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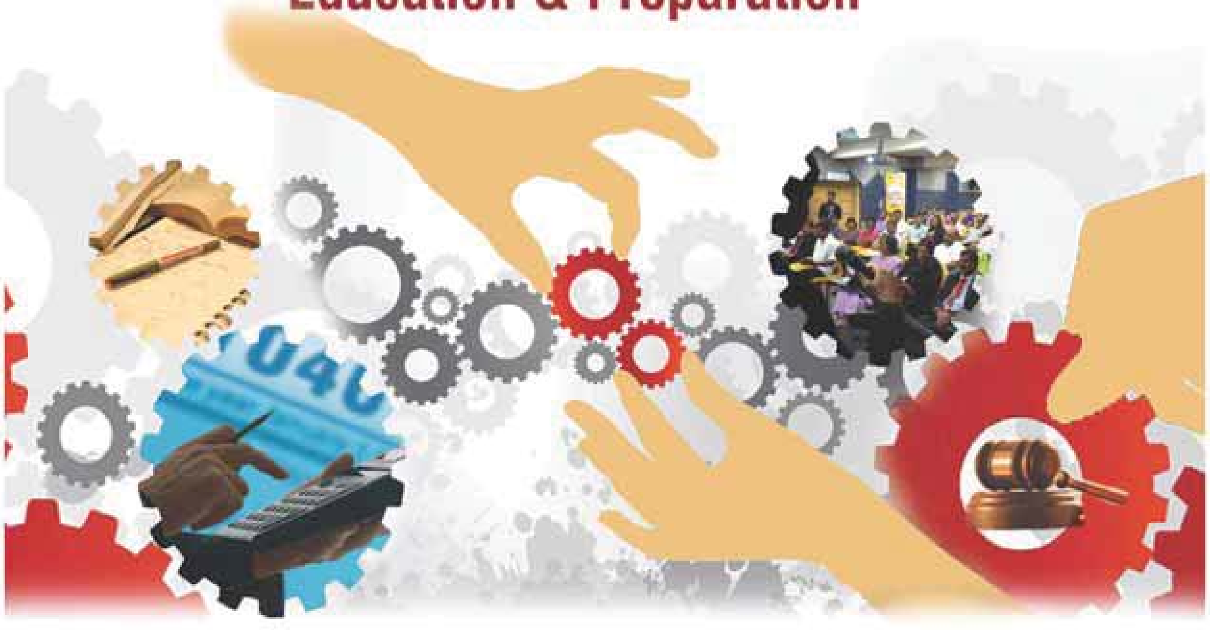
November- 2015 Vol . IV | No. 2

GST - Awareness Creation, Education & Preparation



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CORPORATE MEMBERS COMMITTEE

Seminar on Internal Financial Controls – Views of an Expert Panel of Designers, Implementers and Reviewers of IFC held on 9th October, 2015 at M. C. Ghia Hall.

CA Paras K. Savla, Chairman welcoming the delegates. Seen from L to R : S/Shri CA Neha Gada, Convenor, CA K. Raghunathan, Speaker, CA Ashutosh Pednekar, Panel Moderator and CA Vitang Shah, Convenor.

CA K. Raghunathan, Chairman of Aurobindo Pharma Ltd. delivering Keynote address. Seen from L to R : CA Neha Gada, Convenor, S/Shri CA Paras K. Savla, Chairman, CA Ashutosh Pednekar, Panel Moderator and CA Vitang Shah, Convenor.

CA Ashutosh Pednekar, Moderating Panel Discussion (in centre). Seen from L to R : S/Shri CA Sai Ram, Partner, Deloitte, CA Mahesh Tahiliyani, Group CFO, Shapoorji Pallonji & Co. Ltd., CA Hasmukh Dedhia, Vice Chairman, CA Nagesh Pinge, Chief Internal Auditor at Tata Motors Limited and CA Rohit Mathur, Partner, Ernst & Young LLP.

Section of delegates.

MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Free Eye Check up for Members, their Family Members and Staff Members held on 7th October, 2015 at CTC Conference Room.

Mr. Kishor Vanjara, Past President offering flowers to Mr. Ravindra Kore, Sr. Optometrist from Lawrence & Mayo's Eye Test Camp. Seen from L to R: Mr. Natwar Trivedi, Convenor, CA Avinash Lalwani, President and CA Hemant Parab, Chairman.

CA Avinash Lalwani along with CA Hemant Parab, Chairman, CA Natwar Trivedi, Convenor, Hitesh G. Shah, Manager and Mr. Agnelo Rodrigues from Lawrence & Mayo's and Eye Test Camp Staff.

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THE CHAMBER OF TAX CONSULTANTS
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Editorial

Wish you all very Happy Deepawali and Happy New Year.

I hope the reforms in the tax laws which were stalled for so many years will get a fillip in this year. My optimism may sound to be little misplaced considering the election results in the State of Bihar. As professionals, we are not bothered about the political parties. The winner, in the recently concluded elections is development. The person who is going to occupy the chair of the Chief Minister of Bihar has the credentials of delivering on the promises made. These things make me optimistic. All political parties and politicians on the plank of development should come together and carry on the tax reforms which are essential to fast track the development.

When my dear friend Shri Bakul Mody suggested to bring a Special Story on the proposed GST for Awareness and Education, I was rather reluctant to accept his suggestion. After going through all the articles, I found Bakul's suggestion very important and enriching as I don't know much about indirect taxes. The Special Story of the November issue on the Chamber's Journal – "GST Awareness Creation, Education And Preparation" will give all an illuminating exposure to the proposed law of GST.

I thank all the stalwarts who contributed to this issue. Once again wish you all Very Very Happy Festival of Lights.

K. GOPAL
Editor

From the President

Dear Readers

My first request to all of you is to **Like** our **THE CHAMBER OF TAX CONSULTANTS** page on **Facebook.** To get day-to-day updates, the link is "https://facebook.com/ctcconnect/"

On behalf of the Managing Council of The Chamber of Tax Consultants, I would like to wish you all a very **Happy Diwali and a Prosperous New Vikram Samvat 2072 Year".** May it bring peace, prosperity, happiness and progress for all of us. In Indian tradition, the shraad period, that is meant to pay tribute to one's ancestors and appease their souls is followed by the nine-day Navratri festival that celebrates the nine goddesses, then the Durga Puja, followed by Dussehra (Vijya Dashmi), Sharad Purnima, Raas Leela and culminates with the festival of lights "Diwali" and Kali Puja. The celebrations continue well into the winter months with Guru Nanak Jayanti, Christmas and New Year. And then it's a new cycle of celebration, beginning with Makkar Sankranti, Pongal and many more. The idea perhaps is to savour the season. Be Happy with what we have, share our joy with others and cheer each other up, especially during the cold days and nights of the winter season. Looking at life, as one big festival is a good way to help all of us navigate through all its ups and downs; looking for any reason or no reason to savour its flavours, whenever possible.

GST is Knocking our Doors; The Current Issue is on GST. I must compliment CA Bakul B. Mody and CA Mandar U. Telang for creating a synopsis to provide an excellent coverage to the Current subject of GST. I am sure it will be very useful to our members as pre reference material.

During the month of October 2015, Chairmen of various committees organised many successful Seminars, Lectures, Meetings, Study Circle Meetings and ISG.

The Membership and Public Relations Committee had organised a **"Free Eye check up** for members, their Family Members and staff members, **full day seminars at Jalgaon and Dhule and SAS – Experience, Stress Free life through Yoga and Meditation**". Chairman CA Hemant Parab is giving his best efforts for increasing visibility of CTC through various activities. My compliments to him for his dedication and commitment to CTC.

The Students and IT Connect Committee had organised a Half day workshop on **"Multiply your network with Social Media"**. The topics covered were How to use Facebook and LinkedIn for professional networking. A nicely arranged seminar dedicated to Digital India, the ideology of Our Prime Minister Shri Narendra Modi. Chairman CA Parimal Bhai has a great vision for the chamber and his calm nature, always keep him first everywhere.

Corporate Committee had organised a Half day seminar on **"Internal Financial Controls"** Chairman CA Paras Savla always organises seminars on latest subjects. The response of delegates to this seminar was very good. Committee Members CA Ashutosh Pednekar and CA Hasmukh Dedia had put in 100% efforts for conducting a successful seminar on IFC.

Delhi Chapter had organised a Full day seminar on **"Transfer Pricing"**. Under the Chairmanship of Advocate, R.P. Garg, the Chapter is doing very well.

Allied Law Committee had organised SC Meeting on **"Opportunity to professionals in Insurance Sector".** CA Kamal Danuka has the courage to do something new always in CTC. It seems the chamber has discovered a new asset for the future.

As usual SC & SG Committee, under Chairman CA Ashok Sharma is doing very well. In the month of October, two SC and one SG meeting was organised by this Committee. I have attended these meetings and in my opinion a professional of Tax person should attend these meetings and see how quality education is imparted by all speakers. Speakers are coming with well prepared notes and discuss on **"Each clause of Income-tax Act"** which leads to a very healthy debate on the Act.

Direct Tax Committee under Chairmanship of CA Ketan Vajani had organised ISG meeting on **"Recent Important Decisions under Direct Taxes".** A few recent cases were discussed in this meeting and the response to this meeting was very positive.

Indirect Tax committee under Chairmanship of CA Rajiv Luthiya, is doing fantastic work. His personal efforts coupled with the habit of doing everything with perfection, is taking his committee to great heights. The Committee has organised one SC on **"Service Tax Investigations, Audit & Scrutiny"** which was really good in terms of Material and Discussions. Government had made available the draft Business Processes of GST report on the Government portal and invited comments from Stakeholders and public at large. The last date for sending suggestions was 31-10-2015. On the last day itself, the Committee has sent a representation on GST. Chairman and committee members CA Naresh Sheth, CA Jayesh Gogri, CA Bharat Shemlani and Advocate Nikita Badeka have given major contributions for the representation on each and every clause of the draft Business Process of GST .The topics covered for representation were Registration, Payment and Refund Process.

Law and Representation Committee under Chairmanship of Advocate Vipul Joshi, is doing well, Armed with a perfect drafting ability, Calm Nature and a knack for making Leaders for CTC, Vipulbhai is getting very good results for the Committee. In the month of October, CTC had been invited to give suggestions in open meeting chaired by Shri Hasmukh Adiya, Revenue Secretary. In 23-10-2015 meeting, CBDT Chairman Smt. Anita Kapoor, Principal Chief Commissioner, Mr. D S. Saxena along with other dignitaries was present. In a personal hearing of 10 minutes, CTC has given representation on **"Idea for Innovative Tax Policy"**. On 30-10-2015 CTC was invited by the Principal Chief Commissioner, Mr. D. S. Saxena for giving suggestions on the subject **"HOW TO MITIGATE CORRUPTION".** The Co-Chairman CA Mahendra Sanghvi, Vice Chairman Krish Desai, Convener CA Amirt Porwal and CA Nishta Pandey, had attended meeting along with me and represented Members grievances in the meeting. I am thankful to the Committee for asking suggestions from the members. An e-mail and message was sent to CTC members for asking their suggestions on the subject. I am very happy to share with you that we received a very good response from the members. One of the visions of my President's speech was involving members for representation which has got partly fulfilled thanks to this activity.

On 23-10-2015, CTC had organised **"A felicitation function of Shri K. K. Ramaniji, Shri P. C. Joshiji & Shri. Narayan Vermaji, for having completed more than 50 years in practice."** The objective of the felicitation function was to share the happiness of their great contribution to the society and profession with all of us. The function was attended by most of the Past Presidents. A Sub-Committee headed by Shri. Kishore Vanjara, Past President was formed on that day. The Committee members are Shri Vipul Joshi, Shri Akbar Merchant & Shri Ajay Singh. I must appreciate all of them for giving their support and conducting a successful event for the Chamber.

Friends, November and December are full of activities too. Our Chairmen have announced the best designed quality seminars for all of you. I would request you to encourage them by registering for the seminars and help us in fulfilling our dream of **"Making the CHAMBER a DREAM CHAMBER".** For Future activities, please check our CTC Website "ctconline.org" and/or CTC Monthly Newsletter and/or check our Facebook page.

Prime Minister Narendra Modi's aspiration to turn the country into a top investment destination, has got off to a positive start, with India now ranked by the World Bank at 130 of 189 countries on **"Ease of Doing Business."** That is up 12 places from its original ranking last year and up four places from its rank on a revised list.

Terming the improvement in India's ranking a "remarkable achievement", World Bank Chief Economist, Kaushik Basu said, "Going from 142 in the world to 130, as India has done, is a very good sign. It gives a good signal about the way things are moving in India." Mr. Basu added that India can be in the top 100 countries next year if it continues with the set of planned economic reforms, including the crucial goods and services tax (GST).

The proposed GST (Goods and Services Tax) law is the most important reform towards creating a single market in India and if implemented by April 2016, its impact will be visible by 2018.

The GST is the single most important tax reform because it is so important for creating one market in India. GST will make it easier to pay tax. As per Survey for example, if it gets introduced by April 2016, realistically speaking you would only see the impact of GST by 2018.

As per press release dated 27-10-2015, Govt. has taken a step towards simplifying the Income-Tax Act, 1961. Within the scope of the committee are to study and identify the provisions/phrases in the Act, which are leading to litigation due to different interpretations; ease of doing business; simplification in the light of the existing jurisprudence. To suggest alternatives and modifications to the existing provisions and areas so identified to bring about predictability and certainty in tax laws without substantial impact on the tax base and revenue collection and at the same time, the Government with OECD and G20 is keen to put an end to tax avoidance due to shortcomings in the International and domestic tax systems. OECD has finalised and published its reports on Base Erosion and Profit Shifting (BEPS) measures. With the reports in place, the countries are expected to implement the BEPS measures through their domestic law. We at CTC support the measures to curb tax avoidance, coupled with simplification of the tax laws.

The President of India has promulgated the Arbitration and Conciliation Amendment Ordinance, 2015 to amend the Arbitration and Conciliation Act, 1996. There are so many amendments that the Union Cabinet had approved promulgation of the ordinance on October 21, 2015. A new provision to provide that application to challenge the award is to be disposed by the Court within one year, which will reduce the pendency in Arbitration area. A new sub-section in section 11, an application of Appointment of Arbitrator shall be disposed within 60 days by Court and is also a welcome move. It will speed up the Arbitration process.

As per press, the Government is setting the ground for another overhaul of the Companies Act, 2013 to make it easier for Corporates to do business in the country by setting Six Expert Panels to review the Companies Act. The new company's law, despite amendments last year, has not improved the conduct of doing business in India. So setting up task forces to review the new law makes eminent sense. Provisions hostile to entrepreneurship must be removed. Besides fostering entrepreneurship, regulations should also ensure fair treatment of all stakeholders. In my view, the Government has set an internal target of completing this exercise by the end of the current fiscal after which it would introduce the bill in Parliament.

For Readers benefit, please find below the following contents which are very useful to manage your team from the book HBR – Being the Boss – **Prep-Do-Review**

This simple action model will guide you to think of every activity, not as a one step – simply doing something – but as three steps: preparing to act, acting and then reviewing the outcome.

Here's how it works.

Prep:— Before acting, take literally a minute to prepare. Ask yourself, what am I about to do? Why am I going to do it? (i.e. what goal, no matter how simple, are you trying to reach?) Who will be involved or affected and what are their interests? And how am I going to do it?

Do:— Perform the action you prepared to take in the prep step.

Review:— Afterwards, reflect on what was done and the outcome, including any expected or unexpected consequences. Identify the lessons to be learned. How would you perform the action differently in the future? This is probably the part most managers we know neglect. They assume that the right lessons are self-evident. But it rarely is.

Prep-do-review may sound simple and obvious. But too often we simply react to what's in front of us. We deal with what's there on its own terms and our only goal is to solve it, resolve it and move on. How often do we stop and consider the broader context or the consequences for all concerned? And how often do we pause for a moment, reflect – a way of thinking that usually take no more than a few seconds – to the level of a practice that you follow in virtually everything you do.

Good Team Building:— Punctuality is the most important characteristic of all successful people. A punctual person is able to complete his entire tasks on time. Punctuality brings in its trail efficiency. It helps us to build our career. If we look at the lives of all great men, we would realise that they had got a time schedule for every day. Mahatma Gandhi used to rise early in the morning. He used to keep up appointments and was punctual to the minute.

Punctuality is a virtue, which is doubly blessed. It imparts efficiency and keeps a person fit and healthy. If we get up early in the morning and take a walk every day and follow a set-programme of life every day, we shall be able to keep fit and healthy. But if we waver and show laxity in our daily programmes, we are bound to meet with failure in life.

