

# Petroleum Federation of India

Impact of GST on Oil and Gas sector

July 2016

For discussion purpose only





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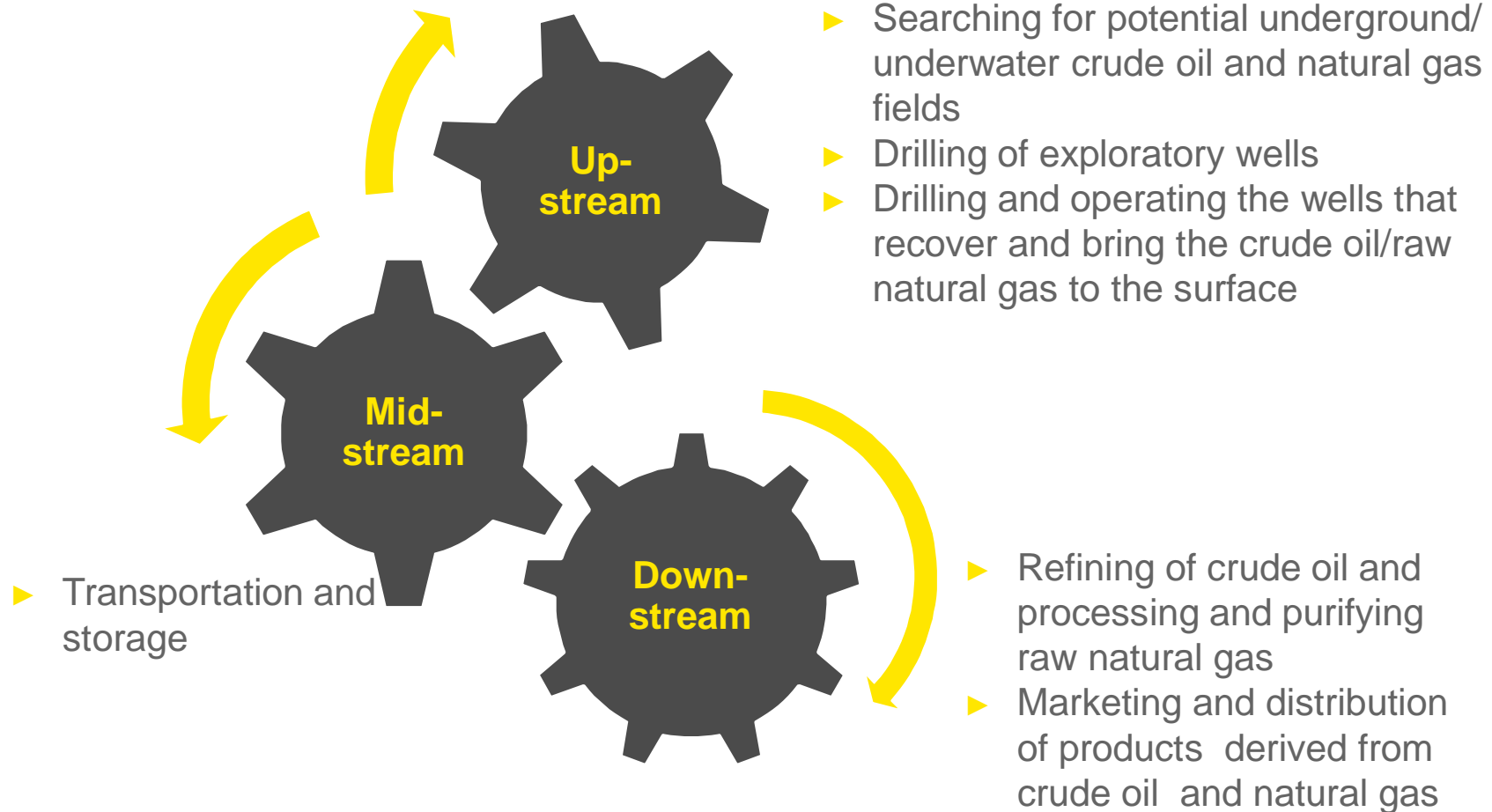
- 1 Oil and gas industry - Overview
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# Oil and gas - industry - Overview

