

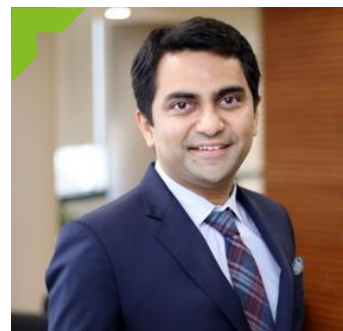


Indian GST and customs: Fundamentals and updates

Speaking with you today



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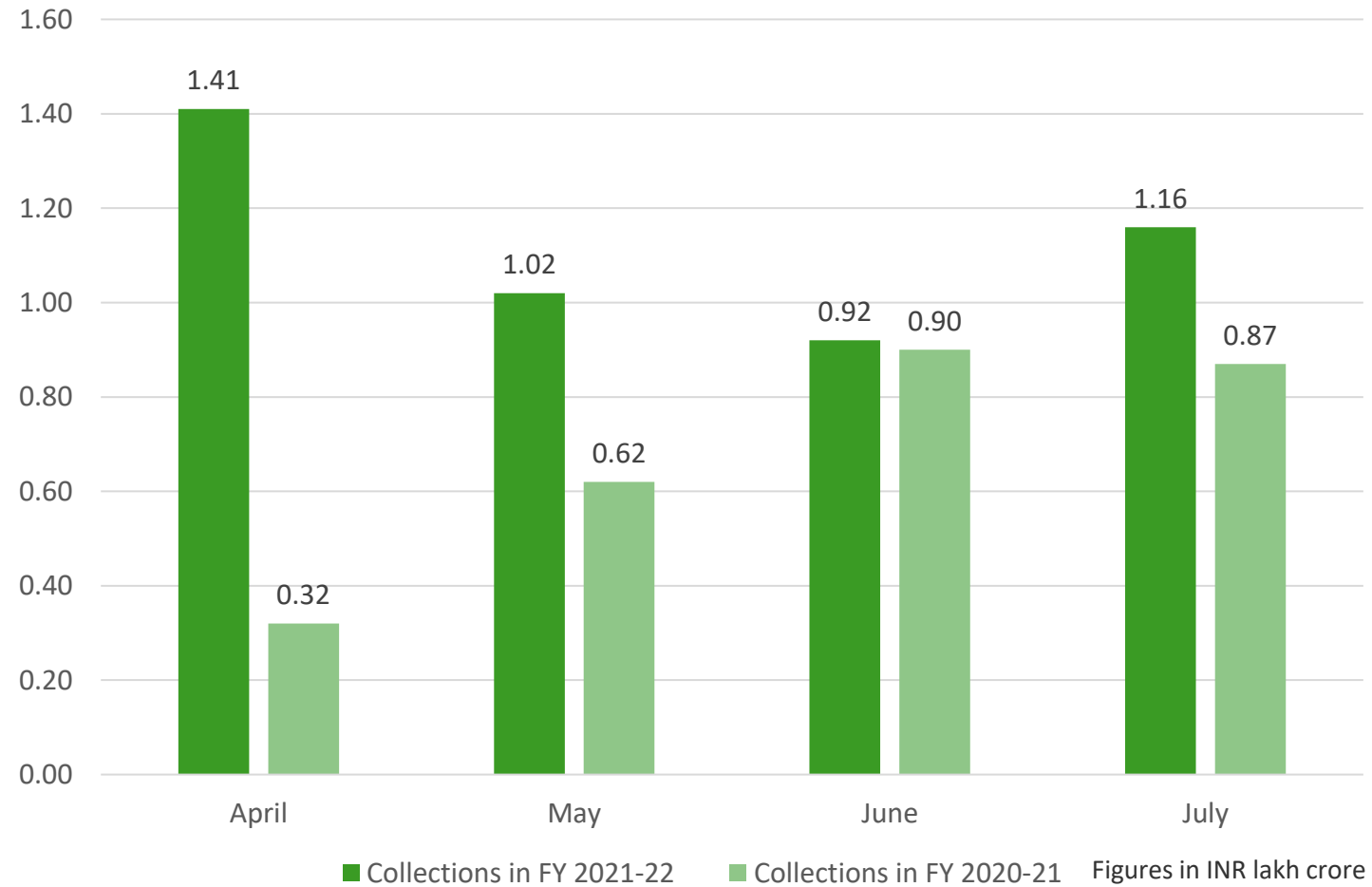
Goods and Services Tax (GST)

GST – A brief background

- GST was introduced on 1 July 2017 with the objective of simplifying India's indirect tax regime, eliminating tax cascading and curbing tax evasion
- Various central and state indirect tax levies were subsumed under GST.
 - Central levies: Central excise, additional duties of customs, service tax, etc.
 - State levies: Value added tax, central sales tax, luxury tax, etc.
- Alcoholic beverages for human consumption are kept out of the purview of GST
- GST on petroleum products would be levied from a notified date recommended by the GST Council
- In its fifth year, the GST landscape, including law, policies, and the government's IT platform, has been evolving constantly. Record GST collections have also been seen in the recent months



