This paper aims to analyse the Jammu and Kashmir Reorganisation Bill 2019, which bifurcated the state of Jammu and Kashmir into the Union Territories of Kashmir and Ladakh. The analysis will, however, be limited to the impact of the bifurcation on the GST regime in the new Union Territories.

The J&K Reorganisation Act was passed and subjected to heavy scrutiny by Indian citizens. Narendra Modi went on to state that this move was monumental move to save Kashmir from its turmoil and finally focus on developing the nation. As a result, India now has 27 states and 9 Union Territories (UT) after the J&K Act, 2019 was passed. Our focus however, is not the political correctness of the above mentioned act, but the impact of the Act on the taxation laws of the country, now that 2 UTs have been formed out of a state. However, before analysing the impact on taxation, an analysis on UTs will be conducted to further understand the thesis.

WHAT ARE UNION TERRITORIES?

Union Territory is a small administrative unit that is ruled by the Union. The Union territories are controlled and administered directly by the Central Government. Till date, India had seven UTs – Delhi, Puducherry, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh, Daman and Diu and Lakshadweep.

However, it is relevant to note that the UTs of Delhi and Puducherry are different from the other UTS. Article 239A and 239AA of the Constitution allow these UTs to have their own legislatures and pass their own laws. Whereas the others are controlled directly by the centre. These Articles give partial statehood to Delhi and Puducherry.

As per S.13 of the J&K Reorganisation Act 2019:

On and from the appointed day, the provisions contained in article 239A, which are applicable to “Union territory of Puducherry”, shall also apply to the “Union territory of Jammu and Kashmir”.

This is very important as this would mean that the UT of Jammu and Kashmir would be one similar to Pondicherry, in that, it would have its own Legislative Assembly and confers partial statehood to it. This also relevant through S.4 of the Act which is titled ‘Formation of Union Territory of Jammu & Kashmir with Legislature’. On further perusal of the Act, there are several provisions that facilitate for an Assembly to be formed in this UT.

However, it is relevant to note that as per S.3 of the act, it is titled ‘Formation of Union Territory of Ladakh without Legislature’. This clearly shows that Ladakh is a UT in the more traditional sense, which would make it more similar to the UTs of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh, Daman and Diu and Lakshadweep due to the absence of a legislature. This would mean that it would be directly administered by the Centre and can be subjected to Article 240 of the Constitution.

THE GST REGIME

The GST regime has been introduced after the 101st Constitutional Amendment, where 4 new types of taxes were introduced into the fold of Indian law. They are:

- CGST
- SGST
- UTGST
- IGST

IGST and CGST are Central legislations which apply to every state. IGST, however, only applies to inter-state trades. CGST is simultaneously levied SGST or UTGST depending on the nature of administration of the state.
Every state has its own GST laws passed by its legislatures. The Constitution (One Hundred and first Amendment) Act, 2016, has inserted a new clause, namely Clause 26B on “State” in Article 366. As per this clause, “State” with reference to Articles 246A, 268, 269, 269A, and 279A includes a Union territory with Legislature. Even ‘State’ for the purposes of GST, includes a Union territory with Legislature. Therefore, technically SGST cannot be levied in a Union Territory without legislature. This would mean that Puducherry and Delhi would be included within the definition of ‘state’, within the new GST regime. They have also gone onto to pass their own SGSTs.

Since the UTs of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh, Daman and Diu and Lakshadweep do not have their own legislatures, A UTGST act was passed to cover this legal loophole.

There is actually not much of a difference between UTGST and SGST other than difference mentioned above. In fact, it only changes the combinations of taxes that can be levied. For example, there are now going to be two combinations of taxes in GST as under:-

For Intra-State (including Union Territory) Supply of goods and/or services: CGST + SGST OR CGST + UTGST;

For Inter-State Supply of goods and/or services: IGST;

As UTGST will be at par with SGST, order of utilization of Input Tax Credit of UTGST would be the same as SGST.

That is – Input Tax Credit of SGST or UTGST would first set-off against SGST or UTGST Output Tax Liabilities and balance, if any, can be set-off against IGST Output Tax Liabilities.

In the final part of this paper, we will assess what will be followed in the 2 new UTs.

UT of Jammu and Kashmir

The UT of Jammu and Kashmir will have its own legislature as per the Reorganisation Bill. In fact, Part III of the bill is entirely dedicated to the facilitating the setting up of the assembly in that area. The biggest question that arose among tax experts is the status of the JKSGST Act, since there is a new assembly. Would this have to be re-appreciated by the assembly before passing it or will it remain in force.

The Act provides the answer in its Fifth Schedule. Table 4 in the Fifth Schedule is titled ‘STATE ACTS INCLUDING GOVERNOR’S ACTS THAT SHALL REMAIN IN FORCE IN UNION TERRITORY OF JAMMU AND KASHMIR; AND UNION TERRITORY OF LADAKH’. Under this, The Jammu and Kashmir Goods and Services Tax Act, 2017 was included within its purview. This would mean that JKGST would be applicable to the UT of J&K.

UT of Ladakh

The UT of Ladakh is the territory that is new and does not have a legislature. This would not bring within purview of the definition ‘state’ in the 101st Amendment. The JKGST Act cannot also be extended to this area, as it would pose many legal impediments.

The UTGST Act however was promulgated to cover this loophole, and it will now include Ladakh. In fact, there is a strange clause in the UTGST in the form of Section 2(8)(vi):

(8) “Union territory” means the territory of,—
(i) the Andaman and Nicobar Islands;
(ii) Lakshadweep;
(iii) Dadra and Nagar Haveli;
(iv) Daman and Diu;
(v) Chandigarh; or
(vi) other territory
There is no doubt that the UGST Act will apply to Ladakh. However, for the sake of legal clarity, Ladakh must be added to the Act. Clause 2(8)(vi) also provides for ‘other territory and Ladakh can fall under this clause until an amendment has been made to include it to the Act.

[1] Section 2(8) of the UGST Act

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