Let us look at nature; everything in nature appears at a proper time. Thus, nature teaches us to be punctual. If we follow the course of nature, we will keep fit, healthy and strong. No school, college or institution can function if punctuality is not observed there. Thus, punctuality is an important ingredient of all successful people. Punctuality implies maintaining regularity in our daily schedule of work.

Quote:— J. Rumi "Go find the gem hidden in your depths. Your Heart Is the Size of an Ocean."

With Personal Regards

AVINASH LALWANI
President

Chairman's Communication

Dear Readers,

I take this opportunity to wish all of you 'A very Happy Diwali and Prosperous New Year'. "Diwali" — the festival of lights, illuminates the darkness of the New Year's moon, and strengthens our close friendships and knowledge, with a self-realisation!

GST in India is expected to be a destination based consumption based levy. Its main objective is to consolidate all indirect tax levies into a Single tax except customs, replacing multiple tax levies, overcoming the limitation of existing indirect tax structure and creating efficiencies in tax administration. GST was proposed to be in place by April 2016. With the process involved in the implementation of GST from present position, the implementation from April 2016 will be bit optimistic. GST whenever it is implemented may be from 2016 or 2017, there would be paradigm change in the business models for all trade and industries. More important, from the business man and consumer perspective, this change is going to have substantial impact on business as well as cost to consumers depending upon the structure of the business and location of business and consumers.

There is a need of awareness to know what will be in the GST for professionals and Tax practitioners. The design of this Special Story is broadly focusing on creation of awareness, educating and preparing for GST. The issue will help members to understand the concept, need, tax mechanism, and its comparison with other countries, industry expectation and its impact on business models, business segments and business transactions.

I am sure you shall enjoy the articles and will be gearing up for GST. I would like to thank Shri Bakul mody for the design of the Special Story and Shri Mandar Telang for co-ordinating with all the authors. I thank all the authors who have contributed to this issue of Chamber's Journal for sharing their valuable knowledge. I once again wish you all the readers a very happy and joyous Deepavali and also wish that New Year brings for all of us peace, prosperity and progress.

CA. HARESH KENIA
Chairman – Journal Committee

CA Bhavna Doshi

Why India needs GST?

Why, the question of why?

While we have made significant progress since the Union Finance Minister proposed April 2010 as the date for introduction of nationwide goods and services tax in his Budget Speech in February, 2006, it is ironical that even now, in 2015, after Constitution Amendment Bill to facilitate its introduction is passed by Lok Sabha and is awaiting nod of Rajya Sabha, there are some soft murmurs asking: "Do we need GST at all?" or "What are we achieving by moving to this new system of taxation?"

The concerns arise from the fact that we will have 30 GST Laws (1 Central Government and 29 State Governments) and apprehension that there will be multiplicity of compliances and controls and that businesses will have to face litigation across the country and that in some cases, for same issue, there could be multiple tax demands and so on. And, if that be so, how is it an improvement over current system of indirect taxation, the very basis for moving over to GST?

These concerns and apprehensions are not totally unfounded given not too happy general experience of dealing with tax administration both, at the State and Central level.

Do we therefore, presume that the new system will not be different and not achieve the objective for which it is being introduced?

What can address the question of why?

Answer to that lies in critical examination of the following aspects:

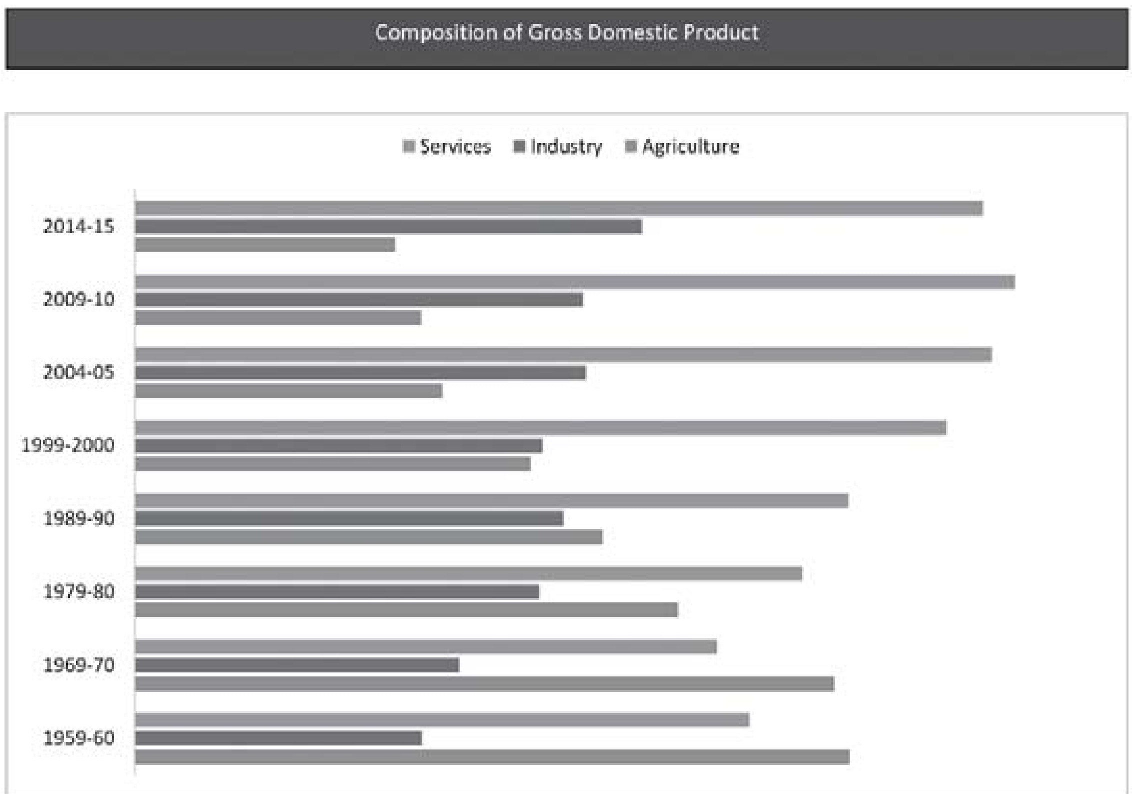
- Are the design and modalities set out for the new tax system capable of achieving the objective for which it is being introduced?
- Can the issues and concerns being raised be addressed? One appreciates that cent per cent satisfaction is not feasible but, can they be redressed to a large extent, in short and medium term? Is there an effective mechanism to raise and address them? Will there be a forum for open and transparent dialogue on the issues?

Response to majority of these aspects, especially, the design and modalities, to my mind, is in the positive. Yes, the proposed design and the modalities that we have heard of like common principles of taxation, terminology, definition, exemptions, and so on, seem capable of achieving the objective for which GST is being introduced. So far as the approach of administration is concerned, we do hope and wish that the new system changes that too; brings about an attitudinal change and ease of compliance with greater use of technology.

GSTN (GST Network) is one such measure and placing detailed processes in public domain for comments is an example of the openness for deliberations and transparency.

In fact, the challenge that we, as a nation, are facing is that we are not used to deliberations before law or rules are made; 'we are long used to being told what the law is' as is very succinctly put by Mr. Somsekhar Sunderesan in his article in Mumbair Mirror of 9th October, 2015 titled "The side effects of law"*(http://www.mumbaimirror.com/columns/columnists/somasekhar-sundaresan/The-side-effects-of-law/articleshow/49278900.cms).*

We, as an economy have matured significantly over the years; we are firmly on path to become a developed nation from a developing nation, we are growing out of being an agrarian economy and becoming a manufacturing and service economy as is evident from composition of our GDP set out in the graph below.



Source: http://statisticstimes.com/economy/sectorwise-gdp-contribution-of-india.php

In this background, reform of our indirect tax system, which depended heavily on taxation of goods is a must and here is more of why.

The Answer to Why

India is ranked at number 142 out of 189 countries on overall ease of doing business and 156 out of 189 countries in the parameter "Paying Taxes", one of the ten parameters used for ranking countries in ease of doing business in "Ease of Doing Business Report, 2015 by World Bank Group (http://www.doingbusiness.org/rankings).

The keys used for assigning ranks for "Paying Taxes" are:

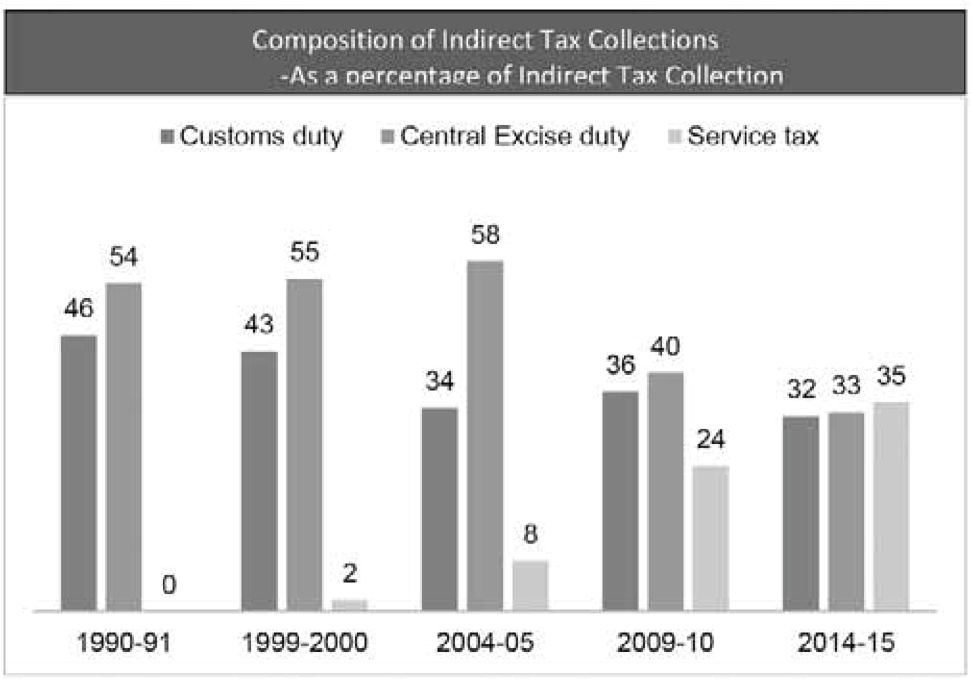
- Number of Taxes
- Rates of Taxes
- Time for Compliance.

There can be no two views that, we, as a country face challenges on all these aspects. We are constantly endeavouring to address them through reforms of our taxation system which started with introduction of Modified Value Added Tax (MODVAT) in Central Excise Duty in 1986, introduction of Service Tax in 1994, CENVAT System under which input tax credits are allowed across taxes on goods and services at the Central level, change over to Value Added Tax System at the State Level from single point, origin based system of sales tax from 2005 till about 2010 when all States switched over to this system.

We have come a fair way in the past two decades in the reforms process and have still a long way to go…

A developing economy relies heavily on revenue from taxation of goods in view of its inability to effectively bring entire economy in tax net and to curb leakages due to unaccounted transactions, comparatively low level of literacy and other challenges.

We too did so for several years. As a result, traditionally, goods have borne greater burden of indirect taxes and continue to do so. While, the share of service sector in indirect taxes at the Union level has now almost equalled that of manufacturing sector (see chart below), on overall basis, goods still bear higher tax burden of almost 28.2 % (12.5% Central Excise Duty + State VAT of say, 14 % - standard rates of VAT vary from 12.5 % to 15 % in States) as against 14 % borne by services sector.



Source: Economic Surveys and Budget Documents over the years

On substantive matters, we still have large number of exemptions and the list of these items varies from State to State and between Centre and State(s). There are still several rates of taxation besides standard rate; there is reduced rate of 4% (most states have increased it to 5 %), 1% and so on under State VAT and 1%, 2% and 6 % under Central Excise Law. Service tax has its own challenges with exclusion, exemption and negative lists. The value addition chain often breaks and leads to cost sticking to goods and services. There are large number of taxpayers outside the tax net and there is fairly high threshold of ₹ 1.50 crore under Central Excise Law.

In this background, the consensus clearly is that we do need a tax regime which addresses these challenges. A regime where:

- The tax chain starts from origination and reaches its destination, ultimate consumer without break in the chain
- Both goods and services share the tax burden equally as both contribute to the economic activity
- There is no cascading effect of taxes – there is no tax on tax[1]
- There is one standard tax rate across the country with minimal exemptions and very few items at reduced rates
- The law for taxation of goods and services is same across the country and procedures are also almost identical with may be, few, very special case exceptions with adequate documentation to explain the logic for the same
- The tax base is fairly broad
- The tax system has self policing mechanism to minimise tax evasion
- Technology is used to facilitate ease of compliance
- There is robust monitoring mechanism with effective grievance redressal mechanism.
- The tax system is fair and equitable and is built on sound economic principles
- Taxes are neither imported nor exported
- And……

Goods and Services Tax, a destination based consumption system of taxation, promises to meet all these parameters and is, certainly expected to facilitate tax compliance and enhance ease of doing business while giving a fillip to economic activities.

What can make it work – Mindset change!

Such a major reform involving changes to the powers of taxation of Central and State Governments enshrined in the Constitution of the country is a Himalayan task requiring mindset change all around be it, finance heads of governments, administrative officers of governments, businesses, professionals, public at large and above all, all political parties. Each one needs to come together and think alike!

I am confident that like all our earlier reforms, this reform, which is far more challenging one than the earlier ones, too will be implemented, comparatively smoothly and sooner than later though, it may miss few deadlines.

So, let us be optimistic, put on our thinking caps, bring to bear our experience and contribute to development of a robust new system of goods and services tax for the country.

1. Classic example is that of State VAT which is computed on price of goods + Central Excise Duty

CA Sunil Gabhawalla

Salient Features of Proposed GST Design

1. Introduction

1.1. Goods and Service Tax ("GST") is a landmark indirect tax reform knocking at our doors. This article explains the salient features of the proposed GST design. It is based on the information as available at the time of drafting this article.

2. Dual Model of GST

2.1. GST is proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as on the services at a national level. In an utopian situation, the tax has to be a singular tax on all supplies with a uniform rate and seamless credits for taxes paid at the earlier stage. The current distinction between goods and services and between concepts of manufacture, sale, deemed sales, etc. are expected to be subsumed in such a utopian GST.

2.2. However, considering the federal structure of India, the Empowered Committee of State Finance Ministers have worked out a dual GST model for India. In this model, both the Central and the State Governments would levy Central GST ("CGST") and State GST ("SGST") respectively on the same comprehensive base of all supplies, thus eliminating the distinction between goods and services for the purpose of levy of tax

3. Destination Based Consumption Tax

3.1. Since the State Governments would also have jurisdiction to levy tax on supplies, the need for addressing issues related to interstate supplies arises. As a design, GST is proposed to be a destination based consumption tax and therefore in case of interstate supplies, the tax on the interstate supply must accrue to the destination State. This would also enable seamless flow of credit in case of interstate supplies for business purposes.

3.2. Extending the principle of destination based consumption tax, supplies imported into the country would attract GST whereas supplies exported from the country need to be zero rated (i.e. not liable for payment of GST with unfettered input credit).

3.3. To enable a smooth implementation of the above propositions, it is suggested that interstate supplies, imports and exports be governed by an Integrated GST ("IGST"). The IGST rate is proposed to be determined by considering the CGST and SGST Rates. Effectively, in IGST, there would be two components i.e. CGST and SGST, out of which, the portion of CGST will be held by the Central Government and the portion of SGST will be transferred to the destination State Government. Thus, for IGST, the

Central Government will work as a clearing house for the states where consumption takes place. IGST will also enable smooth flow of credits between the origin and the destination States.

3.4. In order to ensure smooth flow of credit and reduce the documentation requirements, IGST is proposed not only on interstate sales but also on interstate supplies including branch transfers.

3.5. The adoption of the destination based principle for taxation of interstate supplies had resulted in apprehensions from various States since the current principle for taxation of interstate supplies is origin based principle. Therefore, as an interim measure, it is proposed to introduce a 1% Origin Based Tax ("OBT") on interstate supplies of goods.

4. Broad Roadmap ahead

4.1. The Government of India has introduced the Constitution (122nd Amendment) Bill to enable the introduction of Goods and Service Tax (GST). The said Bill has been approved by the Lower House (Lok Sabha) on 6th May, 2015 and is awaiting approval from the Rajya Sabha and thereafter assent of the President.

4.2. Being a Constitutional Amendment Bill, the same will need to be endorsed by at least half of the State Assemblies.

4.3. After endorsement by more than half of the State Assemblies, the GST Council can be formed to recommend draft legislations. These legislations will then need to be approved by the Central and State Governments respectively.