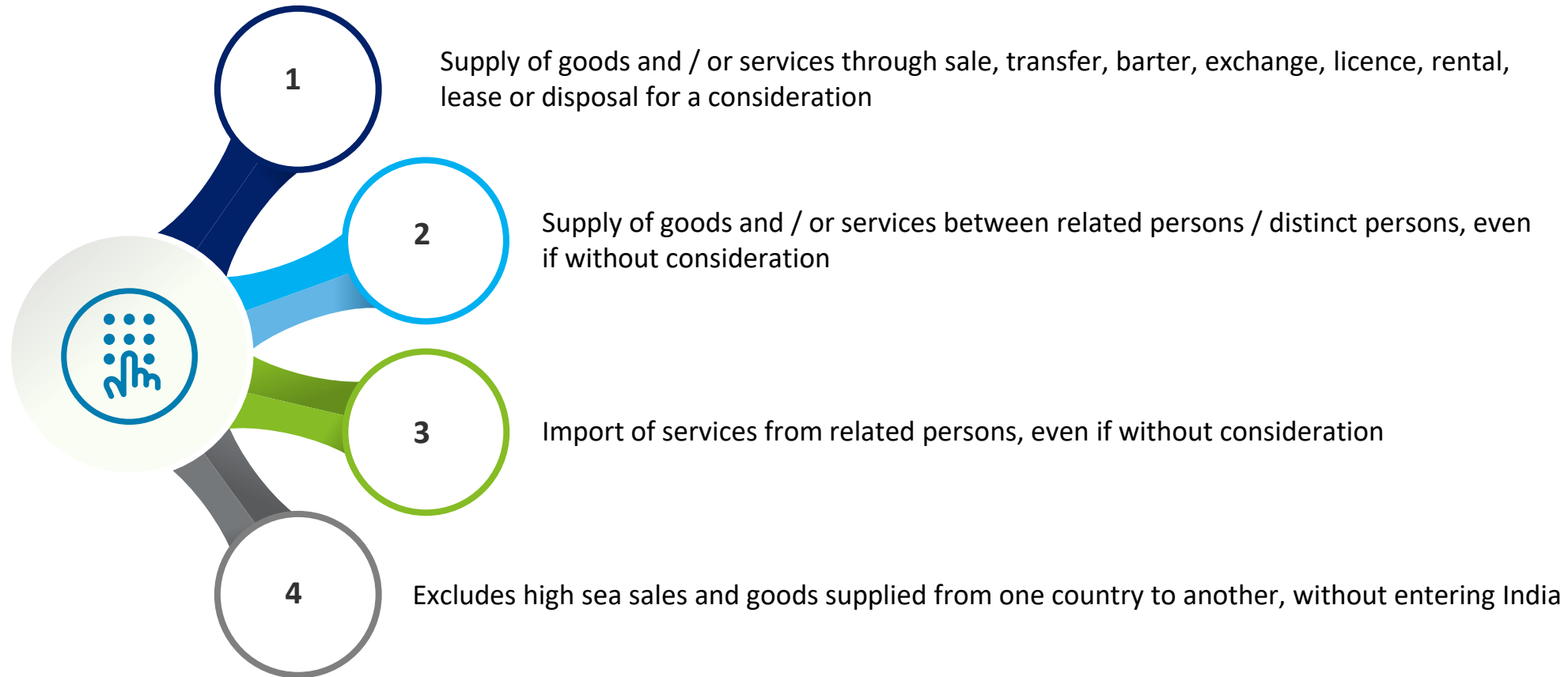
GST collections



“Supply” under GST

Scope

Scope of “supply” under GST



GST issues

Free of Cost (FOC) transactions - Background



1 >

Overseas entities may provide support functions to its group entities in India for which, no consideration is charged



2 >

Since the GST law provides for an inclusive definition of supply, some of these activities may be considered as 'supply' and attract GST payment under reverse charge