# Oil and gas industry

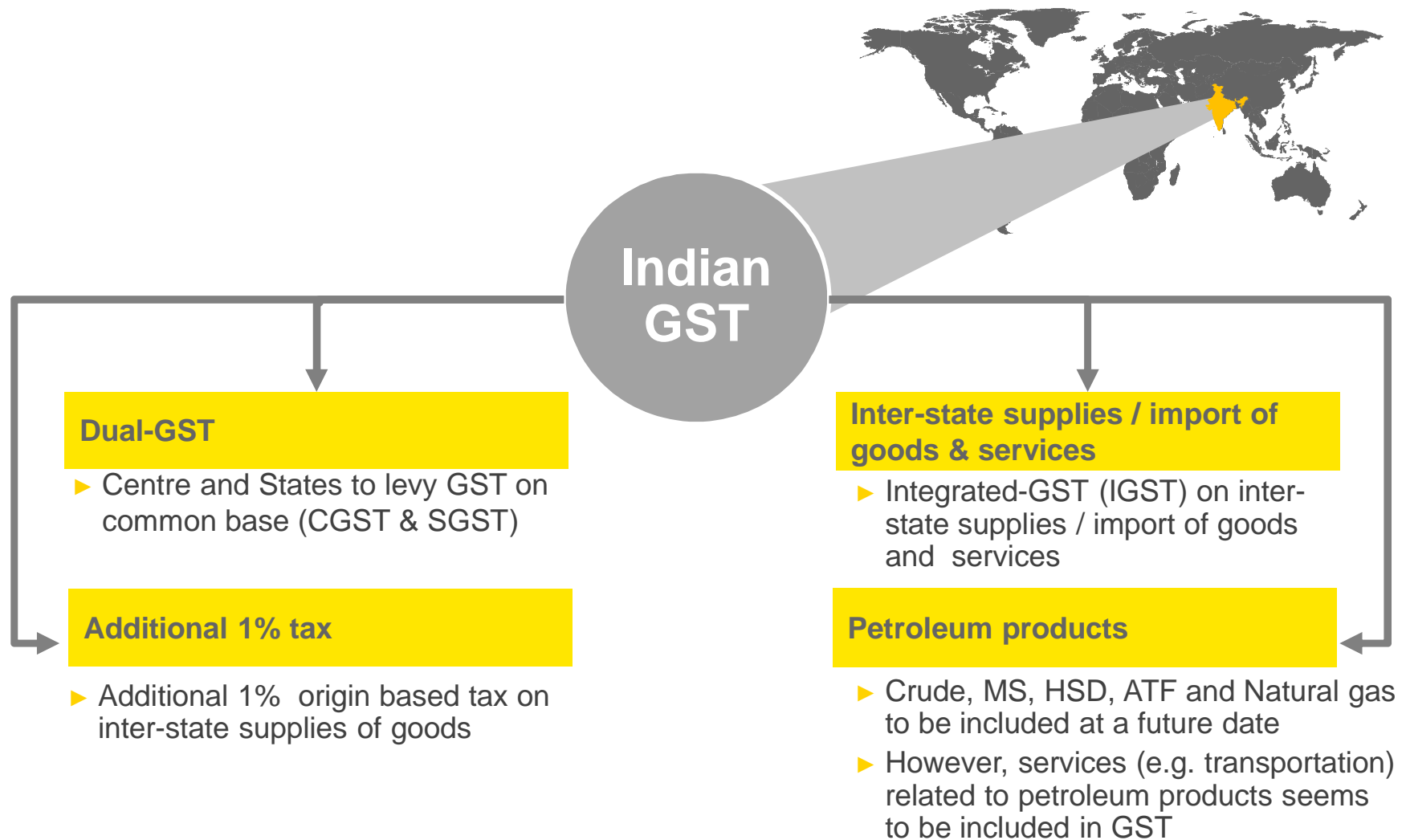
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# GST – Legislative framework

# Legal framework



# Rates as per report by Committee headed by CEA

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Particulars	Rates
Exempted goods and services	Nil
Precious metals	2% - 6%
Merit goods	12%
“Standard” rate (goods and services)	17% - 18%
Demerit goods	40%