4.4. The GST Council will then proceed to define an effective date for implementation of GST in India.

5. Salient Features of Constitution Amendment Bill

5.1. The term 'GST' is defined in Article 366(12A) of the Constitution of India to mean *"any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption".*

5.2. Article 366(26A) of the Constitution of India provides that "services means anything other than goods".

5.3. Various Central and State taxes will be subsumed in GST. All goods and services, except alcoholic liquor for human consumption, will be brought under the purview of GST. Petroleum and petroleum products (Crude Petroleum, Petrol, Diesel, and ATF) have also been brought under GST. However, it has also been specifically provided that petroleum and petroleum products shall not be subject to the levy of GST till a date to be notified. Till such time petroleum products will continue to attract excise duty.

5.4. Article 246A of the Constitution is inserted in the main body of the Indian Constitution after Article 246 to empower both the Centre and State to legislate on a common matter i.e. Goods and Service Tax. The power to make laws on Inter-state transactions has been kept exclusively with the Central Government.

5.5. Article 279A of the Constitution has been introduced for creation of Goods and Service Tax Council, a constitutional body which will be a joint forum of the Central and the State Governments. This Council will make recommendations to both the Central and State Governments on important issues like tax rates, exemptions, threshold limits, disputes resolution for GST. The GST Council is envisaged as a recommendatory body with the Union Finance Minister as Chairperson, Minister in charge of Finance or Taxation or any other Minister nominated by the each State Government as members and Union Minister of the State in charge of Revenue as Member of the GST Council.

6. Legislation

6.1. The dual GST model would be implemented through multiple statutes:

- An enactment by the Centre to govern the collection and administration of CGST.
- An enactment by each of the States to govern the collection and administration of SGST.
- An enactment by the Centre to govern the collection and administration of IGST.
- An enactment by the Centre to govern the collection and administration of OBT.

6.2. While there would be multiple statutes for collection and administration of different variations/components of the GST, it is expected that the basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes. For the said purpose, the GST Council may provide a draft legislation for adoption by the State Governments. However full autonomy would be available to the respective State Government to deviate from the suggested draft legislations, if there is a need for the same.

7. Coverage

7.1. The Central GST and the State GST will apply to all 'Taxable Supplies' except exempted and excluded supplies which will be outside the purview of GST. Similarly, basic threshold limits for registration will be prescribed.

7.2. It is proposed that the following supplies will not get subsumed under the GST regime:

- Alcohol for human consumption (State Excise plus VAT will continue to levy)
- Electricity (Electricity Duty will be levied rather than GST),
- Real Estate Transactions (Stamp Duty plus Property Taxes as in present regime will continue),
- Petroleum Products (covered under GST but effective from the date as notified by GST Council),
- Tobacco products (GST plus Central Excise will be applicable),

7.3. The following Central level taxes and duties are proposed to be subsumed under CGST:

(i) Central Excise Duty

(ii) Additional Excise Duties

(iii) The Excise Duty levied under the Medicinal and Toiletries Preparation Act

(iv) Service Tax

(v) Additional Custom Duty, commonly known as Countervailing Duty (CVD)

(vi) Special Additional Duty of Customs (SAD)

(vii) Cesses

7.4. The following State taxes and levies would be subsumed under SGST:

(i) VAT/Sales Tax,

(ii) Entertainment Tax (unless it is levied by the Local bodies),

(iii) Luxury Tax,

(iv) Taxes on lottery, betting and gambling,

(v) State Cesses and Surcharges in so far as they relate to supply of goods and services,

(vi) Entry Tax not in lieu of Octroi

8. GST rate

8.1. The proposed GST rate would be determined based on the principle of Revenue Neutral Rates(RNR). 'Revenue Neutral Rates' (RNR) in layman terms, is the rate that allows the Central and States to sustain the current revenue from tax collections.

8.2. Based on various studies, it appears that four broad classifications of rates are proposed in upcoming regime of GST :

- Merit Rate for essential goods
- Standard Rate (RNR) for goods and services in general
- Special rate for precious metals
- NIL Rate

8.3. It is also likely that to start with, the RNR rate for services may be slightly lower than that for goods.

8.4. As proposed, for SGST, the States may be empowered to vary the SGST rates within a narrow band of variation

8.5. Under the proposed regime, exports will be zero rated. Similar benefits will be given to Special Economic Zones (SEZs).

9. Credits

9.1. Since CGST and SGST are to be paid to separate Governments, taxes paid against the CGST shall be allowed as Input Tax Credit (ITC) for the CGST and could be utilized only against the payment of CGST. Similarly the ITC of each SGST can be utilised only for the payment of output SGST of that particular State.

9.2. Cross utilization of ITC between the Central GST and State GST would, in general, not be allowed except in the case of Inter-State supply of goods and services under the IGST model.

9.3. Credit of IGST would be first adjusted against the output IGST. After the said adjustment, the balance unutilised credit of IGST can be used for payment of output CGST and thereafter output SGST. As such, IGST would act as a bridge for smooth flow of credits.

9.4. Credit accumulation may arise due to multiple reasons like inverted rate structure, timing mismatches, exports, zero rated supplies, erroneous payments, under protest payments, etc. An exhaustive and expeditious refund mechanism will be prescribed for such situations

10. Procedural aspects

10.1. It is proposed that uniform procedure for registration, payment of taxes and filing of returns would be prescribed in the respective legislations governing IGST, CGST and SGST

10.2. CGST and SGST are to be paid to the accounts of the Central and the State separately, though may be through a single Challan using the respective codes. A national level Information Technology Infrastructure under the name of GSTNET is proposed to be established

10.3. In the proposed GST regime, Composition/ Compounding Scheme may be introduced whereby an assessee having a turnover of less than a stipulated amount may be eligible to pay GST at a lower rate (say 2%) without having the facility of any Input Credit, i.e. no credit of IGST, CGST and SGST will be available or issuance of tax invoice.

10.4. The assessee in GST regime may be required to file periodic returns for all the three legislation namely IGST, CGST and SGST. Each taxpayer may be allotted a PAN-linked Taxpayers Identification Number (TIN).

Shailesh P. Sheth, *Advocate*

An Analysis of GST Bill

"Let all the laws be clear, uniform and precise for interpreting laws is almost always to corrupt them".

(Voltaire, Philosophical Dictionary 1764)

A. GST – "Punishing Past, Perilous Present, Uncertain Future."

(a) GST – A Historical Perspective

The chronicle of Indirect Tax System of India post-independence presents a sordid saga ! For nearly five decades after independence, the indirect tax systems in India, both at Centre and States level, remained multi-tiered and suffered from inherent complexities, cascading effect of 'tax on tax' and lack of consistency and clarity. Despite phenomenal progress made in the past two decades to implement the basic design of 'VAT' in the form of CENVAT at the Centre and VAT at the States level, the systems continue to suffer from many shortcomings.

In the words of one of the most respected GST experts globally, Mr. Sijbren Cnossen: *"India's system of indirect taxation at the Central and State Level is a serious obstacle to the formation of a single common market in which business source anywhere, manufacture anywhere and sell anywhere. Its complexity is baffling and its incidence is highly capricious and indeterminate. The system's multiple tax-on-tax effects cascade throughout the production-distribution chain with harmful economic consequences. These effects are compounded by the lack of co-ordination between the various forms of indirect taxation (sales tax, excise duties, import duties) and between the levels of Government (Centre vs. State, State vs. State), as well as the uneven enforcement of the respective tax administrations."*

The basic objective of any tax reform in the 'Indirect Tax Regime' would be to address the problems of the current systems. 'It should not only establish a system that is economically efficient and neutral in application, distributionally attractive and simple to administer, but at the same time, be capable of broadening the tax base while maintaining the autonomy of the taxation powers of Centre and the States guaranteed under the Constitution.

It is, therefore, no wonder that a comprehensive 'Value Added Tax' ('VAT') or 'Goods and Services Tax' ('GST') is looked upon as the only '**savior**' to lift India out of the '**tax-mess**' it currently finds itself in.

The switch-over to 'Goods and Services Tax' ('GST') is justified as it is viewed that GST is capable of addressing the problems associated with the current tax system and of achieving the above objectives. The proposed GST system is targeted to be a simple, transparent and efficient tax system which would help achieve a common market, widen tax base, improve revenue productivity of 'domestic indirect taxes' and enhance welfare through efficient resource allocation.

Since the Constitution of India does not confer any concurrent taxing powers to the Centre and the States to levy tax on every transaction of supply of goods, or services, or of both, appropriate amendments to the Constitution are inevitable for the introduction of GST and to empower both, the Centre and the States to concurrently impose it on all transactions. With this objective, the Constitution (One hundred and Fifteenth Amendment) Bill, 2011 ('115th Bill') had earlier been introduced in the Lok Sabha on 22nd March, 2011. However, the Bill lapsed with the dissolution of fifteenth Lok Sabha.

(b) GST Bill – An arduous journey so far… !

As a result of renewed efforts and serious re-negotiations between the Centre and the States, the much-awaited 'Constitution Amendment Bill', titled as 'The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014' ('the GST Bill' or 'the Bill'), to pave the way for the introduction of GST in India, was tabled by the Hon'ble Finance Minister in the Lok Sabha on 19th December, 2014. GST Bill primarily aims at empowering both, Centre and the States (including Union Territories) to concurrently levy and collect GST on every transaction involving supply of goods, or of services, or of both.

Predictably, the GST Bill had a fairly smooth passage in the Lok Sabha where NDA Government enjoys a clear majority. The Bill was passed by the Lower House on May 6, 2015 – a day which would surely be remembered as 'red-letter day' in the history of Indian GST! However, as was apprehended, the Bill ran into 'rough weather' in Rajya Sabha where the ruling party is lacking the desired strength. Bowing down to the combined onslaught of the opposition, the Government finally referred the Bill to the Select Committee of Rajya Sabha for its recommendations. The Committee tabled its Report on 23rd July, 2015 mainly endorsing the GST Bill, but recommending modifications to a few select clauses of the Bill. The Union Cabinet promptly accepted all the recommendations of the Committee, fervently hoping that this would ensure a smooth passage of the Bill in the Rajya Sabha.

But alas! That was not to be! In an unfortunate development, the eruption of 'Lalit Modi controversy' and what followed thereafter resulted into the washing out of the Monsoon Session, and sealed the fate of the GST Bill in the process!

(c) GST Bill – Uncertainty lies ahead …!

As is famously said: 'politics is a vocation of extreme uncertainties'! The dark clouds of political uncertainty are hovering above the GST Bill and it is hazardous to make a guess as to how and when these clouds would dissipate. However, one thing is certain – the Government would not be able to meet the deadline of 'April, 2016' for the implementation of nationwide GST and the earliest date one can now look forward to is 'October, 2016'.

(d) Delay in passage of GST Bill – 'A God-sent opportunity, perhaps'!s

Painful though it may be, the delay in the passage of the GST Bill may prove to be a 'blessing in disguise'! The Bill has many 'birth defects' which need to be cured and there is a time and opportunity to do so. If the Bill is allowed to be enacted in its present form, it would remain handicapped – like a 'permanently disabled person' – in dealing with the interpretation and implementation issues which may arise in future. GST Bill is poorly drafted and has many distortive features that need serious and critical attention of the law-makers at this stage only, or else it would spell disaster in future.

Against the above historical backdrop and keeping in view the present status of the Bill, let us now have a critical look at a few important clauses of the GST Bill.

[Note: Considering the constraints of space, the relevant provisions have not been reproduced.]

B. GST Bill – A selective Clause-wise analysis

1. Clause 2 – Insertion of Article 246A – Grant of concurrent legislative powers to Centre and State to levy GST

Needless to say, one of the primary purposes of the GST Bill is to grant legislative powers to the Centre to levy tax on 'value addition' at the distribution stage below the stage of production and to the States to levy tax on services. This purpose is sought to be achieved by insertion of Article 246A *vide* clause 2 of the Bill.

Various aspects emerging from a careful reading of Article 246A are briefly discussed below:

I. 'Non-obstante Clause'

Article 246A starts with **'Non-obstante clause'** and is overriding Articles 246 and 254 of the Constitution, in so far as the proposed powers of the Parliament and the State Legislatures to make laws with respect to goods and services tax are concerned.

(i) The present Constitutional Scheme of Article 246 and Article 254

Both, Article 246 and Article 254 play a discreet but extremely crucial role in the Indian Constitutional Scheme.

(a) Article 246 – Concept of Competence

'Concept of Competence' as enshrined in Article 246 refers to the powers of Parliament and the State Legislature to pass laws with respect to certain matters.

Article 246 serves two functions; first, it grants the Centre and the States competence to legislate with respect to the matters enumerated in the Lists in Schedule VII of the Constitution. It is a settled law that the entries in the Legislative Lists are merely fields of legislation and that, the competence of the Centre and the States to pass laws in those fields emanates from Article 246.

See, 1. Hoechst Pharmaceuticals Ltd vs. State of Bihar - AIR 1983 SC 1019;

2. UOI vs. Harbhajan Singh Dhillon - (1971) 25 SCC 779.

Secondly, Article 246 lays down the hierarchy between laws passed by the Centre and the State relating to the areas of their respective competence. It hardly needs to be emphasised that entries in the Legislative Lists are to be construed according to **'Pith and Substance'**. The doctrine came to be established in the pre-independence period under the Government of India Act, 1935. [See, *Prafulla vs. Bank of Commerce – AIR 1947 PC 60*].

At the same time, it should be remembered that Pith and Substance is a concept employed to determine the competence of a legislature to pass a law, not to resolve a conflict between two laws which both legislatures had the competence to enact.

Article 246 deals only with the scope of the power of the Centre and the State to legislate with respect to the matters in the Legislative Lists. If these powers conflict, then they will be ordered and reconciled in accordance with the hierarchy laid down therein.

(b) Article 254 – Concept of Repugnance

The principle of harmonious construction of the Legislative Lists is one of the cardinal principles of Indian Constitutional Interpretation, most succinctly laid down in the decision of the Supreme Court in *Tika Ramji vs. State of UP – AIR 1956 SC 676.*

The three tests of repugnance were laid down by the Supreme Court in Tika Ramji's case (supra) and affirmed in Deep Chand vs. State of UP – AIR 1959 SC 648. They are:

- Whether there is a direct conflict between the two provisions;
- Whether Parliament intended to lay down an exhaustive code in respect of subject matter replacing the Act of the State Legislature; and
- Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

To summarize, the current scheme relating to conflicts between Central and State laws is as follows:

- The Court must first look to determine whether both the Centre and the State had the competence to pass the respective laws. This inquiry is to be carried out using Article 246 read with the legislative lists, which are to be read harmoniously, and by using the doctrine of Pith and Substance.
- If there is a factual conflict between the two laws, the Court must assess whether the laws deal with the same matter in the Concurrent List. If they do, then the Court must resolve the repugnance in accordance with Article 254.

If the laws do not deal with the same matter in the Concurrent List, then the Court cannot use Article 254. Then reliance must be placed on Article 246, and the hierarchy provided therein must be followed to either reconcile the conflict, or give priority to the Central law over the State law.

(ii) The proposed scheme under Clause 2 – Article 246A

Under the proposed Clause 2 of the GST Bill, the applicability of Article 246 and Article 254 has been done away with and the Centre and the States have been empowered to make laws with respect to Goods and Services Tax. However, in their place, no alternative mechanism has been introduced. Given the scheme proposed in the First Discussion Paper of the Empowered Committee and the GST structure as articulated in the Bill, it appears that an irreconcilable conflict between Centre and State laws is presumed to be unlikely. Since 'uniformity' and 'unanimity' are the major driving forces of GST legislations, it has been justifiably presumed that no such conflict would arise between the Central and the State laws governing the GST regime in the country. The need for providing any 'dispute resolution mechanism' in such circumstances has not been felt at this stage apparently because Article 246A only empowers the Parliament and the State Legislatures to make laws with respect to GST. It is only when the respective legislations are in place and operative that the possibility of any conflict between the Centre and the State Legislations can be looked into, whereupon the constitutional dispute resolution mechanism may be provided.

II. Clause 2 – 'Imposed by'

Apart from the problems with the non-obstante clause as discussed above, there is yet another anomaly in Article 246A as is presently drafted. It is the use of the words 'imposed by'. The purpose of this phrase is not clear and it is susceptible to patently wrong interpretation that the power extends only to such GST laws which the Union and the States are imposing as on the date of the Constitutional amendment.

The use of the words **'imposed by'** is inelegant, superfluous and confusing. These words, if at all to be retained, ought to be preceded by the words 'to be' so as to make the provision meaningful. The prospective nature of the words "to be" will not affect the GST laws already in force which are saved by clause 18 of the GST Bill.