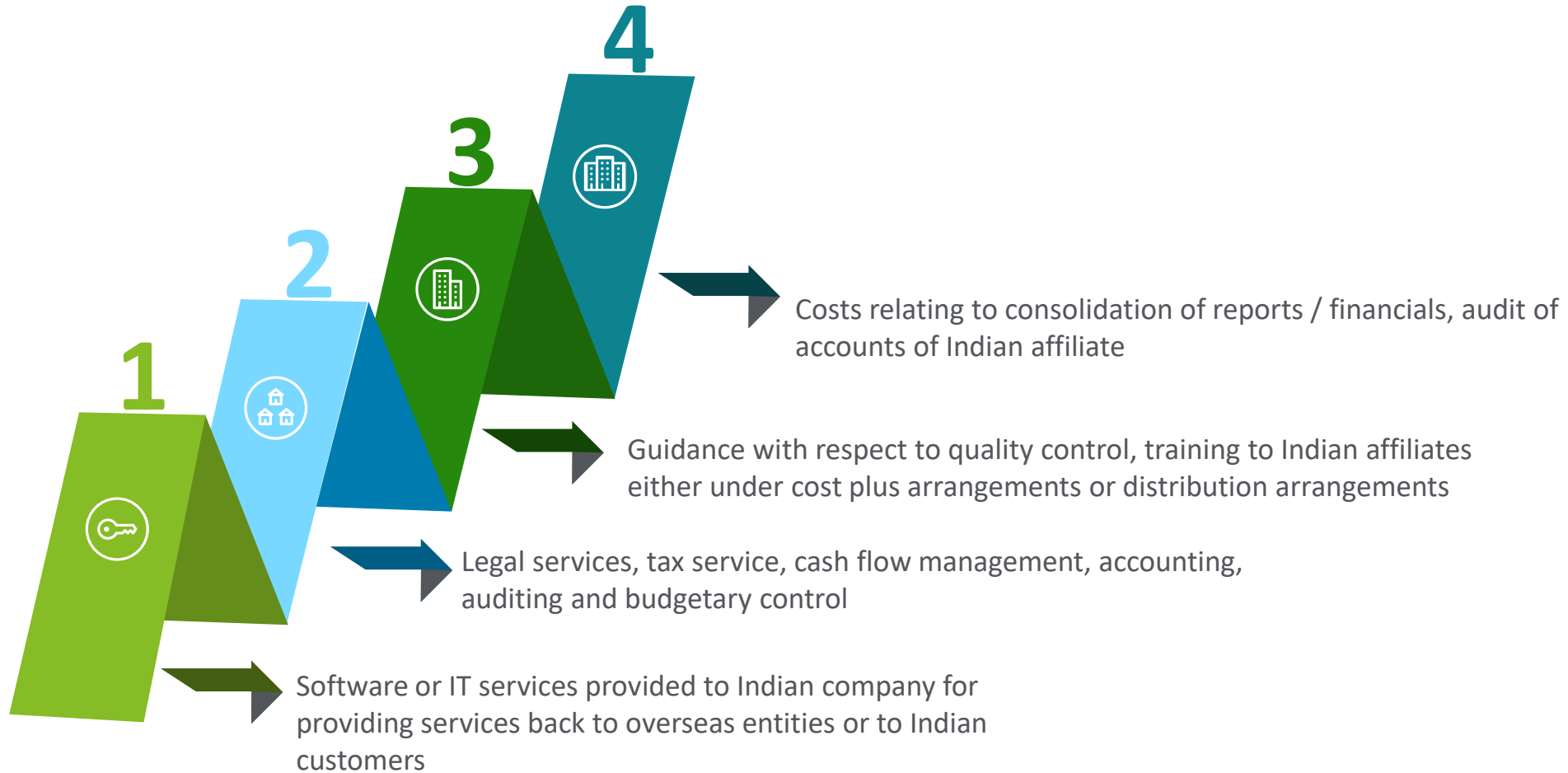


3 >

It is to be analysed whether the recipient of 'supply' is commercially exploiting such transactions received from the supplier of service

GST issues

FOC transactions - Illustrations



GST issues

Intermediary services

An intermediary is a person who **arranges** or **facilitates** supply of goods or services or both, belonging to the other person. The intermediary service suppliers generally receive consideration in the form of commission or brokerage in respect of the services supplied by them

If the supplier qualifies as an intermediary, then the services would not qualify as an export and liable to pay GST

There has been considerable debate on the constitutional validity of these provisions with the Gujarat High Court had upholding the provisions relating to imposition of GST on intermediary services. Further, a division bench of the Bombay High Court has given a split verdict on this issue

In an advance ruling passed by the Maharashtra Advance Ruling Authority, it was held that back-office services would be covered within the scope of intermediary services and would not be treated as export under GST

It is important to structure the agreements with the foreign customers / affiliates / associates to bring out the scope of services clearly so that benefit of export of services is not denied

GST issues

Services supplied by subsidiary in India to parent company outside India



- Various services such as accounting services, research and development services and other professional services are supplied by subsidiary in India to its parent entity located outside India on principal-to-principal basis



- One of the conditions for services to qualify as export under GST is that the supplier of services in India should not merely be an establishment of the recipient located overseas



- Branch office / liaison office / representational office of a foreign company in India is considered as an establishment and services provided by such offices in India to the foreign company are not considered as exports under GST



- Similar provisions existed in the erstwhile service tax regime as well where services provided by the subsidiary in India to its parent entity outside India (on principal-to-principal basis) have been treated as export of services



- The GST authorities have started examining the services supplied by Indian subsidiary to its parent company located outside India and have issued notices challenging the services being treated as export under GST. Demands have been raised and refunds disallowed by the authorities

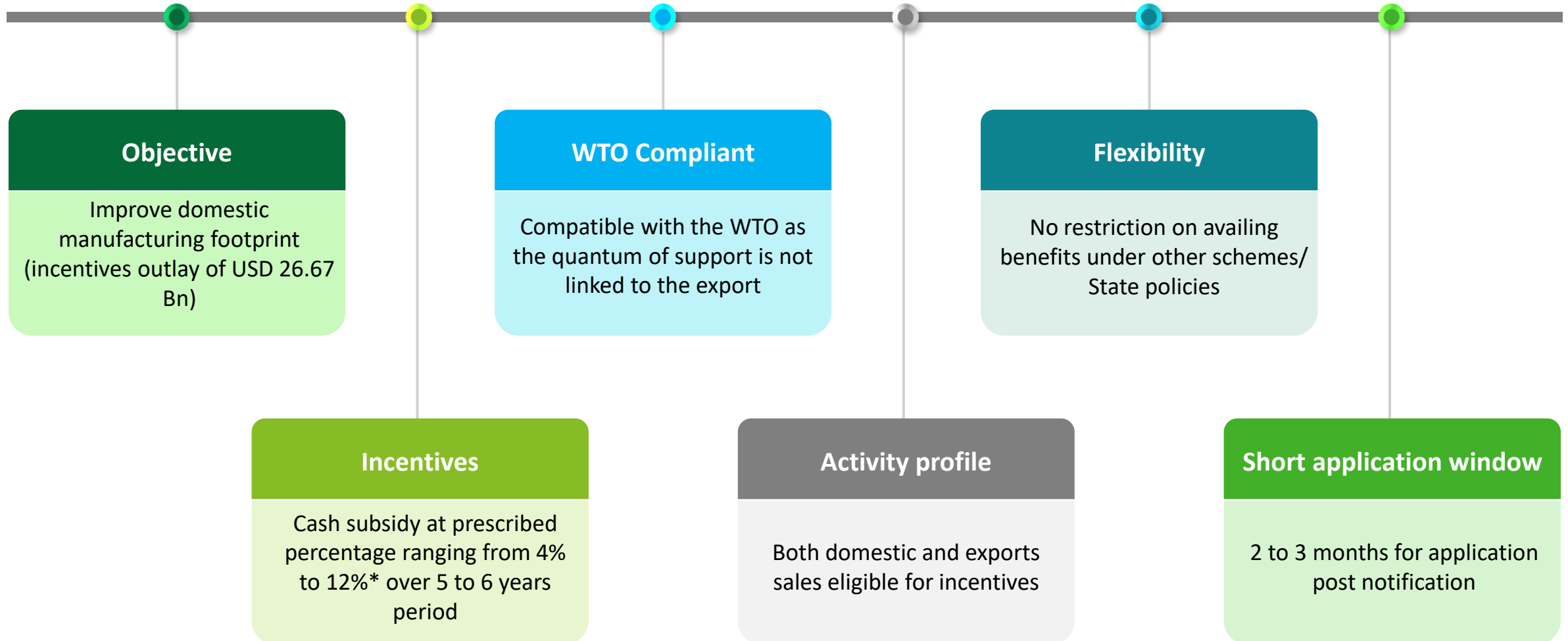
Have you analysed inter-company / cross-border transactions from Indian GST perspective?

