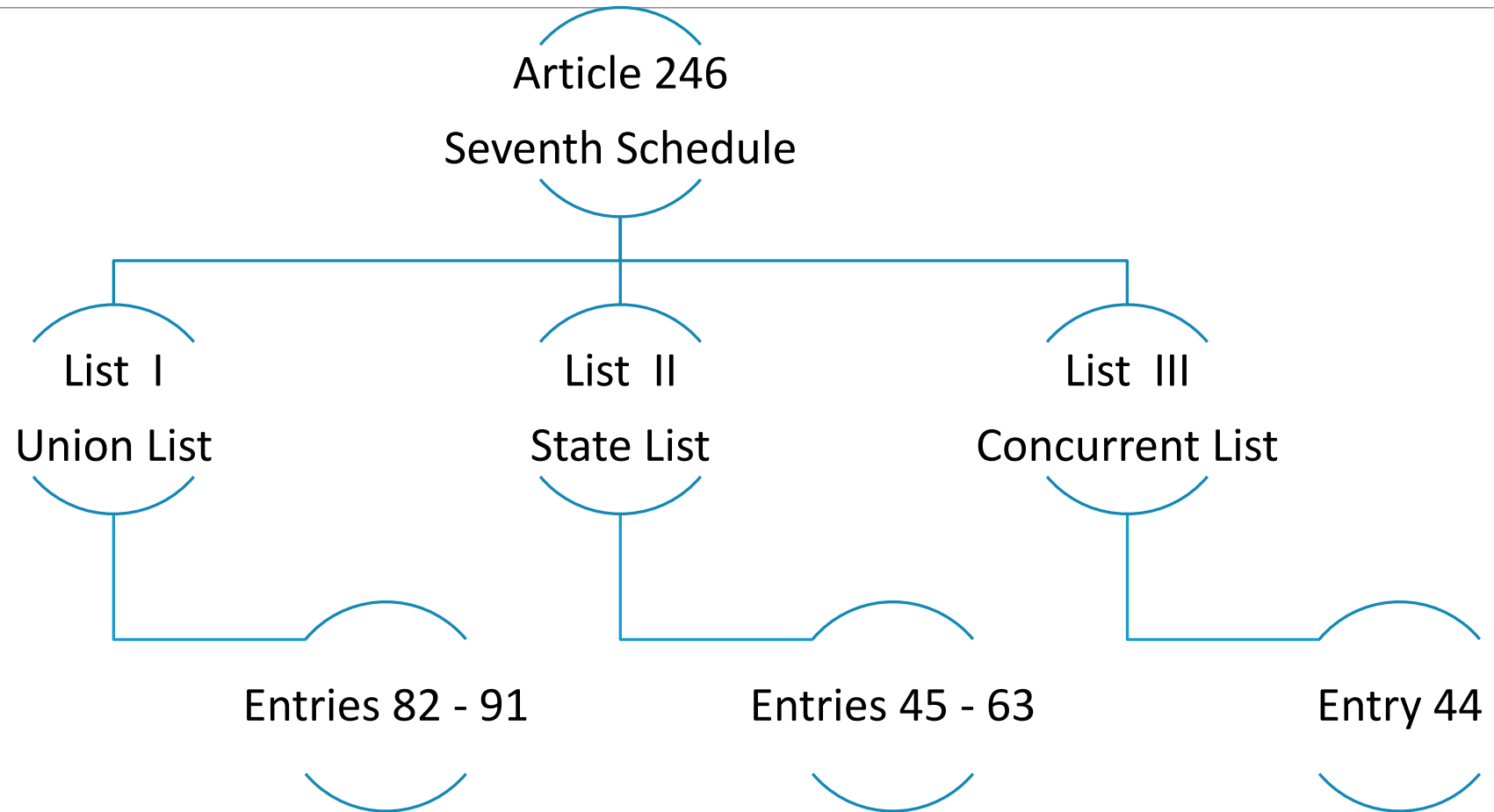
No law made by parliament will be invalidated due to extra-territorial operation. Eg TDS / IGST on imports

It Implies that Central can make for State also..

Article 246 – Provide authority to Union and state Government for levying **tax**.



Constitutional provision





GST – Need Constitutional Amendment

Constitution (101st Amendment) Act, 2016.

No Integration in earlier laws resulting in cascading effect. Therefore a new Act to integrate all taxes.

Article 246A-

Power to make laws wrt Goods and Service Tax – Joint Power to CG & SG

Article 269A-

Levy & collection of GST on inter-state supply & Import

Article 279A- GST Council

Council Recommendation - members - Voting

Article 366- Definitions



Article 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.



Article 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.



Article 269A..... contd

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2-4. Where any amount collected as IGST has been used for payment of SGST or viceversa, will not form part of the Consolidated Fund of India. To facilitate transfer of funds.

5. Parliament is empowered to formulate the principles regarding place of supply and when supply of goods or services occurs in inter-state trade or commerce.



Article 279A – GST Council

Provisions relating to GST council came into force on 12th September, 2016.

The President constituted GST Council on 15th September, 2016.

- 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.

It is a constitutional body for making recommendations to the Union and State Government on issues related to Goods and Service Tax – GST Rates, Exemption, principles that govern Place of Supply, threshold limits, special provisions for certain States, etc.

11 Special Category States - TNMM, SUP MAT + Assam, Himachal, Jammu Kashmir



Article 279A – GST Council ... contd

GST Council shall also recommend the date on goods and services tax be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.

One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

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.



THANK YOU