2. Clause 3 – Relationship of Article 248 with Article 246A

Article 248 deals with the residual power of Parliament to make laws with respect to any matter not enumerated in the State List or the Concurrent List. Since the power to impose 'Goods and Services Tax' is not being introduced in the Legislative Lists, subjecting Article 248 to Article 246A is essential. This is taken care of by the insertion of the words **'subject to'** in Clause (1) of Article 248 *vide* Clause 3 of the GST Bill. However, the power to impose taxes which are not enumerated in the State List or the Concurrent List is dealt with separately by Article 248(2). Admittedly, the use of the words **'such power shall include'** in Article 248(2) suggests that any limitation on the power granted in Article 248(1) will also narrow the scope of the power in Article 248(2).

Therefore, by way of abundant caution, it may be advisable to introduce the words **'other than goods and services tax'** after the words **'imposing a tax'** in Article 248(2). This would have the benefit of removing any confusion over the relationship between Article 248 and Article 246A.

3. Clause 9 – Article 269A – A 'master-stroke' in the GST Bill ….!

Article 269A, as proposed, empowers the Government of India to levy and collect GST on supplies in the course of Inter-State trade or commerce and to **'apportion'** the same between the Union and the States in the manner as may be provided by the Parliament on the recommendations of the GST Council.

The Explanation to Clause (1) of Article 269A provides that supply of goods, or services, or of both in the course of import into the territory of India shall be deemed to be the supply of goods, or of services, or of both, in the course of inter-state trade or commerce.

Article 269A is one of the most crucial provisions of the GST Bill and will play a pivotal role in the GST regime. Presently, under the CST Act, the tax is levied by the Centre on the Inter-State sale or purchases, even though it is assessed and collected by the originating States. However, Central Sales Tax ('CST') being levied under the CST Act is restricted only to Inter-State sales or purchases and does not extend to stock transfers or consignment sales. It is pertinent to note here that though Entry 92B of the Union List of the Schedule VII of the Constitution empowers the Centre to charge the tax on stock transfers or consignment sales, the levy has not been introduced till date. This is understandable since the tax paid on Inter-State sale or purchase is not available as Input Tax Credit, notwithstanding the introduction of VAT in 2005.

It is an undeniable fact that the CST Act has been a fertile ground for huge number of litigation. It has also created vested interests for the States who are producing States and net exporters to other States. The compliance costs in collecting and managing the various Forms like C Form, E-I and E-II Forms, F-Form, etc. are huge. The transactions involving the issue of such Forms are also perennial source of litigation. VAT authorities have always disputed the 'Stock Transfers' and have always been demanding full rate of tax on the Inter-State stock transfers on the ground that the buyer's identity was known before hand and therefore, the transactions tantamount to 'Inter-State sale'. [See, the recent ruling of the Andhra Pradesh High Court in *Larsen & Toubro's case -TS-507-HC-2015(TEL & AP)-VAT].*

The proposed Article 269A is expected to eliminate the complexities involved in determining as to whether the Inter-State movement of goods is occasioned by way of stock transfer or sale. This is for the reason that the word 'supply' is much wider in scope than 'sale or purchase' and therefore, the former word would cover even the stock transfers and consignment sales within its scope so as to attract the levy of GST. It is also expected to remove, at one stroke, the necessity of the diverse kinds of declaration forms which lie at the root of major litigation at present. Since GST, in the form of IGST, paid on the Inter-State transactions would be available by way of Input Tax Credit, the cascading effect of tax will be avoided, though, it may result into significant increase in the working capital needs of the tax-payers.

The only **'dampener of spirit'** is the proposed levy of 1% additional tax on Inter-State supply of goods! (Refer the discussion *infra*).

However, the use of the word **'apportioned'** in Clause (1) of Article 269A may not be entirely appropriate. A better term could be **'distribution'** in sync with existing jurisprudence in the Indian context. The doctrine of apportionment has specific connotations in Constitutional laws of other countries. The use of the term 'apportion' in the proposed Article 269A, while retaining the term 'distribution' in Article 270, may also be incongruous and lead to potential conflicts.

Secondly, the use of the word **'both'** in Explanation to Clause (1) and elsewhere in the Bill is rather confusing and needs greater clarification. The word is prone to conflicting interpretations – does it refer to transactions where both goods and services are involved, but as separate elements, or does it also include or refer to composite transactions. It is to be noted here that the term **'services'** is being defined *vide* a new Clause (26A) being inserted in Article 366, in an extremely wide manner so as to mean **'anything other than goods'**. Viewed against the definition of the term **'services'** as proposed, the very use of the term **'both'** in Explanation to Clause (1) and elsewhere appears to be superfluous.

4. Clause 14 – Definition of 'GST' and amendments to Article 366:

Clause 14 of the GST Bill is the arterial provision of the Bill, for it, *inter alia*, defines two important terms viz. 'goods and services tax' and 'services'.

(a) Insertion of Clause 12A – 'goods and services tax' defined

Vide Clause (14) of the Bill, a new Clause (12A) is proposed to be inserted in Article 366 defining the term **'goods and services tax'** so as to mean *'any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.'*

This all-important definition needs serious deliberations.

(i) 'Supply' – Does it need to be defined?

The term **'supply'** used in the definition is quite significant. The term has not been defined in the Bill. In the context of GST, the term would refer to **'supply of goods'**, **'supply of services'** or **'supply of both'**. At present, the taxable events are broadly speaking, **'manufacture'** (for levy of excise duty);'provision of service' (for levy of service tax); **'transfer of ownership in goods'** (for levy of VAT or Sales Tax) and **'import of goods in India'** (for levy of customs duty). However, these present-day **'taxable events'** would become irrelevant once the GST regime is ushered in as the **'taxable event'** in GST regime would shift to 'supply of goods, or of services, or of both'.

The absence of definition of this fundamental term constituting the very taxable event for the purpose of levy of GST, has therefore been justifiably frowned upon. Representations had been made before the Committee for prescribing a specific definition of the term **'supply'** in the GST Bill itself. However, the Committee has not accepted the suggestion and instead, has recommended that the term 'supply' would be defined in the various GST laws relating to CGST and SGST.

Probably, the reason for not prescribing the definition of the term 'supply' in the GST Bill itself could be that if, in future, it becomes essential to amend the definition for any reason, it would necessitate Constitutional amendment which can be a tardy process.

Considering the wide meaning of the term '**supply**' (which is not defined), it appears that even transactions involving job-work, repairs, testing, movement of goods for exhibition or demonstration or 'sale or return basis', etc. are likely to come within the purview of GST.

Moreover, the requirement of **'consideration'** to constitute a '**taxable supply**' is conspicuous by its absence in the proposed provisions. Consequently, even the transactions involving branch/stock transfer, free supplies, gifts, free samples, free products or services in lieu of loyalty/reward points, etc. may be subjected to levy of CST.

Interestingly, view was expressed by the Ministry of Finance, Dept. of Revenue before the Committee that while 'sale' is for consideration, 'consignments' are in the nature of branch transfers. According to the Ministry, 'supplies' would constitute both 'sale' as well as 'consignment' transactions. Since input tax credit of GST charged on both sales as well as consignments in the course of Inter-State trade would be available, there would not be any cascading effect of tax, the Ministry contended. These views expressed by the Ministry before the Committee on Clause 9 (supplies of goods and services in the course of Inter-State trade) of the GST Bill were accepted by the Committee which recommended no change in the Clause.

Another issue that arises here is whether the legislature is empowered to define a taxable event artificially, without having an express authority flowing from the Constitution ? The answer to this question appears to be in affirmative considering the judicial pronouncements on the issue.

See, *1. S. N. College vs. State of Kerala (2010) 1 KLT 691.*

2. CIT vs. Venkateswara Hatcheries – 2002-TIOL-709-SC-IT-LB.

3. Kerala Public Service Commission vs. State Information Commission, Kerala – (2011) 272 ELT 18 (Ker.HC);

4. Saifuddin vs. Assistant Commissioner of Sales Tax (1976) 38 STC 463 (Cal.HC).

While the powers of the legislature to define a word even artificially has been well recognized judicially, one will have to wait for the actual definition of the term 'supply' that may be provided by the CGST and SGST laws. But, a word of caution here! No doubt, the use of the word 'supply' is intended to consolidate Indirect Taxes that are presently levied on a diverse set of taxable events. However, the object of Clause 14 of the Bill is not and shall not be to expand the category of taxable events and hopefully, there will be sufficient inbuilt safeguard in the definition of the term 'supply' as and when provided by the CGST and SGST laws.

(ii) Retention of Clause (29A) of Article 366 – "Intentional or oversight?"

The above discussion inevitably brings us to Clause (29A) of Article 366 pertaining to **'Deemed Sale'.** It is interesting to note here that this clause has been retained *vide* the present GST Bill, though it was sought to be omitted by the 115th Bill presented in 2011.

The retention of Clause (29A) of Article 366 in the GST Bill is rather curious. It is difficult to fathom the reason for retaining the provision considering the widest possible manner in which the term 'services' is being defined *vide* Clause (12A). The proposed definition is wide enough to cover the six transactions enumerated in Clause (29A). The deletion of Clause (29A) had been suggested to the Committee, but the Committee has remained non-committal on this aspect in its final recommendations.

(iii) "Any tax" – Incoherent and Incongruous …..!

Clause (12A), as is presently worded, defines 'goods and services tax' means 'any tax on supply of goods, or services, or both….'. The use of the word 'any' is rather improper and incongruous. Though, highly contextual, the word 'any' has, on occasion, been construed to expand the scope of the provision in which it appears. [See, *Balaganesan Metals vs. Shanmugham Chetty - (1987) 2 SCC 707* on the scope of the word]. No doubt, it is unlikely that a Court will take the view that 'any tax on supply of goods or services' expands the scope of the provision, because it is still the case that the tax must be on supply. Nevertheless, the possibility of dispute, entirely avoidable, lies here.

The proper expression to be used is, perhaps, the plural form of the word 'tax' i.e. **'taxes'** in place of the word **'any'**. The definition would then read as **'taxes on supply of goods, or services……'.** This would bring it in harmony with similar expressions used in various entries of the Legislative Lists of Schedule VII (e.g. Entry 82, Entry 83, Entry 86 of Union List or Entry 46, Entry 49 of State List). This would also promote coherence and consistency in the pattern of drafting.

5. Clause 18 – Levy of additional tax on Inter-State supply of goods – An unholy compromise…!

Clause 18 of the GST Bill seeks to empower the Government of India to levy and collect an additional tax, not exceeding 1%, on supply of goods in the course of Inter-state trade or commerce. This additional levy is prescribed for a period of two years or such other period as the GST Council may recommend. The proceeds of this levy shall be assigned to the States in the manner as prescribed.

Clause 18 is perhaps the most controversial provision of the GST Bill and has remained in the **'eye of the storm'** till date! The provision to allow the States to collect this additional tax of 1% on Inter-state supply of goods is with a view to assuage the revenue concerns of the originating/producing States, since GST is supposed to be a destination-based consumption tax, wherein the SGST portion of the tax revenue in case of Inter-state supply of goods or services shall be retained by the consuming/destination States.

The provision, as was originally drafted, would have brought within its scope, even the branch/stock transfer of the goods, goods cleared to other State for job work, repairs, etc. Fortunately, with the acceptance of the recommendations of the Committee on this issue by the Union Cabinet, the fears on this count are allayed.

However, this partial relief would still not justify this levy at all. Since the levy will be on the Inter-state supply of goods for a consideration, the cascading effect of tax would remain. It will also lead to increased cost of compliance for the tax-payers. This would effectively nullify the avowed objectives of GST. Mr. Cnossen has therefore aptly described this levy a**s 'a highly avoidable distortion'.**

Levy of additional tax – a CST by other name ?

A careful look at the scheme and mechanism for levy and collection of this additional tax would reveal that it is akin to Central Sales Tax (CST). Its features like being levied only on goods and not on services; non-vatability and retention of the tax by the originating/producing States put it on par with CST.

Government of the day has always promised the phasing out of CST with the introduction of GST.

Therefore, this backdoor entry of 'CST' in disguise is highly regrettable.

Additional tax – Will it be levied on imports ?
As mentioned above, Explanation to the proposed Article 269A treats the supply of goods, or of services, or of both in the course of import into the territory of India, at par with the supply of goods or of services or of both in the course of Inter-State trade or commerce. The question therefore naturally arises as to whether the additional tax of 1% will be leviable on imports of goods?

It can be argued that since in the case of imports of goods, there would not be any originating State, the levy would not be attracted. However, clear and explicit principles for determining the place of origin would be essential to avoid any confusion and dispute on this count.

At the same time, if the imports of goods escape this levy, there is a real danger that it would make the imported goods cheaper as compared to the domestically produced goods. This may deal a serious blow to the **'Make In India'** dream of the Prime Minister.

Additional tax – An absurdity or an aberration….?
GST is a destination based consumption tax as opposed to origin based tax, and availability of input tax credit (ITC) at every stage of supply of goods and services is its hallmark.

The proposed levy of additional tax of 1% being origin-based and non-vatable, would be completely opposed to the fundamental principle of GST. Not only this, India would achieve a unique distinction of having a simultaneously 'destination-based tax system' and 'origin-based tax system'!

Additional tax – Confusion over the 'duration'…!
Clause 18 is also very loosely drafted. Whereas a period of **'two years'** is prescribed for the levy, the Clause does not state explicitly as to from which date, the levy shall become effective so as to compute this period of '**two years**'. Similarly, the word '**other**' used in the Clause is also a misnomer and it should be appropriately replaced by the word **'further'**, since it refers to the extended period as may be recommended by the GST Council for continuation of the levy.

Moreover, it is not clear whether the words *'as the Goods and Service Tax Council may recommend'* used in the provision qualifies the words *'such other period'* only or the entire preceding words i.e. *'for a period of two years or such other period'*. The absence of 'comma' (,) after the word 'years' in sub-clause (1) leads to this confusion. This gives an impression that even the initial minimum period of 'two years' would also commence based on the recommendations of the GST Council which does not appear to be the intention of the Government. Naturally, the producing States would be eager to have the share of this levy from the date of implementation of GST itself or soon thereafter.

C. Concerns of the States

It is obvious that the States have had a major say in the structuring of the GST Bill. Quite a few significant provisions of the Bill aim at appeasing the States and allaying their concerns. It is a different matter that this has potential of skewing the very fundamental design of GST!

The proposed levy of 1% additional tax on Inter-State supply of goods is the case in point. At the cost of repetition, this levy has been proposed to keep the rich, industrialized and the producing States in '**good humour**' who perceive a huge loss in the revenue with the introduction of GST, a destination-based consumption tax. However, the Centre has already accepted the States' demand for compensation for five years if any loss arises due to the implementation of GST. The proposal to this effect has been given Constitutional recognition by incorporating the same in the GST Bill (Clause 19 refers). That being so, where is the question of or need for this additional levy of 1% to compensate the producing States for their perceived loss in future? Or, is there more to this than what meets the eye ?Is it a ploy to create an additional pool of revenue, in lieu of CST, which would provide a cushion to the Centre while finalizing the compensatory package to the States as it would mean – compensation payable to the State is = total amount of compensation minus revenue earned through 1% levy!

If this additional levy is inevitable, then is there a conceptually and legally much healthier option available? On this, Mr. Cnossen has suggested that if it (levy of 1% additional tax) was a part of the federating States, then the actual solution could have been allowing the States to collect one per cent **additional SGST** or there could have been a lapsable independent Bill to allow the originating States to collect such a tax for limited period.

The **'flawed'** – rather than **'flawless'** – design of GST is again visible when it is seen that petroleum products and natural gas have been kept out of the VAT chain. No doubt, the FM has managed to bring these products within the ambit of GST, resisting the tremendous pressure of the States to exclude it, like alcoholic liquor, from the coverage of GST itself. However, the deferment of levy of GST on petroleum products, leaving the date of imposition of levy thereon to the recommendation of GST Council, is again a 'costly compromise'. Keeping petroleum products and natural gas out of the VAT/GST chain would cause price distortions due to cascading effect of tax and would also create administrative complexities.

The above are but a few of the undesirable and unhealthy compromises – though being justified as 'inevitable' – made by the Centre so as to bring the agitating States on board to ensure speedy and smooth implementation of this grand Indirect tax reform. However, let us remember the sage words of another Internationally acclaimed GST expert, Mr. Michael Keen who says : *"One (general lesson) is the political difficulty of making sensible changes to a GST once it has been introduced: the compromises made at an introduction are hard to undo."*

Conclusion

India is at crucial crossroads in its fiscal history. India is considering – and justifiably and inevitably so – the introduction of uniform, comprehensive GST extending through retail stage and levied concurrently, albeit, independently by the Centre and the States. The crucial GST Bill provides a bedrock for the smooth introduction of this ambitious tax reform and for ensuring its success in future. Unfortunately, the proposed GST structure as imbibed in the Bill has serious fault lines which are clamoring for urgent attention! These serious 'flaws' in the GST Bill have as much to do with the 'political compromises' made by the Centre as the **'capacity deficit'** of the Draftsmen and revenue officers working under the aegis of Empowered Committee, designing the GST structure and articulating the GST Bill!