(Select one of the options flashing on the right panel to respond)

Production Linked Incentive scheme

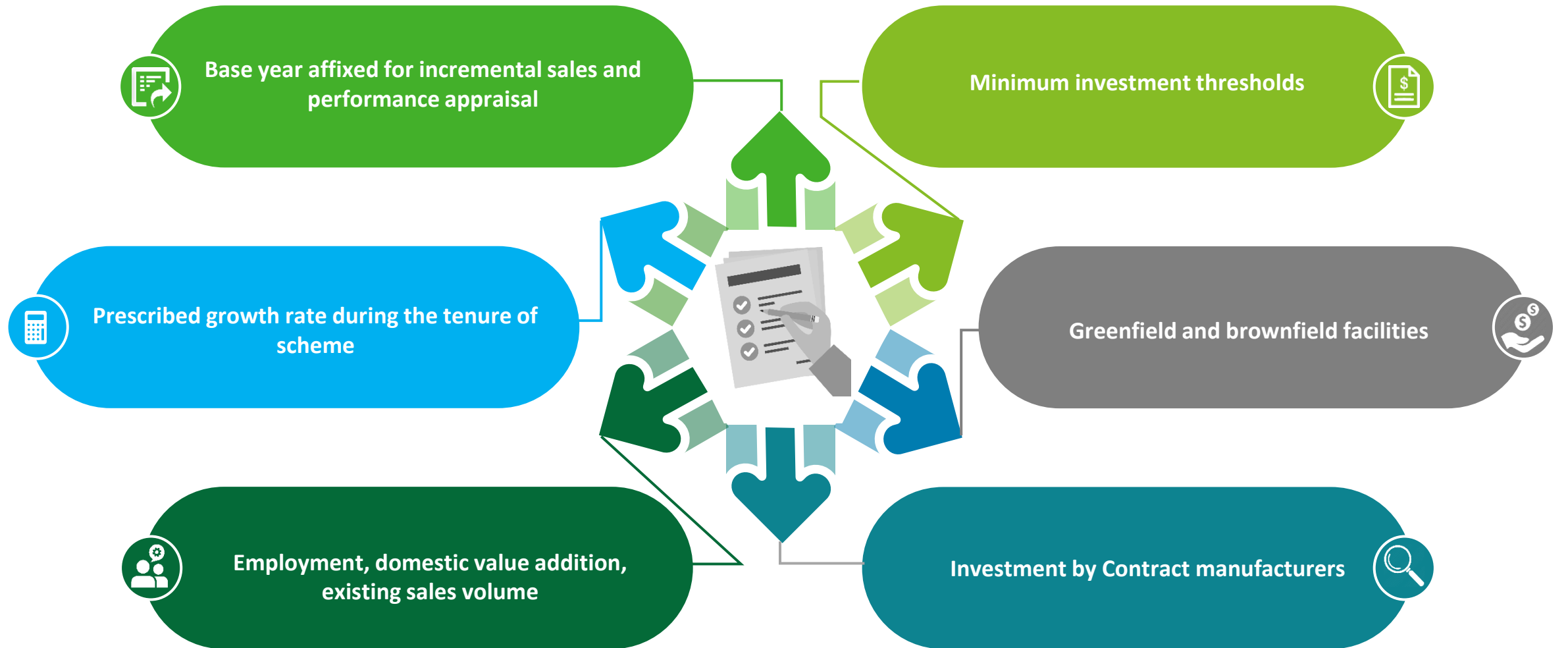
Concept and Coverage

Introduction of sector specific Production Linked Incentives (PLI) scheme







*Incentives and modalities vary for each scheme





Key parameters for consideration



PLI scheme status

 Sector	 Ministry	 Incentives Outlay (USD billion)	 Status
Automobiles & Auto Components	Department of Heavy Industry	7.60	Scheme yet to be notified
Textiles	Ministry of Textiles	1.42	Scheme yet to be notified
Specialty Steel	Ministry of Steel	0.84	Scheme approved, applications yet to be invited
Advance Chemistry Cell (ACC) Battery	Department of Heavy Industry	2.41	Scheme notified on 9 June 2021
White Goods (ACs & LED)	Department for Promotion of Industry and Internal Trade	0.83	Application window open till 15 September 2021
Pharmaceuticals drugs	Department of Pharmaceuticals	0.93 (Phase I) + 1.99 (Phase II)	Application window closed