SGST rates may vary within a small band

**\* Notes:**

**1. The rates given are combined CGST + SGST rates**



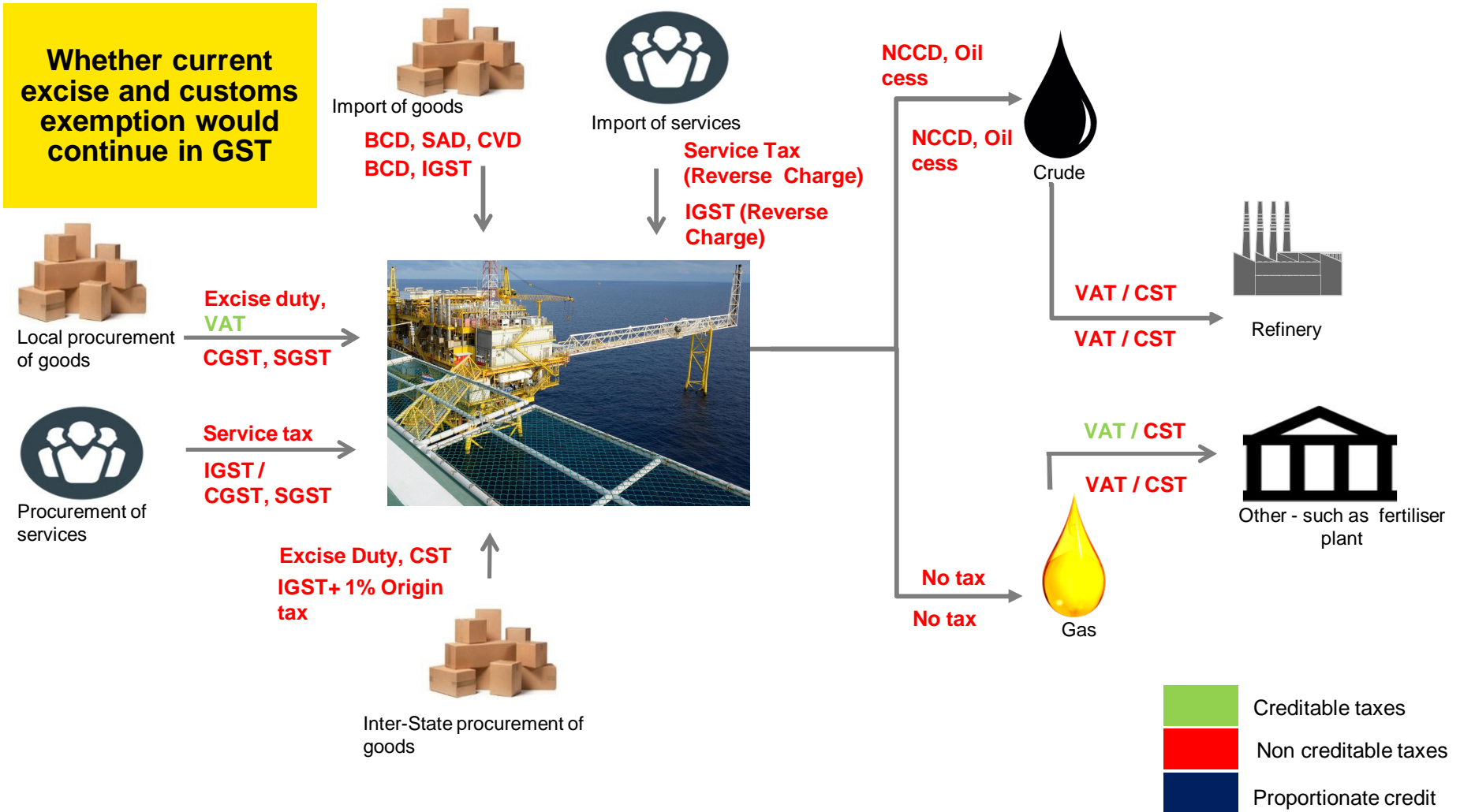
# GST - Impact for oil and gas sector



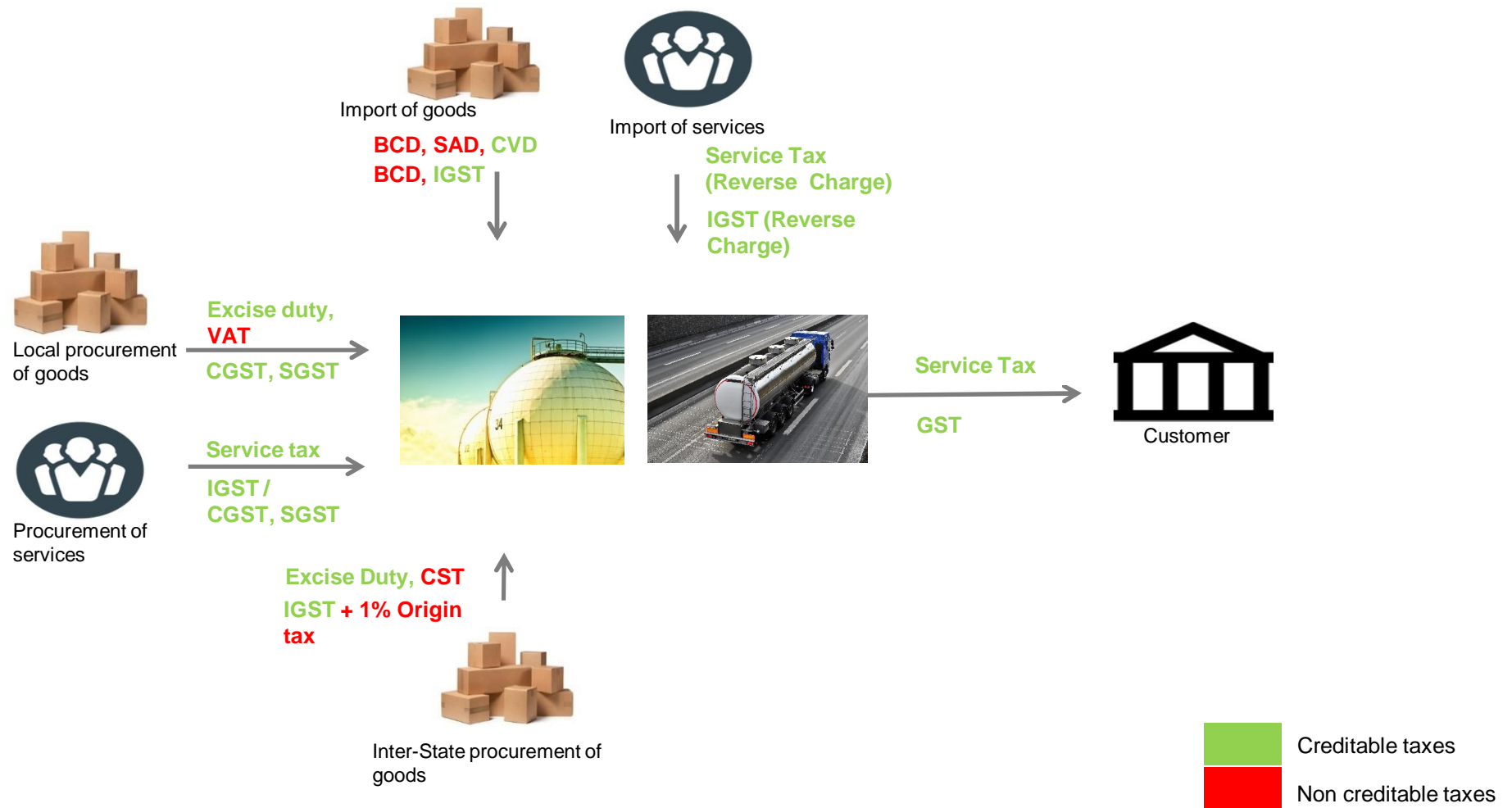
# Multiple tax laws

Products	Oil Cess and NCCD	Excise duty	VAT / CST	SGST / CGST	IGST
Crude	✓	X	✓	X	X
Natural gas	X	X	✓	X	X
HSD, MS, ATF	X	✓	✓	X	X
Naphtha, LPG, SKO etc.	X	X	X	✓	✓