In the end, I can't resist the temptation of recalling the profound words uttered by Hon'ble Justice R. Raghuram, President of CESTAT during his speech at FAPCCI, Hyderabad on January, 17, 2015:

"When I saw the GST Bill, it is mind boggling constitutional complexity. It is neither the exclusive list nor the concurrent list; it's a fourth dimensional animal. It is post-Einstenian Physics. Heisenberg's uncertainty of quantum mechanics is elementary compared to the complexity of this. Even the political complexity of States and Union coming together on a continual basis to ratchet the policy of GST is a huge challenge. It is an economical challenge, it is a political challenge, policy challenge, an administrative challenge; it's an adjudication challenge. So that is the next animal that is waiting to pounce on you. But we have to fight, we have to survive."

"Laws are like sausages. It's better not to see them being made."

- (Otto Von Bismarck 19th Century Prussian Prince)

CA Shailesh V. Haribhakti

GST – An Economic Perspective

1.1 FM's Commitment

Hon'able Finance Minister Mr. Arun Jaitley during his 2015 Budget Speech mentioned *"we are now embarked on two more game changing reforms. GST and what the Economic Survey has called the JAM Trinity – Jan Dhan, Aadhar and Mobile – to implement direct transfer of benefits. GST will put in place a state-of-the-art indirect tax system by 1st April, 2016. The JAM Trinity will allow us to transfer benefits in a leakage-proof, well-targeted and cashless manner"*. Unfortunately it appears that this promises' fulfilment may be deferred by a year.

1.2 GDP game changer

GST is an internationally recognized game changer for tax administration and collection in India. Even without the implementation of Goods & Services Tax (GST) the Indirect Tax collection in India has jumped 37% in the April-August 2015 period. GST is seen as the largest indirect tax reform in the history of Independent India. The passage of 122nd Constitutional Amendment Bill (CAB – the bill incorporating GST regime) in Lok Sabha on May 6, 2015 has opened the room for implementation of GST regime in India. Though still there is a long way to go, it appears that the crawling stage of GST has come to an end and it is ready to run on the path of success taking Indian economy hand in hand. As per a report of the National Council of Applied Economic Research (NCAER) published in December 2009, *"implementation of GST across goods and services is expected,* ceteris paribus, *to provide gains to India's GDP somewhere within a range of 0.9 to 1.7 per cent"*.

1.3 Impacts

This magic is predicted as GST will pull the entire value chain into the formal system. The phenomenal rent seeking at check posts of every state entry point and the delays in goods reaching their destination will dramatically reduce. The velocity of commerce will improve and the growth momentum will receive a fillip. FOR THE FIRST TIME IN INDIA'S HISTORY THE RAILWAYS MAY BE FORCED INTO TIME TABLING FREIGHT TRAINS TOO! India can finally emerge as one Economic Zone.

1.4.1 Current scene

Our present tax regime is marred by a multiplicity of cascading taxes, distortion in value chain, restriction on movement of goods from one State to another, cumbersome compliances and high tax administration cost. Important business decisions are made keeping in mind various incentives / exemptions / rates and tax credits. Tax considerations need to give way to economic wisdom in business decisions. Factors such as availability of skilled labour, raw material, proximity to markets, availability of necessary infrastructure and land are the key drivers of growth. Currently, the tax burden on production, movement and sale constricts growth and breeds evasion.

1.4.2 India is a diversified country, where natural resources such as fertile land, minerals, forests, rivers and sea beds are spread across different regions. These natural endowments should determine the dominant economic activity of the local population. Industries based on the natural resources available in the respective states need to be readily set up! Northern states such as Punjab, Haryana, Uttar Pradesh and Uttarakhand are agri economies where large scale food processing and dairy industries should be set up. Jharkhand and Chhattisgarh having abundance of iron ore and coal should have mining, steel and power generation projects. Coastal states viz. Goa, Andhra Pradesh, Tamil Nadu, Kerala, Odisha, Karnataka etc. should have shipping, ports and marine based industries. State governments need to be empowered to formulate policies keeping in mind the occupations of public at large. Capacity building under the 'co-operative federals' in concept can be given wing so that expenditure on health, education and policing can reach the bottom of the pyramid.

1.4.3. Evolving the framework of fair tax sharing has taken substantial time in view of this diversity of natural resources and occupations. A common legislation, which can serve the purpose of promoting and safeguarding local trade in different states required co-operative deliberations in the Empowered Committee of States considering GST.

1.5 GST choice

Therefore India has chosen a GST model which is similar to that of Brazil and Canada with sharing of power to levy tax by Centre and States. GST aims at establishing an efficient and harmonised consumption tax system i.e. simple and one law across the country, taxing value chain of goods and services from production till final consumption by the consumer. GST will subsume majority of indirect taxes on goods and services and promote a 'single levy' on consumption of goods and services across India. The other key features of GST include seamless credit of Central as well as State levies and uniform taxing principle throughout India. Given the structure of GST, the stages of production and distribution would be merely a pass-through and tax would be levied on final consumption within the taxing jurisdiction. Consequently, GST would be leviable only on the value addition made at each value transmission point, thereby reducing price of goods and services in the hands of the end customer. GST is expected to change the business functioning in India particularly as the entire system will be e-enabled. The transparency and accuracy that the system can achieve is at a level unknown in India.

1.6 Context of the GST Task Force

Report of the task force, dated December 15, 2009, set up under the Thirteenth Finance Commission of (Ministry of Finance) (hereinafter referred as 'Task Force Report') has elaborated the rationale of introduction of national wide GST in the following paragraphs:

"7.1 The economic case for a 'flawless' GST is straightforward: Income is taxed irrespective of source and use; therefore, consumption should also be taxed on the same principle........... In the Indian economic policy context, poverty reduction and inclusive growth are key policy objectives and will, undoubtedly, continue for some time.

7.2 High import tariffs, excises and turnover tax on domestic goods and services have enormous cascading effects, leading to a distorted structure of production, consumption and exports. The existing tax system introduces myriad distortions which favour some goods and services at the expense of others. These distortions yield inefficient resource allocation and consequently, inferior GDP growth. In India, the *motivation underlying the hugely differentiated scheme of indirect taxation of production and sales that has evolved over the country's history was progressive and noble; the actual impact of such a structure is now widely acknowledged to be regressive, capricious, and sub optimal in terms of the efficiency of tax effort, leaving the door open for lobbyists and special pleading. The problem of the present distorted indirect tax system can be effectively addressed by shifting the tax burden from production and trade to final consumption. The 'flawless' GST, which subsumes all indirect taxes on goods and services, is the most elegant method of taxing consumption. Under this structure, all different stages of production and distribution can be interpreted as a mere tax pass-through, and the tax essentially 'sticks' on final consumption within the taxing jurisdiction."*

1.7 Minimum distortion and Economic Benefits

Given the above rationale, in my view there are number of channels through which GST will minimise tax distortions.

By reducing exemptions on goods and services to a bare minimum the tax base would be increased and ultimately the tax rate may fall. GST will disincentivise tax evasion. The millions of small Indian entrepreneurs will become part of a seamless chain and price of goods and services can become competitive. Low tax incidence will encourage consumers to choose authentic goods and services thereby strengthening the economy. GST will change the face of competition in favour of producers who reap the benefits of economies of scale and produce at the lowest cost. This advantage can be shared with the consumer in the form of lower prices.

1.8 Empowered Committee Focus

The First Discussion Paper on Goods and Services tax in India dated November 10, 2009, released by the Empowered Committee of State Finance Ministers promotes this theory, wherein specific rates of GST has been recommended basis the types of goods. The same is highlighted below:

"3.6 GST Rate Structure

The Empowered Committee has decided to adopt a two-rate structure – a lower rate for necessary items and goods of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items. ....

The States are of the view that for Central GST (CGST) relating to goods, the Government of India may also have a two-rate structure, with conformity in the levels of rate under the State GST (SGST). For taxation of services, there may be a single rate for both CGST and SGST."

The same view is also upheld by the Thirteenth Finance Commission's report. I agree with their views, that rate of tax should vary with the elasticity of demand for particular goods and services. Higher tax rate may be leviable on luxury and lower rates on basic necessity items. These measures would bring balance in the economy.

1.9 GST rate debate & coverage

Clarity on proposed rate of GST is still to emerge. The Task Force Report has recommended GST rate of 12% whereas the panel set up by the Central Government is of the view to peg GST rate as high as 27%. The Rajya Sabha Select Committee is of the view that GST rate should not be above 20%. In my view the ideal rate of GST for standard goods and services should be 16%.

GST also envisages full and immediate credit for tax on capital goods, both on Buildings and Plant & Machinery, thereby fully eliminating the cascading incidence of indirect tax on capital goods. It will enhance productivity of capital and will boost investments in manufacturing sector. It will also help attracting foreign investment.

1.10 Level playing field

GST will bring domestic produced goods on par with imported goods by removing distortions in the shape of cascading taxes and credit restrictions, which add to the cost of local manufacturing. It will allow a level playing field to domestic manufacturer vis-a-vis importers. This will reduce dependency on imported goods and will help keep current account in order and the value of our currency reasonable.

1.11 Reduced costs of compliance

Presently, high administrative cost of compliance under provisions of State specific and Central laws poses immense challenges. GST is expected to break the chain of compliances and permit full power to e-governance. Cost saving as a result of GST implementation would allow Central as well as State governments to increase spending on other important social reforms and welfare measures.

1.12 GSTN

Further, in order to reduce tax administrative cost, GST preparation has involved setting up a unified IT platform – GSTN (Goods and Service Tax Network) which will be used for monitoring compliances over functioning of GST across the nation. Establishment of robust IT processes and networks across the country will lead to a platform which will witness highest degree of e-governance. Additionally, several business processes will be re-engineered to align with new IT process of GSTN. Simultaneously, the software industry and tax and legal consultancy activities would grow to support compliance of GST. Such growth in the field will generate greater employment opportunities in India.

1.13 Transit time saving

Our estimates are that a hassle free movement of goods across State borders can save approximately 60% of the transit time. Lower turnaround time would lead to lower cost on fuel and transit administration, which in turn would increase efficiency of the transport industry.

1.14 Warehousing strategy change

In order to reduce burden of taxes, businesses resort to interstate movement of goods, which in turn result in establishment of multiple warehouses across different states. The uniform GST regime (except levy of additional tax of 1% on inter-state movement of goods) would bring inter and intra state trade on par, thereby eliminating requirement of maintaining multiple warehouses. Large central warehouses would provide economies of scale and minimise cost of stock management. Well thought out logistics and warehousing decisions in line with GST would add to business efficiency.

1.15 Inflation reduction

Benefits of economy of scale at various functions such as production, sourcing, supply chain will ultimately lead to reduced cost of production. This will check inflation expectations and bring down prices.

1.16 Comprehensive taxation

GST will bring services which comprise 64% of the GDP and manufacturing comprising 21% of the GDP (as per the Economic Survey 2014-15) into the tax framework. Service sector being the fastest growing sector in the economy and contributing to 31% of indirect tax collection (as per revised budget estimate of 2014-15) would yield more revenue to the Government. As per revised estimate for Central budget of 2014-15 ₹ 5,45,763 crore is estimated collection from indirect tax, which is 43.67% of total tax collection of direct and indirect taxes and Central Indirect Tax share to GDP is 4.06%.

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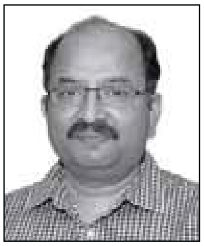


Arvind Bhansali, *Sr. Ex. Vice President-Indirect Taxation Reliance Industries Ltd.*

GST – A Business Perspective

Goods and Service Tax – GST is a comprehensive tax levy and will be one of the most significant tax reforms in the fiscal history of India. GST is all set to integrate State Economies and boost overall growth. It will affect prices, business processes and investments in all segments of the economy. It will act as a catalyst for promoting manufacturing in the country, thereby, supporting the 'Make in India' programme of the Government.

GST is a tax on goods and services with comprehensive and continuous chain of setoff benefits from the Producer's point and Service provider's point up to the retailer level. GST is expected be levied only at the destination point, and not at various points (from manufacturing to retail outlets). It is essentially a tax only on value addition at each stage and a supplier at each stage is permitted to setoff through a tax credit mechanism which would eliminate the burden of all cascading effects, including the burden of CENVAT and service tax, Under GST structure, all different stages of production and distribution can be interpreted as a mere tax pass through and the tax essentially sticks on final consumption within the taxing jurisdiction. Currently, a manufacturer needs to pay tax when a finished product moves out from the factory, and it is again taxed at the retail outlet when sold. The taxes are levied at the multiple stages such as CENVAT, Central sales tax, State Sales Tax, Octroi, etc. will be replaced by GST to be introduced at Central and State level.

GST will affect every part of business in India with regards to cash flow, costing of capital, pricing of products and services, financial reporting, tax accounting, compliance processes, supply chain, procurements and contracts and all technology currently enabling this ecosystem. In addition, there will be significant training needs for personnel to understand and operate effectively under this new regime. The transition to GST will have to be managed in a phased manner and will require proactive and timely planning. Companies will have to start by understanding key areas of impact to their business model and prepare different scenarios for the design and application of GST. Implementation of changes will have to be managed through robust programme management across various company stakeholders in the entire value chain.

Salient feature of the proposed Indian GST system

- GST defined as ***any tax on supply of goods and services other than on alcohol for human consumption***.
- The power to make laws in respect of supplies in the course of inter-State

trade or commerce will be vested only in the Union Government. States will have the right to levy GST on intra-State transactions including on services.

- Centre will levy IGST on inter-State supply of goods and services. Import of goods will be subject to basic customs duty and IGST.
- The GST structure would follow the destination principle. Accordingly, imports would be subject to GST, while exports would be zero-rated. In the case of inter-State transactions within India, the State tax would apply in the State of destination as opposed to that of origin.
- Petroleum and petroleum products shall be subject to the GST on a date to be notified by the GST Council.
- 1% origin based additional tax to be levied on inter-State supply of goods will be non-creditable in GST chain. However Government is looking the way to avoid cascading effect of the same.
- Stamp duties, typically imposed on legal agreements by the State, will continue to be levied by the States.
- Administration of GST will be the responsibility of the GST Council, which will be the apex policy making body for GST. Members of GST Council comprised of the Central and State Ministers in charge of the Finance Portfolio.

Taxes to be subsumed under GST

GST would replace most indirect taxes currently in place such as:

Central Taxes	State Taxes
• Central Excise Duty [including additional excise duties, excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955] • Service tax • Additional Customs Duty (CVD) • Special Additional Duty of Customs (SAD) • Central surcharges and cesses	• Value Added Tax • Central Sales Tax (Levied by the Centre and collected by the States) • Octroi and Entry Tax • Purchase Tax • Luxury Tax • Taxes on lottery, betting & gambling • State cesses and surcharges • Entertainment tax (other than the tax levied by the local bodies)

GST Road Map

1. GST constitutional bill has been passed by Lok Sabha, however pending for clearance in Rajya Sabha.
2. GST bill will be put for clearance in Rajya Sabha in winter session.
3. 3 major legal drafts (CSGT, SGST and IGST) are ready to be put in public domain for comments.
4. Business processes on Payment process, Registration, Refund and Returns have been circulated among public for

comments, which draw major outline on these concepts in upcoming GST law.

5. Once Bill is passed by Rajya Sabha, GST may be introduced any time in the year 2016, however meeting the deadline of April 2016 seems not achievable.

The government is committed to introduce GST as early as possible in the year 2016. Business Entities need to be GST compliant to be able to test system changes in time. Depending on the operating geographies, size and sector, the changes could be substantial and may require a proactive planning with a time-bound action plan.

In order to prepare for the implementation of GST, Business Entities need to understand GST policy development and its implications to scenario planning and preparing a transition roadmap.

Impact of GST on business

The structure of GST and the benefits that are likely to come to the business are common in many cases, but are also different in some other respects. Indirect Tax regime of the country with the implementation of GST is expected to see the drastic change. There are numerous grounds supporting such change and few of them are unified market Place, Reduced litigation, Better compliance management, Reduced operational cost, Seamless flow of credit etc. Impact of GST on manufacturers, traders, Service providers would be altogether different.