PLI scheme status

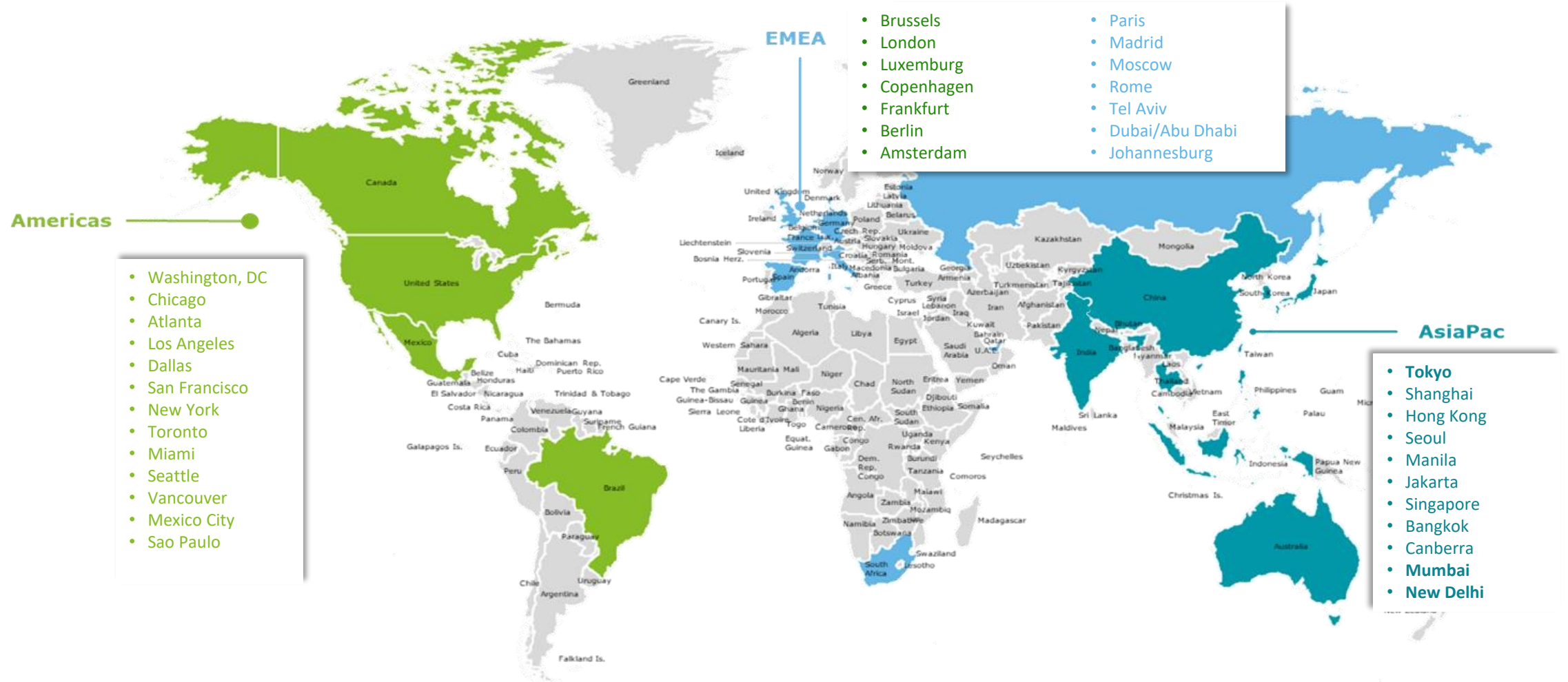
 Sector	 Ministry	 Incentives Outlay (USD billion)	 Status
Medical devices	Department of Pharmaceuticals	0.46	Application window closed
Food Products	Ministry of Food Processing Industries	1.45	Application window closed
Electronic/Technology Products	Ministry of Electronics and Information Technology	0.67	Application window closed
Telecom & Networking Products	Department of Telecommunications	1.63	Application window closed
Mobile phones and electronic components	Ministry of Electronics and Information Technology	5.46	Application window closed
High Efficiency Solar PV Modules	Ministry of New and Renewable Energy	0.59	Application window closed