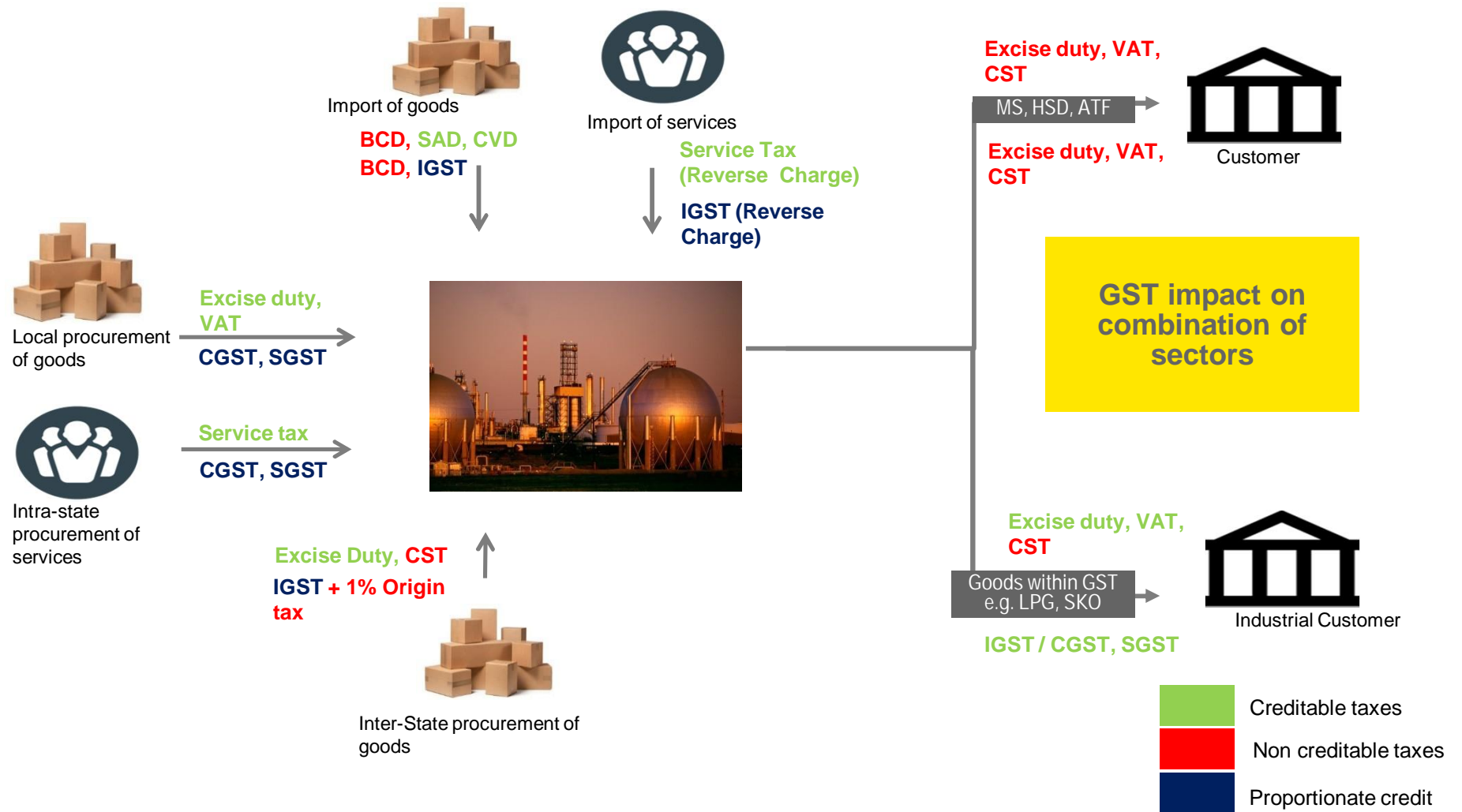
# GST on production and extraction



# GST on midstream sector



# GST on refining and sale



# Additional returns

## Present regime

Return	Time period	To be filed by
<b>Excise</b>		
ER 1	Monthly return	10 <sup>th</sup> of next month
ER 4	Annual return	30 <sup>th</sup> November of next FY
<b>VAT return in each state</b>		
Monthly / Quarterly return		As prescribed
Annual return		As prescribed
Audit reports		As prescribed
<b>Service Tax</b>		
ST 3 (Half yearly)		25 days from half year end
Annual return		30 <sup>th</sup> November of next FY

## Additional in GST regime

Return	For	To be filed by
<b>GSTR 1</b>	Outward supplies (sale, stock transfer, export)	10 of next month
<b>GSTR 2</b>	Inward supplies (purchases, import)	15 <sup>th</sup> of next month
<b>GSTR 3</b>	Monthly return	20 <sup>th</sup> of next month
<b>GSTR 7</b>	Tax deducted at source	10 <sup>th</sup> of next month
<b>GSTR 8</b>	Annual return	31 <sup>st</sup> December of next FY
ITC ledger		Continuous
Cash ledger		Continuous
Tax ledger		Continuous