Depending on the final GST base and rate, there will be a significant redistribution of tax across different goods and services. Goods currently subject to both Centre and State taxes should experience a net reduction in tax, with positive impact on consumer demand.

Besides simplifying the current system and lowering the costs of doing business, GST will call for a fundamental redesign of supply chains. It will affect how the companies operate their businesses, presenting significant opportunities for long-term revenue and margin improvement.

For instance, under the current tax structure, supply chains are invariably designed to minimize the burden of the Central Sales Tax, with distribution centres located in individual States where the consumers are located. They are sub-optimal from a strategic and economic perspective.

The elimination of the Central Sales Tax will provide an opportunity to optimize supply chains, enabling companies to re-evaluate existing procurement patterns, and distribution and warehousing arrangements.

GST is also expected to result in a reduction in inventory costs. Dealers would be able to claim a credit for the tax paid on their inventories, leading to improved cash flows.

Mazor advantage of GST to the Business

- **One tax:** The common base for charging GST for Centre and the State will consist of an amalgamation (subsuming) of several Central Taxes and State taxes which will enable them to give one tax rather than giving about 16 taxes.
- **Common market:** There will be a common market in the absence of CST and entry tax. At present, goods are being sold mostly within the State in order to avoid paying the CST which is not credited at the stage of manufacture or in course of trading. Good quality products being manufactured in one part of the country will find more market in the farthest part of the country because there will be no CST and no entry tax
- **Distinction between goods and services will go:** In some cases, there is a distinction between goods and services when they are sold as a package. These controversies will go.

- **Invoicing will be simpler:** At present, the invoices are more detailed since taxes on goods and services are written separately for one transaction. With the introduction of GST only one rate will be written.
- **No entry tax will lead to fast deliveries of Goods:** As per Media survey India's long distance truckers are parked 60 per cent of the time. This also leads to delaying of delivery of goods at destinations. The abolition of entry tax will be a great boon for the movement of goods by road transport.
- **Common exemptions between Centre and states:** Today the exemptions given by the Centre and the states being different, the final price becomes different in different states. In the GST regime, exemptions will be common between the Centre and the states which will make the rates of duty same all over India.
- **Concept of manufacture will go:** Manufacture is a highly complicated concept. It is defined mostly by judgments of Supreme Court and high courts. It is a den of controversy. The concept of manufacture will be replaced by the concept of value added which is numerically measureable and is not controversial.
- **Classification controversies will go:** Now, classification controversies are galore since there are so many rates of duty. This problem will also go if the exemptions are limited.
- **Problem of identification will go:** At present, identifying a commodity like whether it is rubber or resin, paper or board, ash or dross dominate the proceedings since rates of duty are different. These controversies will be over.
- **Zero rating will be more comprehensive and more easy:** Even without GST, zero rating (giving relief for the input duty) is possible, but it does not give relief for some of the duties. With GST, zero rating will be more comprehensive.
- **Benefit of GST for the Centre and the States:** According to experts, by implementing the GST, India will gain $15 billion a year. This is because, it will promote more exports, create more employment opportunities and boost growth. It will divide the burden of tax between manufacturing and services.
- **Benefit of GST for individuals and Business Entities:** In the GST system, taxes for both Centre and State will be collected at the point of sale. Both will be charged on the manufacturing cost. Individuals will be benefited by this as prices are likely to come down and lower prices mean more consumption, and more consumption means more production, thereby helping in the growth of the Entities.

Some of challenges under GST in India

- A successful implementation of GST is significantly dependent on IT capability – not just at the tax administration level but also at the taxpayer level. Efforts will be required to change existing IT systems for GST enablement which could be complex, challenging and lengthy task for the IT department.
- **Litigation management:** Presently most of the big players has one centralized registration of service tax and several VAT registration in States. The amount of VAT liability is minuscule as their revenue doesn’t suffer VAT. The charging of SGST would introduce the contentious issues with the State Government and in turn litigation in the different States. Presently single show cause notice is issued for a contentious issue by the service

tax authorities and with the separate registration of CGST, there would be separate SCN in all the States for the same issue. The situation may become unmanageable. GST will surely add to their litigation in place of reduction.

Adjudication: In absence of a single adjudicating authority, different State authorities may take different view on the same issue. The contrary decision will prolong the adjudication process. Resolving the difference of opinion between different adjudicating authorities under the same board (CBEC) will again become a uphill task. A smooth and successful implementation of GST necessarily requires trade to be made a partner in GST introduction and implementation. A centralised authority adjudicating the disputes in the CGST would necessarily make GST more attractive.

The key essentials for Business Entities are:

- Understand key areas of impact in their business.
- Prepare different scenarios for the design and application of GST.
- Constantly track policy development regarding GST and update prepared scenarios.
- Identify any areas of adverse impact and prepare contingency measures.
- Identify issues and concerns needing representations to the authorities and develop a strategy for effective advocacy through Trade Associations.

[Contd. from Page 32]

1.17 International experience

Internationally GST has been a successful restructuring of taxation systems. For example New Zealand adopted GST in 1987 and yielded revenue which was 45% higher than the anticipated revenue under old tax regime. GST will result in one of the major reforms in the Indian history of tax reforms after introduction of VAT across states.

1.18 Conclusions

Ease of doing business, simple and clear laws, single point levy, single window clearance, computerisation of process and reduced corruption will create a healthy business environment. GST will not only enhance state revenues but will touch all aspects of business and economy. Every stakeholder in the economy would gain from implementation of GST. The benefit to the poor from the implementation of GST will therefore, flow from two sources: first through increase in the income levels and second through reduction in prices of goods consumed by them. Reduction in cost at all levels will increase purchasing power in the hands of consumers and facilitate lower inflationary trends. Also higher revenues will enable government to invest in infrastructure, etc. Optimisation of natural resources, will lead to goal of inclusive growth of the Indian economy.

GST will create overall buoyancy which would create astonishing gains to the Indian economy. The Indian economy would see fruits of growth in three to four years. The proposed GST regime would attain finality on approval by two-third members in the Rajya Sabha coupled with ratification of CAB, by 50 % of the State Governments and assent of the President of India.

CA Heetesh Veera

GST – Global Experiences

It is said that *change is the only constant.*

The Constitution (122nd) Amendment Bill, 2014 is the torchbearer of such change proposing to bring a comprehensive tax reform to the country's half a century old indirect tax regime. First mooted in the Budget Speech for the financial year 2006-07, GST, in its present form and structure, was introduced in the Lok Sabha on 19th December, 2014 through the Constitution (122nd) Amendment Bill, 2014 and passed by it on 6th May, 2015. The Budget session of February 2015 witnessed a promise of 1st April, 2016 deadline for GST roll out. However, the bill could not be passed by the Rajya Sabha in the monsoon session and the Government is contemplating to put the same for passage in the winter session.

The indirect tax regime in the country is set to undergo a paradigm change with the introduction of GST. The change will impact a substantial cross section of the economy including manufacturers, service providers, traders and the like.

The present indirect tax regime entails multiple taxes and duties with a significant cascading effect of taxes and multiplicity of returns and compliances. The indirect tax system in India has highly impacted the end to end supply chain designs which are influenced by factors such as availability of input tax credits, eligibility to claim fiscal exemptions, tax deferrals, State boundaries on account of CST implications.

GST is proposed to subsume various indirect taxes being levied by the Union and the State Governments including Central Excise duty, service tax, VAT, sales tax, State entertainment tax, octroi duty, entry tax, LBT, etc.

In the international arena, GST is known for its end user consumption tax. The broad objectives of introducing GST would be to widen the tax base through the coverage of multifarious economic activities into its ambit and by cutting down exemptions, mitigate cascading and double taxation and enabling better compliance through the lowering of overall tax burden on goods and services.

In this context, it would be important to understand how GST is implemented & regulated in other countries.

MALAYSIA

As India struggles to meet the April 1, 2016, deadline to roll out GST, its biggest tax reform in decades, Malaysia introduced the value added tax in April this year.

GST was implemented in Malaysia with effect from 1st April, 2015, replacing its sales tax (10%) and service tax (6%).

Under Malaysian GST, most of the goods and services (except basic necessities) are charged a tax of 6% at every stage of the supply chain.

In India, a 'Dual GST' structure is proposed to be implemented, which would have two components viz. Central GST ('CGST') to be levied by the Central Government and State GST ('SGST') to be levied by the respective State Governments. Integrated GST ('IGST') is proposed to be applicable on interstate transactions of goods and services (including imports). This would be collected by the Centre and allocated between the Centre and the State. The average rate of GST could be anything between 20-27%. In addition to this, non-creditable origin tax of 1% is also proposed on interstate sales.

Levy

In Malaysia, GST is leviable on any taxable supply of goods and services made in the course or furtherance of any business by a taxable person in Malaysia, including imports into Malaysia.

The GST registration threshold in Malaysia is MYS500,000 (approximately INR 76,76,800) i.e. when the historical taxable turnover is more than MYS500,000 or there are reasonable grounds that the future taxable annual turnover will be more than MYS500,000.

Under proposed Indian GST, 'goods and service tax' means any tax on supply of goods or services or both except taxes on the supply of the alcohol liquor for human consumption. Further, under proposed Indian GST, anything that is not supply of goods is regarded as supply of services.

Supply

The definition of supply covers all forms of supply where goods and services are given in return for a consideration. Where no consideration is involved, such supplies are termed as deemed supply. In Malaysia, there are two kinds of supply – Taxable supply and Exempt supply. Standard rated and zero rated supply, are considered as taxable supply. The supplier would be eligible to claim Input tax credit against taxable supply. Exempt supply is supply other than taxable supply and no input tax credit is allowed against such supply.

Categories of Goods & Services

There are three different categories of goods & services under the GST scheme in Malaysia which are standard rated, zero-rated and exempt rated.

i) Standard rated – Tax rate of 6% is applied to goods and services in this category such as commercial properties, medical equipment, textiles and furniture.

ii) Zero rated – Tax rate of 0% is applied to these goods and services, which include basic food items such as meat, vegetables, fruits, treated water, etc.

iii) Exempt – Goods and services that fall in this category are non-taxable and are not subject to GST at the output stage. Residential property, education and health care services are covered under this category.

Under proposed Indian GST, the likely rate structure could be:

i) Exempt goods and services

ii) 1% for precious metals and articles

iii) 12% for basic necessities

iv) 20% to 27% Standard Rate (all other goods)

v) 16% to 22% Standard Rate (on services) – Could be 27%?

vi) 1% Origin Tax (on interstate supply – non creditable)

Place of supply

A supply of goods or services is chargeable to GST if the place of supply is in Malaysia.

Supply of Goods: The place of supply of goods is in Malaysia if the supply involves goods which are removed:

(a) from a location in Malaysia to another location in Malaysia; or

(b) from a location in Malaysia to a location outside Malaysia.

The export of goods is therefore a supply made in Malaysia, however, it is zero rated.

Supply of Services: In Malaysia, the place of supply of services is the country where the supplier belongs. Therefore, a supply of services is treated as made in Malaysia if the supplier belongs in Malaysia.

In India, the place of supply of goods with movement of goods shall be the location at which the goods are delivered to the receiver. Where the goods do not involve any movement, the place of supply would be the location at which the goods are located at the time of delivery. The general rule in case of place of supply of services made to a registered person shall be the location of the service receiver.

Valuation

The general rule applicable in circumstances where supply is for consideration wholly in money, is that the value would be price paid or payable. If the consideration is in kind, then the value shall be the open market value less the tax chargeable. If consideration is partly in money and partly in kind, then the value of the supply will be the aggregate of the consideration in money and the open market value of the other consideration not in money. If there is no consideration, value for GST purposes will be based on open market value of the supply.

At present, nothing on valuation aspect under proposed GST in India is available in public domain.

Time of supply

In Malaysia, GST must be charged at the time of supply. In general, the basic tax point is when:

(a) goods are removed or when goods are made available to a customer; or

(b) services are performed.

Exceptions to the General Rules are given wherein the invoice is issued or payment is received before the tax point as stated earlier, particularly in cases of consignment sales, construction services and continuous supply of services.

Credit mechanism

Input tax credit is available of the GST paid on goods or services purchased locally or imported. The recovery of GST incurred on imports is made by crediting the amount allowable against his output tax chargeable on his taxable supplies.

Partial Exemption – Where input tax is not directly attributed to either taxable or exempt supplies, it can be claimed proportionately to the extent of tax attributable to taxable supply.

Liability to pay

Generally, the GST legislation provides for the supplier to charge GST on taxable supplies he makes to the recipient.

Reverse charge

In the case of imported services, the GST liability shifts from the supplier to the recipient if the recipient's fixed or business establishment or his usual place of residence is in Malaysia. Further, importer will be liable to pay GST on import of goods in Malaysia; however, he would be eligible to claim the same as input tax credit.

Credit Notes and Debit Notes

When a credit note is issued and output tax has been paid, the taxable person can reduce his output tax for the corresponding amount stated in the credit note in the return for the taxable period in which the credit note was issued. The customer who is a registered person on the other hand, must reduce his input tax in the return for the taxable period in which he received the credit note if he has claimed the input tax.

When a taxable person issues a debit note, the output tax will increase and the customer would increase his input tax in his return.

Bad debt Relief

A taxable person is entitled to a relief for bad debt on the whole or any part of the tax paid by him in respect of a taxable supply. A person is entitled to claim bad debt even though the bad debt is not written off from his books.

Treatment specified for certain special transactions

i) E-Commerce

Goods sold through electronic transaction are treated in the same manner as any goods supplied in a conventional manner. GST is required to be charged on any supply of services if both supplier and recipient belong in Malaysia i.e. they have a Malaysian internet protocol (IP) address.

ii) Employee benefits

Employee benefits include any gift, privilege or facility provided free of charge to employees as stated in the contract of employment.

If benefits not stated in the contract are provided free of charge, it would be treated as a taxable supply and is chargeable to GST. Goods or services acquired and given as employee benefits to employees are considered as used for the purpose of business and the employers are entitled for input tax credit.

Unlike goods, services provided free to employees are regarded as not supply and hence is not subject to GST.

Some of the key takeaways from implementation of Malaysia GST are as under:

Better consumer communication:

The Malaysian government in general and customs in particular have made great efforts to communicate the message on the GST. It has been noted that the Customs have been very open to consultation and tireless in their responses to queries and requests by people.

Few exemptions

Even though the full GST rate in Malaysia is 6%, among the lowest in the world, only "essential" products were exempted from the tax for social reasons. Some others were assigned a zero rate of GST, which essentially means the Government may in future tax these items.

Anti-profiteering

In order to manage public perception that introducing GST will not result into inflation, it is very essential to have anti-profiteering law. This is also essential to ensure that final consumer will benefit from GST.

Making businesses GST-ready at early stage

Another key lesson from Malaysia for businesses is to start the implementation process to be GST-ready early by understanding the impact on the business. The proposed change would impact almost all business divisions of industries including procurement, manufacturing, sales, distribution, accounting, IT systems, logistics, etc.

It would be essential to carry out a 'business impact analysis' at early stage to understand the impact of GST on the various operating models and processes and to identify the need to re-evaluate the existing business processes, decisions on sourcing, manufacturing, supply chain, sales, distribution and how the IT systems integrates the same to enable businesses to take decisions.

CANADA

Canada's federal government imposes a 5% sales tax known as the Goods and Services Tax (GST). When a supply is made in a "participating province," the tax rate includes an additional provincial component of 8%, 9% or 10%, depending on the province. The combined 13%, 14% or 15% tax is known as the Harmonized Sales Tax (HST).

Levy

GST/HST applies to taxable supplies of property and services made in Canada in the course of a business and to imports of goods into Canada. Specific HST rules determine when a supply is made in a participating province and when property or services are brought into a participating province.

The term "property" includes all property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, any right or interest of any kind, and shares and choses in action. However, it does not include money. The term "tangible personal property" generally means goods.

The term "services" means anything other than property or money. It does not include services provided by an employee in the course of, or in relation to, an office or employment.

Any person whose annual worldwide taxable and zero-rated supplies exceeds CAD30,000 (approximately INR 15,05,000) must register for GST.

Zero rated and exempt supplies

Zero rated supplies under Canadian GST includes exports of goods and services, basic foodstuffs, international transportation, prescription drugs, medical devices, certain inputs used in agriculture and fishing. Further, exempt supplies includes supplies of used residential property, most supplies by charities and public sector bodies, healthcare, education, etc.

Time of supply

In general, tax becomes payable by the recipient of a taxable supply on the earlier of the date on which the consideration for the supply is paid or the date on which the consideration becomes due. The consideration is considered to be paid when the supplier receives the money (or other form of agreed consideration) for the supply.