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Representative Offices



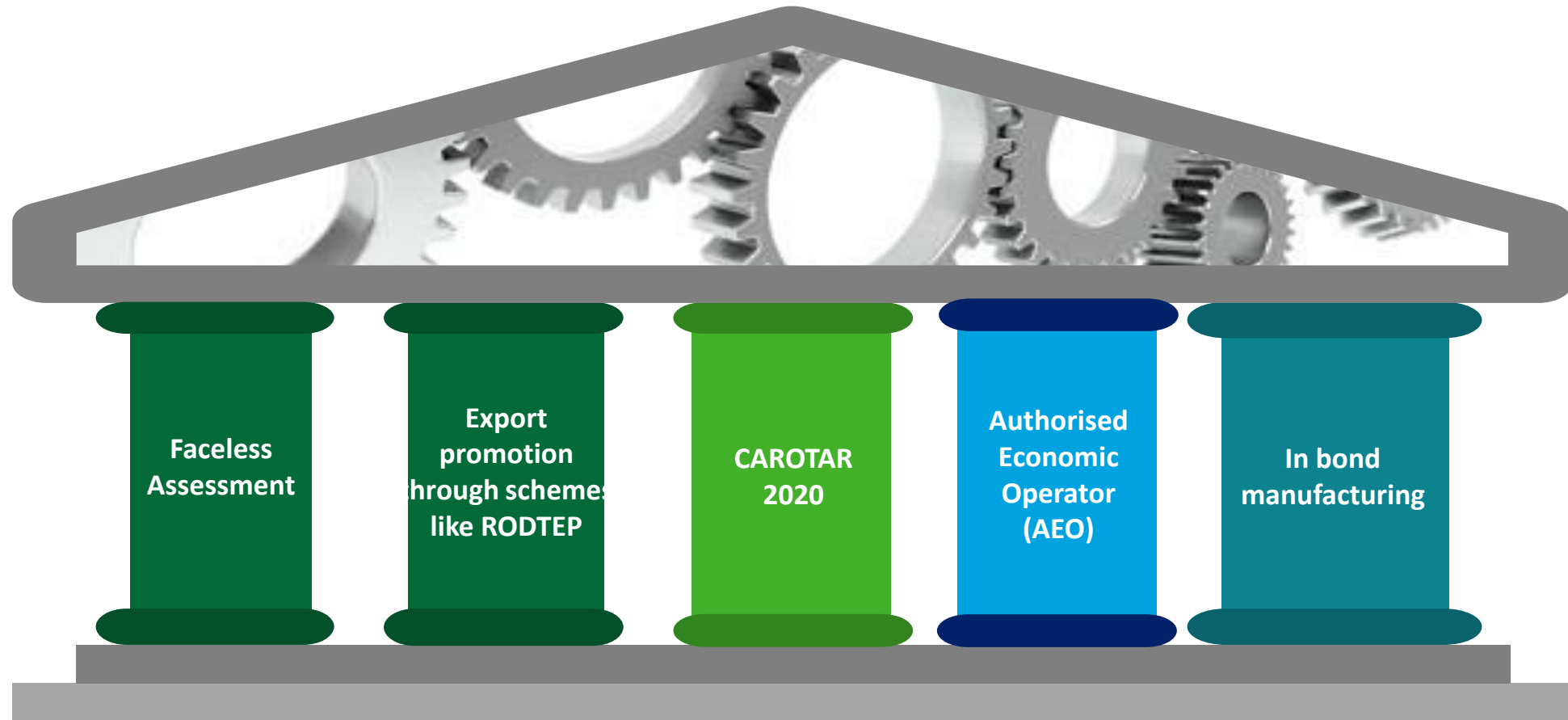
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- London
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- Amsterdam
- Paris
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- Moscow
- Rome
- Tel Aviv
- Dubai/Abu Dhabi
- Johannesburg

- Washington, DC
- Chicago
- Atlanta
- Los Angeles
- Dallas
- San Francisco
- New York
- Toronto
- Miami
- Seattle
- Vancouver
- Mexico City
- Sao Paulo

- Tokyo
- Shanghai
- Hong Kong
- Seoul
- Manila
- Jakarta
- Singapore
- Bangkok
- Canberra
- Mumbai
- New Delhi


Focus areas of Indian Customs

The primary focus of the Government from the Customs front has been on promoting Make in India, improving the ease of doing business through trade facilitation measures and digitization



Faceless assessment

Faceless Assessment – Background



Physical Assessment Regime

Categorization of Bill Of Entries (BOEs)


- **Facilitated BOEs**–Not subject to assessment or examination & routed directly to out of charge officer for granting clearance
- **Non-facilitated BOEs**–Subjected to assessment and examination.

Risk Management system (RMS)

- RMS determines whether a BOE is to be subjected to examination and assessment or not.
- Not more than 30% BOEs (at all India level) are non-facilitated

Physical interface

- In case, where BOEs are subjected to assessment there is direct interaction between the officer and the importer/CHA with port of import authorities.



Faceless Assessment Regime

Objective

- Anonymous and remote assessment
- Uniformity in classification, assessment, etc.

Interface under Faceless Assessment

Paradigm shift in system of officers dealing with assessments & examinations

- **Assessment**–Responsibility with National Assessment Centre
- **Examination**–Responsibility with Jurisdictional Port Commissioners

Implementation

- Faceless assessment was implemented in phases all across India. The 1st phase was implemented on 5 June 2020 and has been rolled out on in phases in different parts of the country.
- Faceless Assessment has been rolled out on a pan India basis from 31 October 2020

Recent measures taken for expediting customs clearances

Few guidelines to smoothen faceless assessment

- All Saturdays (except second Saturday) working for all faceless assessment groups (FAGs) in India
- Instructions to minimise the queries to the extent absolutely necessary
- Turant Suvidha Kendra (TSK) set up at port of import as Facilitation Helpdesk for any grievance related to clearances of B/E filed
- FAGs shall **communicate the 'first decision'** on the Bill of Entry **within 3 working hours** after its allocation
- Total **number of queries** by Appraising Officer in respect of a Bill of Entry would now be **restricted to 3**.