Current complexities + 30 additional SGST laws + CGST law + IGST law

Additional registrations, compliances, 5 returns and assessments in GST in each state where operations liable to GST under forward charge / reverse charge / TDS

# Complex credit mechanism



Under GST scenario, Input Tax Credit is to be matched with Output Tax as given below:

S. No.	INPUT TAX	Credit against OUTPUT TAX			
		CGST	SGST	IGST	OT
1	CGST	✓	X	✓	X
2	SGST	X	✓	✓	X
3	IGST	✓	✓	✓	X

**Additional 3 credit pools in each state (where business operations are liable to GST)**

### Order for credit set-off

- First
- Second
- Third



# Credit availment



## Legal provision

- ▶ **Input** – Goods used for making an outward supply
- ▶ **Input service** – Service used for making an outward supply
- ▶ **Input tax Credit** – IGST / CGST / SGST charged on supply of goods / service to him and is used for furtherance of business

- ▶ Input tax credit is linked to any goods of service used for furtherance of business
- ▶ Input tax is not linked with inputs or input services



# Reversal of credits



## Legal provision

- ▶ Section 16 (6) of Model GST Law:
  - ▶ Goods or services used partly for effecting taxable supplies and partly for non-taxable supplies
  - ▶ The amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies
- ▶ MS, HSD, ATF, Natural gas and Crude constitute majority supplies in the downstream and upstream industry
- ▶ Exclusion of these products would result in reversal of majority credits of GST
- ▶ Advocacy for zero rating / refund

# Inter-state stock transfers



## Legal position

- ▶ Schedule II para 5 of Model GST Law:
  - ▶ (Matters to be treated as supply without consideration)
  - ▶ Supply of goods and / or services
  - ▶ By a taxable person to another taxable or non-taxable person in the course or furtherance of business
- ▶ Provision of services and goods by one establishment to another in different states of the same entity – Valuation?
- ▶ Such taxability would increase the GST credit pool and cost
- ▶ E.g. inward pipeline for crude - running through various states
  - ▶ Provision of services by different taxable person (state) to refinery
  - ▶ IGST would be a cost to the extent of non GST goods

# Carry forward of existing credits



## Legal position

- ▶ Section 143 of Model GST Law:
  - ▶ Taxable person can take credit of the amount of CENVAT Credit / VAT Credit
  - ▶ Shown in a return furnished under the earlier law
  - ▶ Taxable person shall not be allowed to take credit unless such credit was admissible under the earlier law and is also admissible as input tax credit under this Act

- ▶ Is it compulsory to carry forward the credit pertaining to GST products as GST credit?

# Credits of stock lying at depots



## Legal position

- ▶ Section 162A of Model GST Law:
  - ▶ Goods belonging to the principal are lying at the premises of the agent on the appointed day
  - ▶ Agent can take credit of VAT paid on such goods subject to conditions

- ▶ Provision for availing credit of excise duty paid on such goods?

# Meaning of 'works contract'



## Legal position

- ▶ Definition of 'works contract' under Model GST Law:
  - ▶ Means an agreement for carrying out for cash, deferred payment or other valuable consideration
  - ▶ Building, construction, fabrication, erection, installation, maintenance, fitting out etc.
- ▶ Works contract would be taxable as service in the GST regime

- ▶ Whether separate contracts having cross fall breach contract to be considered as works contract

# Upstream sector



# Taxability of offshore supplies



## Legal provision

- ▶ IGST to be levied on supplies in the course of inter-state trade or commerce
  - ▶ CGST/SGST to be levied on all supplies within a state
  - ▶ Principles to determine supply of goods/ services in the course of inter-state trade or commerce
  - ▶ Definition of India includes CS, EEZ
- ▶ CS, EEZ or any other maritime zone not a State
  - ▶ Offshore supplies will be subject to SGST/CGST or IGST ?
  - ▶ Credit available in which state?