Input tax credit

The amount of input tax credits that may be recovered is based on the extent to which the input is used for consumption or for use or supply in commercial activities. Input tax credits may not be claimed for purchases of property and services that are not used for business purposes (for example, goods acquired for private use by an entrepreneur or an officer or shareholder of a company). Input tax credits may not be recovered to the extent that an input is used in making exempt supplies.

Some of the items eligible for input tax credits (if related to commercial activities) include hotel accommodation, attending conferences and seminars, parking, mobile phones, etc

Further, some of the items ineligible for input tax credits include membership fees for social clubs, gifts to employees (subject to exceptions), etc.

Partial exemption

Tax paid on inputs related to making exempt supplies is generally not recoverable as an input tax credit. A GST/HST registrant that makes both exempt and taxable supplies may be limited to claiming a partial input tax credit.

AUSTRALIA

GST was introduced into the Australian economy in July 2000. The standard GST rate is 10%. There are also certain goods which are GST-free (zero-rated) and input taxed (exempt without credit).

GST applies to taxable supplies of goods and services which are supplies connected with Australia and made for consideration in the course of a business enterprise by an entity that is registered or required to be registered for GST. Imports are also taxable under GST.

All Australian businesses whose turnover is above the minimum threshold (currently AUD75,000, approximately INR 35,20,000 per annum) are required to register for GST.

Taxable supplies are subject to standard rate of 10%. GST-free supplies are supplies not liable for GST but can claim input tax credits. Example of GST-free supplies includes basic foodstuff, water sewerage and drainage services, health, education, religious and related supplies, child care etc. There are also input-taxed supplies which are not liable for GST and on which input tax cannot be claimed. Such supplies include financial supplies, rental/sale of residential properties, supplies of precious metals, etc

Time of supply when GST is payable depends on whether the taxable person accounts for cash or accrual basis. Entities that account on cash basis, GST is payable when consideration is received in cash. Similarly, for entities that account on accrual basis, GST is payable when the invoice is issued or consideration is received, whichever is earlier.

NEW ZEALAND

GST was introduced in New Zealand on 1 October, 1986. It is levied at the rate of 15% on all goods & services supplied in New Zealand by a registered person or on goods imported into New Zealand, regardless of the status of the importer. One becomes liable to pay GST when the annual turnover exceeds NZD 60000 (approximately INR 25,12,000) in any 12-month period.

The standard rate of 15% is levied on taxable supplies. However, some specific supplies have an effective rate of 9% such as supplies of accommodation, domestic goods and services in a rest home where nursing care and other services are provided, supplies of long-term hotel accommodation etc.

Zero-rated supplies include export of goods and services, sale of business as going concern certain transactions involving emissions units etc. In addition, some activities are exempt from GST and the supplier has no right to deduct any related input tax. Such supplies include financial services, sales of donated goods by non-profit organisations, certain real estate transactions, supply of precious metals.

The time of supply is when an invoice is issued or when payment is received by the supplier, whichever is earlier.

A taxable person can recover input tax by deducting it from output tax, on goods and services supplied in New Zealand and GST paid on imports.

EUROPE

In UK, Value Added Tax (VAT) is levied on most goods and services provided by registered businesses in the UK and some goods and services imported from outside the European Union. The default VAT rate is the standard rate of 20% while there are also a reduced rate of 5% and 0% for certain specific goods and services.

In Netherlands, VAT is levied at each stage in the chain of production and distribution of goods and services. The general rate is 21%. A reduced rate of 6% is applicable to certain specified goods and services such as foodstuffs and medicines.

In Germany, VAT is levied on goods and services generated in Germany by a business entity. The rate generally in force is 19%. A reduced tax rate of 7% applies on sales of certain foods, books and magazines, flowers and transports etc. Certain products and services such as medical services, financial services, letting real estate, public theatres, museums etc. are exempted from the German VAT.

In 1954, France was the first country in the world to introduce GST. The current standard rate is at 20%. Two reduced rates exist: a 10% rate for restaurant meals, and 5.5% for most groceries. A specific rate of 2.1% applies only to prescription drugs covered by Social Security.

Most of the European countries have GST (popularly known as VAT). The Input tax credit Rules, exemptions, export treatment are more or less similar.

The key learning point is that such tax should be with very few rates, nationwide the same and encourage people/ businessman to comply and pay. If it is complex or subject to interpretation and litigation, then the chances of non-compliances/ evasion are higher. Government should also be proactive to clarify all possible queries/ issues in advance.

GST, no doubt is a welcomed move for Indian Tax regime. Flawless, unambiguous drafting of provisions will lead to an effective implementation of GST. The comparative and critical study of other countries where GST is in force will give the learning curve effect so as to achieve comfortable, smooth and hassle free introduction & implementation of GST in India at the targeted date.

We hope India will also soon see a light of GST and help increase Indian GDP and simplify its Indirect tax system.

Bharat Raichandani, *Advocate*

"Costly wisdom is bought by experience" - Reforms in EU VAT: Lessons for the Indian GST

"In short, the Committee recommended…. moving towards a full-fledged VAT for the commodities as well as the services sector"… Raja Chelliah Committee Report, 1992. Then why and what are we waiting for….

A tax reform requiring introduction of VAT in a federation should have the following objectives: it should be revenue neutral between the Governments; the tax base should be uniform across the country; the provincial and local Governments should have the autonomy to set tax rates; the tax should be relatively simple to administer and to achieve complete compliance; and taxes on the international flows of goods should be based on uniform rules across the country.

The VAT was conceived by a German businessman in 1920 and first implemented in France in 1954. In the late 1960s, when the European Union consisted of only six member states, the VAT was introduced by the First Directive and the Second Directive to replace national turnover taxes. As part of the EU's *acquis communautaire,* VAT is now imposed in the entire internal market of 27 member states.

VAT in the EU is regulated by a council directive. Any changes to the regime requires a unanimous decision by the State Secretaries of Finance. The VAT directive is an EU legal instrument. Directives are binding and must be implemented in the member states' domestic legislation. However, each state has a choice regarding the method of implementation. The European Court of Justice has the power to ensure that the EU legislation is applied in accordance with the treaty establishing the EU and provisions of the European Community institutions. The ECJ rules on cases referred to it under two procedures. Under the first, it hears cases to decide whether member states have failed to fulfil treaty obligations (the infringement procedure). These actions are usually initiated by the European Commission, although they can also be initiated by another member state. Action can also be taken by the commission under a complaint made by any interested party. Under the second procedure, the ECJ hears cases referred to it by national courts (preliminary rulings) requesting an interpretation of the EU legislation. Once the ECJ has ruled on a case referred to it, its ruling will be binding in all member states. Over the past 40 years, only 449 VAT cases have been referred to the ECJ. Certainly, a scary thought for Indian Tax Advisors and Counsels.

Countries like Brazil, Canada, Germany and Mexico as well as the European Union are some of the federations that have adopted

VAT. Brazil introduced federal VAT replacing wholesale tax and the state VAT replacing the state turnover tax in 1967. The tax base for the federal VAT is industrial production. The tax base for the state VAT includes all goods with the exception of some industrial products, imports, agricultural inputs, food products and services. Agriculture, minerals and services are excluded from the tax. Mexico implemented VAT regime in 1980 to replace 30 federal excise taxes and 400 municipal and state taxes. The tax base covers businesses connected with the sale of goods and services. Mexico has uniform VAT rates and bases across the states and it follows the destination principle. The tax may be regarded as a unified national VAT with revenue sharing.

With this introduction, let us take a trip down memory lane and see what lies in store for India as a basis for reference. VAT was first introduced in Europe by France in 1954 and thereafter adopted by the member states of the European Economic Committee in 1967. The Committee was of the view that the old tax regime was no longer viable for the service driven; technology based economy and hence, was about time for a overhaul of the VAT system. It had, accordingly, published a Green Paper on the future of VAT in the EU, for a progression towards a simpler, more robust and efficient VAT system, seeking to achieve the following objectives: (a) reduce the complexities of the present system; (b) make the EU single market work better; (c) maximise revenue collections; (d) tackle the systems susceptibility to fraud; and (e) cope with changes in technology and the economic environment. As we take our baby steps towards the same structure, *at least intended* to, it is imperative for India to monitor the developments in EU and draw positives out of the same, whilst being aware of the downfalls.

The Green Paper argues for a critical look at the VAT system in the EU. It points out that the key issues to be resolved in that regard is to ensure that the treatment of intra EU supplies and domestic supplies is uniform and consistent. It states that equal treatment can be achieved either by taxing intra EU supplies or by eliminating the effective charging of VAT on domestic transactions *via* a generalised reverse charge system, whereby the taxable person to whom the supply is made becomes the person liable for the payment of VAT. On cross-border B2B transactions, the Paper comments on the VAT principle that for both goods and services, the taxation is based on the rate and conditions of the State of destination and since this is not the case as regards domestic transactions, the distinction in the treatment becomes a source of complexity and vulnerability to fraud.

Out of various issues in the Green Paper, paramount issues can be categorized as follows:

(i) Ensuring the neutrality of the VAT system:

The first issue deals with the scope of the tax, exemptions and the right to offset and treatment of international services. Accordingly, the Paper looks on how the current VAT rules for public bodies operate in terms of tax neutrality and what should be done to remove the problems encountered in relation thereto. On the second issue of exemptions and the right to offset, the Paper suggests that the present exemptions are too many and their continued relevance is questionable. The narrow based tax that results from such exemptions is not desirable and there is a need therefore to broad base the tax. Minimisation of exemptions and maximisation of offsets is the objective of the broad based tax. Globalisation, deregulation and developments in communication technology have meant that cross-border services have proliferated, thereby resulting in VAT complexity, leading to possible double taxation or double non taxation.

(ii) Harmonization of VAT:

Harmonisation of the VAT system in order to foster a single and common market in goods and services. The Green Paper argues that a VAT system based on taxation at origin would require a greater degree of harmonisation of VAT rates compared to one based on taxation at destination, which is the current model. Thereafter, the Paper suggests the case for single VAT rates but recognises that multiple VAT rates are perhaps inevitable, in certain circumstances. The Paper discusses the possibility of limiting the reduced rate, as opposed to the normal rate, to a few goods and services, largely in the digital domain.

(iii) Robust VAT collections:

The Green Paper fundamentally discusses how VAT collection efficiencies can be enhanced. It talks about the various means by which collections of VAT can be facilitated through usage of modern technology and/or financial intermediaries.

(iv) Efficient and modern VAT administration:

For efficient and modern administering of the VAT system, the Green Paper envisages the following measures:

i. enhancing the dialogue between the tax authorities and other stakeholders by setting up a permanent discussion forum;

ii. pooling best practice by issuance of guidelines for streamlining administrative practices and reviewing transaction costs;

iii. drafting of a common policy on specific arrangements with stakeholders such as the LTU, partnership models and prior rulings on specified transactions; and

iv. paying attention to IT issues, when implementing new VAT rules, particularly relating to work processes, automated information transfer, better inter-operability of software and related initiatives.

(v) Reducing red tape:

On the issue of reducing red tape, the Green Paper discusses specific EU initiatives such as the programme to reduce administration burden and streamline all VAT processes, the scheme for small business, the one stop shop scheme as proposed in 2004, VAT groupings for larger and pan European businesses and, finally, ensuring synergies between VAT law and other related laws.

From the above, it can be clearly deciphered that problems and challenges seem to be similar, however, obviously, till date, the solutions appear to be varying in EU and India.

A key learning for India would be to emphasise on simplicity and broad basing, as the two tenets on which the GST should be premised, thereby both enabling a relative moderation in tax rates as well as ensuring ease of compliance. Fundamentally, there is an opportunity for us in India, based on some hard choices surely, to bring about a state of the art, business friendly and modern Indirect Tax Regime in India, in order to make India an investor friendly destination. This appears a dream currently but is definitely worth pursuing, if the EU developments are anything to go by.

As is well-known, the GST in India is predicated on the premise that it will be a destination tax which will operate seamlessly through the value chain in a manner that the tax is only borne by the ultimate consumer of goods and services. The broad objectives of simplifying the current indirect tax structure to enable India to become more competitive and operate as a single market, achieving uniformity in tax rates and procedures and increasing the tax revenues of the Centre as well as the States, while removing complexity and tax cascading, closely mirror the overriding objectives as listed out by the EC.

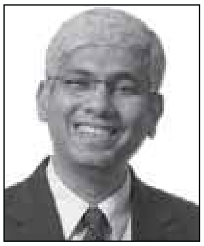
In European Union, VAT is imposed only by the States and not the Union. Yet, VAT in EU is almost like federal VAT in as much as the member countries, while having their own individual structures of VAT, follow the destination principle, thus forming a type of fiscal federation. For joining EU it is a precondition that the member countries agree to impose only VAT for intra-community sales and no other tax. However, VAT rates and threshold continue to vary from country to country. Even, the administering of VAT has followed different models. In Germany and Austria, tax design and administration are controlled by the Centre, but revenue is shared with the States on a formula basis. Spain had initially followed the German model but gradually moved in the other direction. It is felt that India must consider harmonisation of Centre and State GST-bases and administrative procedures.

There are several take-aways for Indian policymakers from the EU. At the outset, the manner in which the EC has gone about the VAT reform process is itself highly instructive, both from a communication process as well as from a stakeholder engagement standpoint. Constant communication with the stakeholders and the public at large on all aspects of the tax reform agenda is highly recommended.

On a different and more important plane, the objectives of the VAT reform process as well as the technical issues identified for further work to facilitate these objectives, including the crucial discussion on the VAT rates themselves, are very instructive. To illustrate the point, in India the treatment of inter-State transactions including the GST on imports has been an area of debate. The levy of Inter-State GST ('IGST'), its collection, the working of the input credit mechanism etc. all need to be agreed upon. In this regard a cue can perhaps be taken from the discussion on the place of supply rules for the intra EU supply of goods and services including on B2B and B2C supplies, given that both the EU and India are agreed on the primacy of the destination principle, as the basis for taxation.

All in all, for successful introduction and smooth implementation of GST, having regard to the fact that we are known as a tax litigation prone nation and keeping in mind the social and secular fabric of the country, coupled with the vast and varying modalities of functioning, India must, in my humble opinion, look at: (a) Limit number of exemptions; (b) Beware of rate differentiation; (c) Provide for high threshold; (d) Separate VATs can co-exist in a single market and (e) VAT reforms should precede VAT co-ordination.

GST is a joint venture which has to be implemented with an adequate degree of mutual trust, and more appropriately, mutual respect for each other's competence. I conclude by referring to what *Sijbren Cnossen*, the famous international VAT expert based in EU had to say on bringing in a good GST: *"If you don't do it right the first time, you will not get a chance to correct your mistakes later"*.



CA Prashant Deshpande*

Concept of "Supply of Goods & Services" – Global practices relevant for India

With the launch of Goods and Services Tax ('GST'), India is about to witness one of the biggest transformation in its indirect tax regime which has matured with experience over last five decades. The fact that GST proposes to offer remarkable advantages and opportunities to businesses has assured continued enthusiasm for its introduction. However, the anticipated benefits may only be derived from a model designed through informed choices which demonstrates minimum flaws.

The fundamental reform that GST brings to India is the destination based consumption tax, as against the existing origin based taxation. The concept of "place of supply" thus forms a stepping stone in determining this "destination". It is essential that sound principles to determine the place of supply form part of the policy which will ensure that services and goods are taxed in appropriate jurisdiction. This becomes critical in the Indian landscape which is characterised by Federal and State Governments. Without effective supply rules, there is a possibility of certain transactions escaping tax and some being taxed twice. In this context, it would be worthy to look at global practices for place of supply in evolved nations such as EU, Canada and Australia and what India can encode in its law book.

To begin with, the concept of supply of goods, immovable property and services are differentiated in most GST evolved nations owing to the basic nature of these supplies. This also forms a base for the VAT/GST framework guidelines that are being crystalised by Organization for Economic Co-operation and Development ('OECD') for world-wide implementation.

As a general rule, place of supply for goods is determined by where the goods are located at the time the supply takes place i.e., where goods are supplied or made available. In case of EU, the basic rule prescribes that the place of supply for goods is the place where the goods are located at the time when they are removed (i.e. physically moved from one location to another) or made available to the customer. This is usually where the transportation of the goods to the customer begins. Further, specific rules are prescribed by some EU member countries based on nature of goods such as electricity, gas, assembled

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goods, etc. Canadian GST in addition to the general rule, also lays down specific rules for supply of goods that are leased or rented or provided with an option to buy-out.