Enhancing direct port of delivery (DPD)

- Shifting **from entity based DPD to a Bill of Entry based DPD**, i.e., all the advance BOEs which are fully facilitated (do not require assessment and / or examination) would be granted the facility of DPD.
- This facility is over and above the present system of entity based DPD extended to AEO entities.

Risk management system (RMS) related updates

- Introduction of **RMS generated uniform examination** orders at all Customs stations across the country, to enhance uniformity
- W.e.f 26 July 2021, CBIC has implemented the **RMS for processing of duty drawback claims**.

Anonymized Escalation Mechanism

- Operationalization of Anonymized Escalation Mechanism (AEM) on ICEGATE, whereby **importers / Customs Brokers** will be able **to directly register** his / her requirement of **expeditious clearance of a delayed BOE**.

Remission of Duties or Taxes on Export Products (RoDTEP)

Remission of Duties or Taxes on Export Products



The **objective of scheme is to refund:**

- Duties/taxes/levies, borne on the exported product including prior stage cumulative indirect taxes on goods and services used in production of the exported product; and
- Such indirect duties/taxes/levies in respect of distribution of exported products



The scheme is **effective for exports from 1 January 2021**. The guidelines and rates for RoDTEP scheme have been issued recently



Ceiling rates shall be determined under the scheme by a Committee in Department of revenue/drawback division with suitable representation of the DoC / DGFT, line ministries and experts etc.



Presently RoDTEP scheme is **not available on goods manufactured in Export Oriented Units, Customs Bonded Warehouses, units in Special Economic Zones, export made under Advance Authorization** etc., which will create issues in smooth functioning of these schemes



Prima facie rates under **RoDTEP appears to be lower in comparison to MEIS scheme**, i.e. where 2% MEIS benefit was available on certain product, has now RoDTEP benefit in the range of 0.3% to 1%.

Remission of Duties or Taxes on Export Products



The scheme shall operate in a budgetary framework for each financial year and necessary revisions shall be made to scheme benefits to ensure that projected remissions for each financial year are managed within the budget approved for the scheme



Rebate under this scheme is to be granted at **notified rate as percentage of FOB value with a value cap per unit** of the exported product as **notified in Appendix 4R**. For few export products a fixed quantum of rebate amount per unit may also be notified



Scheme would be implemented through **end to end digitization of issuance of rebate amount** in the form of transferable duty credit/electronic scrip (e-scrip) which will be maintained in an electronic ledger by CBIC



Rebate allowed under the scheme shall be **subject to the receipt of sale proceed** within the time allowed under FEMA



Necessary rules, procedure regarding grant of RoDTEP claim under the scheme, manner of application etc. are yet to be issued shortly by CBIC

The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020

Rules of Origin : Introduction of administrative provisions in Customs Act

Governing provisions for administration of Rules of Origin (ROO) by customs authorities under various FTA have been introduced to curb undue claims of FTAs by importers. Consequently, Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020) has been introduced w.e.f 21 September 2020

Responsibility of sustaining origin claim

Following responsibilities has been brought on importers with implementation of CAROTAR 2020, for sustaining claims:

- Make specific **declaration in bill of entry** when claiming FTA benefit
- Possess information in **FORM I**
- **Keep all supporting documents** related to FORM I for at least **5 years** from the date of filing of BOE
- Exercise **reasonable care** to ensure accuracy and truthfulness of information

Impact of failure to provide such information

- **Initiating verification on import (within 5 years** from the date of claim of preferential rate)
- Pending verification, proper officer may **suspend preferential tariff** treatment to such goods
- **Provisional assessment and furnishing of appropriate security**, for release of such goods

Power to deny preferential treatment without verification

- Where tariff item is not eligible for preferential tariff treatment
- **Complete description of goods is not contained in the Certificate of Origin (COO)**
- Any alteration in the COO is not authenticated by the issuing authority
- Where **COO is produced after the period of its expiry**

Whether you/your customer are availing benefit of Free Trade Agreements on import in India?