# Ambit of the term 'natural gas'



## Legal provision

- ▶ Vide 115 Constitution Amendment Bill, natural gas has been kept outside the ambit of GST
  - ▶ Accordingly, provisions under the GST regime will not apply to natural gas
  - ▶ Current taxation regime to continue
- ▶ Whether natural gas would include the following:
    - ▶ Compressed natural gas (CNG)
    - ▶ Liquefied natural gas (LNG)
    - ▶ Piped natural gas
    - ▶ Rich natural gas / lean natural gas



# Continuity of existing litigation



## Legal provision

- ▶ Schedule II clause 6 of Model GST Law:
  - ▶ Supply of goods by any unincorporated association or body of persons to a member to be treated as supplies
- ▶ Schedule IV – Activities in respect of which Government would be regarded as taxable person
  - ▶ Assignment of right to use natural resources except:
    - ▶ When provided to farmers or before 1 April 2016

- ▶ Taxability of cash calls?
- ▶ Taxability of charges (such as license fee) paid to Government?



# Midstream sector



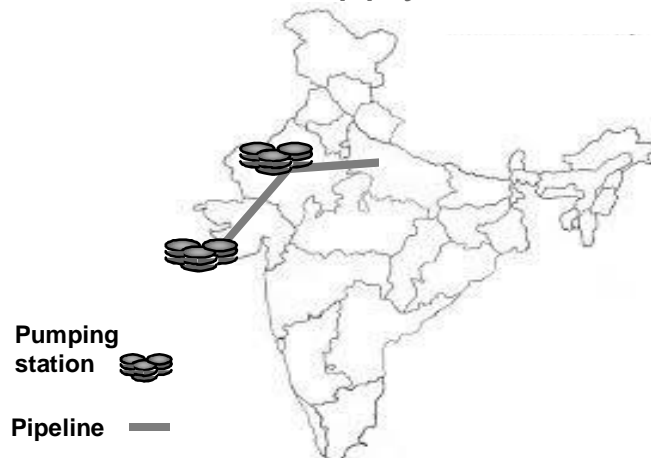
# Taxability on transportation through pipeline



## Legal provision

- ▶ Fixed establishment means a place which is characterised by a sufficient degree of permanence and suitable structures
- ▶ in terms of human and technical resources to supply service

- ▶ Taxability may be in all the states where pipeline is located ?
- ▶ Credits need to be availed in all the states where pipeline is located ?



# Eligibility of credits



## Legal provision

- ▶ Section 16(9)(c) of Model GST Law:
    - ▶ Input tax credit shall not be available for:
      - ▶ Goods or services acquired by the principal in the execution of a works contract
      - ▶ When such contracts results in construction of immovable property
      - ▶ Except for plant and machinery
- ▶ Whether storage tanks would qualify as plant and machinery?
  - ▶ Whether pipeline would qualify as plant and machinery?
  - ▶ Plant and machinery not defined

# Downstream sector



# Inclusion of subsidy in the value of supply



## Legal position

- ▶ Section 15(2)(f) of Model GST Law:
  - ▶ Transaction value shall include subsidies provided in any form or manner, linked to the supply
- ▶ At the time of stock transfer, whether GST to be paid on the value inclusive of subsidy (e.g. for LPG supplied under PDS)?
- ▶ Inclusion of subsidy for GST would increase the subsidy to be claimed and hence, working capital issues

# Issuance of Form C by companies other than oil marketing companies / resellers



## Factual position

- ▶ Natural gas is an input for other industries such as fertilizer
- ▶ Interstate sale of natural gas is subject to CST @ 2%

- ▶ During GST regime, whether concept of Form C would apply for companies in other industry in the GST regime?
- ▶ VAT credits on local sale would not be available to companies in other industry in the GST regime

# Treatment of post sale discounts



## Legal position

- ▶ Section 15(h) of Model GST Law
  - ▶ Transaction value shall not include any discount or incentive that may be allowed after the supply has been effected
  - ▶ Such discount should be established as per the agreement and is known at or before the time of supply and specially linked to relevant invoices

- ▶ If an intimation for post-sale discounts is given before the sale is effected then whether an agreement is still needed?
- ▶ One to one co-relation with each invoice may be a challenge?



# Treatment of natural losses



## Legal position

- ▶ Section 11 of Model GST Law
  - ▶ Central or State Government may, by Rules under this sub-section, provide for remission of tax
  - ▶ On such supplies which are found to be deficient in quantity due to natural causes
  - ▶ Rules may specify the limit beyond which remission may not be available
- ▶ Whether losses during manufacturing would constitute self consumption / supply?
- ▶ Whether losses during storage (factory / warehouse) would constitute self consumption / supply?
- ▶ Remission to be applied for losses during transit?
- ▶ Each State and Centre may specify a remission limit



# Questions

**Thank you**