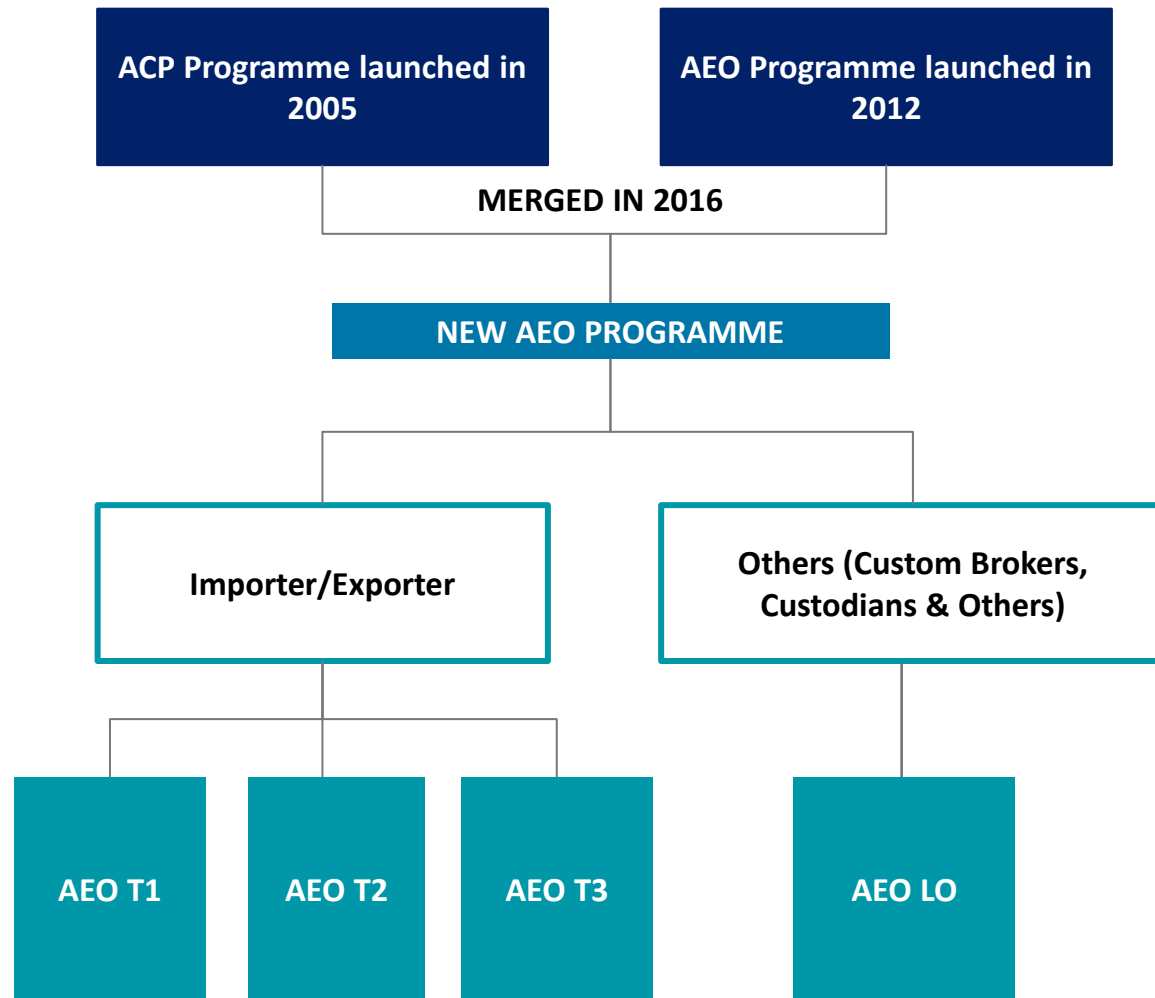
(Select one of the options flashing on the right panel to respond)

Are you/your customer facing issues in compliance with CAROTAR 2020?

(Select one of the options flashing on the right panel to respond)

Authorised Economic Operator (AEO)

AEO Overview



AEO – A Trusted Business Partner

- Over the years, AEO has become a flagship programme for WTO Members
- AEO provides businesses with an internationally recognised security standard and certifies an entity as a “secure” and “reliable” trade partner.
- The new AEO Programme launched by Government of India is a positive step towards the trade facilitation & ease of doing business in India

AEO	No. of certified entities as on 22 August 2018	No. of certified entities as on 01 August 2021	Validity	Filing mode
T1	823	3229	Auto renewal	Online
T2	193	571	3 years	Online
T3	1	40	5 years	Online
LO	287	840	5 years	Online

CBIC has been empowered to prescribe a different procedure / documentation etc. for specific class of importers / exporters

Benefits available

Key benefit	AEO T1	AEO T2	AEO T3
Brand Enhancement	✓	✓	✓
Direct Port Delivery/Entry of containers	✓	✓	✓
24-hour clearance without Merchant overtime fees	✓	✓	✓
Separate space in custodian premises	✓	✓	✓
Facility for Deferred Duty Payment	X	✓	✓
Waiver of bank guarantee for various schemes	50%	75%	100%
Faster resolution of investigations under Indirect taxes	✓	✓	✓
Seal verification by customs officer	Required	Waived	Waived
Priority processing of BOE/Shipping Bills	✓	Higher as compared to T1	Higher as compared to T2
Dedicated relationship manager from Customs	X	✓	✓
Access to consolidated data through ICEGATE	X	✓	✓
Scanning of containers at Port	Required	Priority over others	Waived
Facility to paste MRP stickers in their premises	X	✓	✓
Faster completion of SVB proceedings	X	✓	✓
Faster Disbursement of all Incentives (Duty Drawback, & Refunds)	X	✓	✓

Introduction of HSN 2022

Introduction of HSN 2022 : Window of New Opportunities

- 7th edition of Harmonized System Nomenclature (HSN), HSN 2022 accepted by all Contracting Parties to the HS Convention
- It shall come into force w.e.f. 1 January 2022
- New HSN 2022 to bring around 351 sets of amendments relating to wide range of goods
- In line with above, the Customs Tariff Act has been amended (w.e.f. 1 January 2022)



Way forward

In order to align with new HSN, Companies must initiate the review of its masters in advance, to avoid last minute hassles. The following activities/steps needs to be taken in this regard:

- Analysing the modification in HSN/definitions to revisit the practice followed till now
- Review of company's master data in line with new HSN
- Identifying applicable customs and GST rates for revised classifications
- Harnessing exemption under free trade agreements or other general exemptions for revised classification (if any)
- Filing advance ruling/ representation for ambiguity in classification that may persists or which may arise (if any) with introduction of HSN 2022

Questions?

Watch out

Amongst other topics following may also be covered:

- Online Information Database Access and Retrieval (OIDAR) services and Equalisation Levy
- In-bond manufacturing
- Customs vs TP interplay

Thank you!

Kindly spare a minute to help us with your feedback for today's session...



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