In India, currently, multiple taxes, i.e., Excise Duty, Value Added Tax, Central Sales Tax, Entry Tax, Octroi are levied on goods. The taxable event also differs for each of these indirect taxes. Taking a corollary from OECD framework and nations levying GST, India may also prescribe place of supply for levy of GST on goods as the location where goods are delivered / made available. In such a scenario, a shift to consumption based taxation would be specifically relevant in case of inter-State supplies where tax collection will shift from the State where goods are originating to the State where the goods are supplied. It would be interesting to see how the place of supply is determined in cases where supplies involve multiple States and are delivered only in a single State (popularly known as 'bill to-ship to model'). Specific rules may be required to determine place of supply for supplies such as electricity, gas which are supplied through common distribution network running across various states. Secondary rules apart from general rule may have to be designed for supplies which may not involve movement of goods such as intangibles in relation to goods.

Moving ahead, generally services are taxed in the jurisdiction of consumption. To identify the jurisdiction of consumption, nations define parameters based on various factors such as nature of services, status of customer and so on. EU, being characterised as group of member nations, prescribes separate general rules for B2B and B2C transactions. The supply of services between businesses (B2B services) is where the recipient is located, while services supplied to private individuals (B2C services) are taxed at the supplier's place of establishment.

This differentiation indicates that the objective of place of taxation rules for B2B supplies is to facilitate the ultimate goal of taxing business-to-consumer supplies in the jurisdiction where final consumption occurs, thereby ensuring that the burden of the tax does not rest on either business to maintain VAT neutrality. Similarly for B2C supplies, the objective is to tax the final consumption in the jurisdiction where it occurs with the tax burden resting on the final consumer while taking into account practical constraints.

It is further observed that in case of B2B intra-EU supplies of services, the supplier does not charge VAT on the supply. Instead, the recipient treats itself as having both supplied and received the services and accounts for the VAT due at the domestic rate *via* the reverse charge mechanism. It may be noted that if the services are provided outside the EU, for both B2B and B2C services, the supply takes place where the customer belongs and the local taxes may apply in that case.

On the other hand, Canada having tax on supply of goods and services at Federal level and provincial level, prescribes the home or business address of the recipient (or any other address of the recipient) obtained by the supplier in the normal course of business to be the place of supply for services generally. In cases involving multiple provinces, proportion of services performed in a province and the rate of provincial GST are drivers for determining place of supply.

Australia's goods and services tax (GST) is an example of a GST introduced and applied as a single national tax with all of the GST revenue being collected by the Central Government and distributed to the States. There is no distinction between inter-State and intra-State supply or B2B and B2C supplies in Australia. In relation to the place of supply, the 'connected with Australia' rules are determinative.

In case of supplies other than goods and property, the place of supply in Australia is based on either performance of service or location of supplier or supply of goods or property being connected with Australia to which service is related. As the GST is intended as a tax on consumption in Australia, supplies 'connected with Australia' that are exported will generally qualify as 'GST-free' supplies. The rules determining whether 'GST-free' treatment applies to supplies of things, other than goods or real property, pertain to consumption outside Australia.

As an addition, EU and Canada have specific rules for different types of services such as transportation, events, telecommunication, electronic and digital supplies. On an illustrative basis, for telecommunication services, a different design is followed by Canada whereby the supply is made in the jurisdiction if the points of origin and termination are in that jurisdiction, or if one of the points is in the jurisdiction and the supply is billed to an account in the jurisdiction. Hence, billing location is considered as determining factor for place of supply of such services. Further, the primary rule for place of supply for Intangible Personal Property ('IPP') in Canada is based on where the IPP will be primarily used (more than 50%). In addition, specific rules are prescribed for IPP that relate to goods, real property and services. Further, in the cases where the application of specific rule results in the supply in multiple provinces, secondary rules are provided. On the other hand, supplies of telecommunications, broadcasting and electronically supplied services made by EU suppliers to private individuals and non-business customers will be taxable in the Member State of the customer.

The current Place of Provision of Service Rules, 2012 in India are drafted in lines of basic philosophy of taxation in jurisdiction of consumption. Further, the terms 'business establishment', 'fixed establishments', 'most directly concerned with the supply' are coined to identify location of service receiver. The conceptualisation of such principles is in light of GST implemented in various nations. However, exceptions are carved out in situations such as intermediary services and certain electronic supplies which are not aligned to the consumption based taxation.

One of the important points that can be considered is the case of services consumed in equal proportion in multiple States or State where highest proportion is consumed cannot be determined. A rule that will resolve the question of levy in such cases can be brought out in the context of current rules. Another relevant situation is the case of services provided in waters beyond the territorial limits wherein provider and receiver are both located in India. Covering such services as consumed within jurisdiction of India may not be aligned to global framework.

In addition, a revisit may be required for defining place of supply for popularly increasing supplies across globe such as intangibles, digital services, telecommunication and network services to identify most appropriate jurisdiction.

While, draft business processes of GST relating to registration, payment, refund and returns under the proposed regime are made available in the public domain for comments/feedback, the draft model of GST laws after being reviewed by States will be soon made available. In such a situation, we can only hope that the Government evaluates the global best practices in the Indian context and tries to inculcate the learnings from the GST evolved nations.

 

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Concept of 'Service': Global Standards Relevant for India

Introduction

India has the second fastest growing services sector with its compound annual growth rate at 9%. The service sector in India contributes about 57 per cent to the nation's GDP. It is a significant source of the foreign investments, exports and employment.

The taxing of services was not specifically provided under the Seventh Schedule of the Constitution. The service sector was taxed neither by the Centre nor by the State until 1994. The journey of taxing services began in 1994 when the Central Government decided to tax a modest 3 services under residuary Entry 97 of the Union List read with Article 246 of the Constitution of India. The list of taxable services grew from 3 in 1994 to 119 in 2011, in what came to be known later on as the Positive List regime ('PL regime').

Due to the growth in the services sector in recent times and the complexities of the nature and structure of services provided, difficulties in taxing the services started arising under PL regime. In order to overcome the difficulties arising under the positive list regime and to broaden the tax base, the 2012 Budget introduced the Negative List regime ('NL regime'). Under the NL regime, all services except those mentioned in the Negative list were subjected to taxation. The then Finance Minister, Mr. Pranab Mukherjee, while introducing the Negative list in his Budget speech of 2012-13 said that the introduction was a step in the direction towards the eventual transition to the Goods and Services Tax regime (GST). The definition of "service" was introduced in the 2012 Finance Act as "any activity carried out by a person for another for consideration excluding specific activities and includes a declared service". The NL regime expanded the coverage of service tax and made it more comprehensive while plugging avoidable leakages in the tax collection process and reducing avoidable litigation, which were plaguing the PL regime.

The GST regime is set to bring about a paradigm change in our country's indirect taxation regime. It is of paramount importance, for both the industry, and the practitioners to proactively take steps in understanding the key GST concepts that are proposed to be introduced via the GST legislations in order to leverage the opportunities and avoid the pitfalls which might arise under the proposed GST regime.

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The main purpose of this chapter is to introduce its readers to the broad concepts of 'service' as understood under foreign GST laws and their treatment respectively under those laws.

The 'hiring' conundrum: Whether Sale or Service?

Transactions involving hiring of goods for use are not a sale in the strict sense of the term as the ownership in the goods does not pass to the hiree. This fact was recognized by the Madras High Court in the case of ***AV Meiyappan*** and it held that such transactions cannot be subjected to sales tax. This was overcome by the insertion of sub-clause 29A to Article 366 in the Constitution by deeming such transactions as sales transactions.

Subsequent cases like that of ***20th Century Finance Corporation and Rashtriya Ispat Nigam*** held that for hire transactions to fall under Art. 366(29A), there must be a transfer of the right to use goods from the transferor to the transferee, i.e. effective control and possession must be transferred and not merely custody.

Subsequently, assesses began entering into transactions wherein only the custody of the goods was delivered to the customer for use. The supplier maintained effective and possession over the goods and thereby avoided payment of sales tax. To overcome this, the Central Government introduced 'Supply of tangible goods for use' (STGU) as a separate category of service under the Finance Act. It included all those transactions wherein the effective possession and control were not transferred to the customer and only the custody of the goods was delivered to the customer.

There is a fine line differentiating a TRUG and a STGU transaction. Courts have held through a plethora of cases that the nature of the transactions can only be determining by looking into the contractual terms agreed upon by the parties.

In the present scenario, assesses who pay either VAT or Service Tax pursuant to litigation face further scrutiny through show cause notices from the department claiming tax on the transaction on the pretext that they were not parties to the earlier adjudication which decided the nature of the transaction and its taxability. The problem here is not one of double taxation, but that of uncertainty.

Going forward into the GST regime, the government must bring clarity to such transactions and define them to be goods or create a legal fiction whereby they are classified as services. There must be no overlapping of the two under the GST regime. Determining the nature of such transactions must be simplified unlike what exists under the current regime.

Either action will have its own implications. Defining them as goods will mean that assesses must have to bear the 1% additional tax burden levied on inter-state supplies and making them a service transaction will require multiple registrations and issues might arise with respect to determining the place of provision of the service.

Scope & meaning of service: International Jurisprudence and Indian Law

As per the GST Laws of Australia, UK and NZ, 'Services' means *"anything which is not goods or money but done for a consideration"*. It includes an entry into, or release from, an obligation: (i) to do anything; (ii) to refrain from an act; or (iii) to tolerate an act or situation. The GST legislations in those countries go a step further and define services to include the granting, assignment or surrender of any right. This inclusion gives the term 'Services' a very wide scope.

The Indian definition of 'Services' provided under Section 66B (44) of the Finance Act, 1994 is very similar to that of its foreign counterparts. A 'Service' is defined as *"any activity performed by one person for another for a consideration, and includes a deemed service"*. Section 66E(e) of the Finance Act also includes an obligation to refrain from an act, or to tolerate an act or a situation, or to do an act for consideration within the purview of 'Service'. The present Indian definition of service has widened the scope of services to cover *"any activity"* unlike the *"economic activity"* requirement expounded under European jurisprudence. Further, the definition excludes any transaction in money or actionable claim, a transfer of title in goods and immovable property and transactions of the nature falling under Article 366(29A) of the Constitution.

The international jurisprudence on *"supply"* under GST laws treat the granting, assignment or surrender of any right if done for a consideration as a service. This includes, for example, transfer of right to use goods, delivery of goods on hire purchase or the granting, assignment or surrender of an interest in land which is not a major interest. Private use of goods or services is considered as service in UK & EU.

Whereas, similar transactions in India involving the transfer of right to use goods, delivery of goods on hire purchase, fall within the scope of 'Deemed Sale' under Article 366(29A) of the Constitution of India, thereby attracting the levy of VAT on such transactions. The 122nd Constitutional Amendment Bill (CAB) has not deleted Article 366(29A), and the silence from the Government on this issue is concerning. The relevance of the Article 366(29A) under the GST regime has to be examined in detail.

A very interesting point to note is that, under all the above discussed foreign GST laws, the definition of goods excludes actionable claims from its purview. A service is defined as anything that is not goods and money. Hence, an actionable claim is a service and taxable under the GST laws of those countries. The NZ GST Act goes a step ahead defines 'services' to include a chose in action, i.e. an actionable claim. The NL regime in India excludes actionable claim from the definition of service. The 122nd CAB, under Article 366(26A) defines 'service' as 'anything other than goods'. The proposed wide definition of service may bring actionable claims in its purview under the GST regime.

Under the NZ GST Law, all services provided by the Government or its agencies are subject to GST. However, services provided by the Government are excluded from the purview of GST under the UK and Australian GST Laws. In India, the services provided by the Government are specifically excluded from service tax under the Section 66D(a) of the Finance Act. It will be interesting to see which approach India will be adopting in the GST regime.

Place of supply of services

The OECD provides for taxing services on the basis of consumption. The GST being a Consumption based destination tax, the determination of place of supply is essential for the distribution of IGST among the different states. Accordingly, OECD classifies services into two categories. The first category covers those services where the place of consumption can be readily identified. Such services are relating to specific areas of land, including buildings and services relating to physical performance (cargo handling, beauty parlour, transportation of goods etc.). These services are either physically performed or take place at an identifiable location and may therefore be said to be consumed at that location. The second category covers those services where the place of consumption may be difficult to determine. Such services are consultancy service, advertising agency services etc.

World over, uncertainty prevails in determining the place of consumption with respect to the second category of services. The best method to determine the place of consumption is referred to as a pure consumption test. Under a pure consumption test, such services would be treated as consumed in the place where the customer actually consumes or uses the services (irrespective of place of signing of the contract or of making payment, or the location of the supplier or customer at the time of the supply). However, this pure consumption test is subjective and would depend upon the facts and circumstances of each case. This would create hardship for the assessee as also administrative difficulties for the tax authorities. Therefore, OECD suggests a "proxy" test i.e. the service shall be taxed where the recipient has located its business presence.

The Place of Supply Rules 2012 (the POPS Rules) also incorporates the best practical alternative i.e. an artificial test to determine the place of consumption in case of certain services. In case of second category services, in terms of OECD, Rule 3 of the POPS Rules state that the services shall be deemed to be received at a place where the service recipient is located. The POPS Rules has streamlined the provisions for determination of place of supply of service in line with the international practices. In the GST regime, the 122nd CAB, under Article 269A and Clause 18 provides for the Parliament to formulate the principles for determining the place of supply in case of intra-state supplies and place of origin for inter-State supplies.

European Court of Justice on "Services"

The European Court of Justice in the case of **First National Bank**[3] examined whether exchange of foreign currency is provision of service. The Court held that the exchanging of foreign currency undertaken by the bank are supplies of services. Further, in that case, while deciding about the consideration for supply, it was held that "the consideration therefore comes down to determining what the bank receives for foreign exchange transactions i.e. the remuneration on foreign exchange transactions which it can actually take for itself".

The European Court of Justice in the case of **FCE Bank**[4] examined whether the Italian branch of FCE Bank (FCIT) provided the service or the overseas headquarters of the FCE Bank in United Kingdom provided the same. Italian VAT authorities sought to levy Italian VAT on the premise that service was provided by the Italian branch. Rejecting this claim, ECJ held that FCE Italy is not the establishment which provided the service but it is only headquarters in UK.

Composite/ Single and Mixed Supplies of Services

A *composite supply* of service is defined as a single transaction involving the supply of multiple services which are inextricably bound to each other. It consists of a bundle of independent services but that are essentially supplies of a single service. It is treated as a single supply for tax purposes. In contrast, a

3. *First National Bank of Chicago vs. Customs and Excise Commissioners - [1999] 2 W.L.R. 230*
4. *FCE Bank plc vs. Ministero dell'Econo-mia e delle Finanze, Agenzia delle Entrate, Case C-210/04, [2006] ECR I-2803*

mixed supply is defined as a single transaction involving the supply of a number of separable goods or services. Each supply is treated as an independent supply for tax purposes, and the consideration is apportioned accordingly[5].

Every VAT/GST system taxes transactions under a differential rate structure. Some are taxed at a positive rate, some are zero rated and some are exempt from tax. This differential rate structure may incentivise suppliers to bundle several independent supplies of services into a single composite supply or disaggregate a single supply of service into several components in order to reduce the VAT/GST borne by the purchaser. The incentive is greater if the buyer cannot claim credit on the purchases.

It is important for a VAT/GST regime to have the suitable legal framework to distinguish between a composite and mixed supply as this determination has complex implications regarding the timing and place of supply of such services. The subsequent paragraphs will discuss the legal principles used by the Courts for adjudication around the world with respect to distinguishing between composite and mixed supply of services.

The EU VAT (Sixth) Directive and Card Protection Plan: The Gold Standard around the World

The European Court of Justice in the case of *Card Protection Plan Ltd. vs. Customs and Excise Commissioners* [Case C-349 / 96] (hereinafter CPP) laid down the guiding principles for determining whether a particular supply is a composite or mixed supply. It is widely cited within and outside the EU.

In CPP, the company sold customers a credit card protection plan that indemnified them against financial loss and inconvenience if their cards were stolen. In some cases, it also covered car keys, passports, and insurance documents. The company assisted customers by notifying the credit card issuers of the lost or stolen cards and providing their customers other services. The company purchased a block policy from an insurance company and listed its customers with the insurance company as assured.

The Commissioners claimed that the company provided a basket of taxable services, and not that of exempt insurance, because there was no direct relationship between the customers and the insurance company. On the other hand, the company claimed that its services constituted an arrangement for insurance services and that were was a sufficient direct relationship between the customers and the insurance company to constitute exempt insurance services.

Applying the principles of the Sixth Directive[6], the ECJ held:

> Every supply of a service must normally be regarded as distinct and independent and ….. a supply which comprises a single service from an economic point of view should not be artificially split. So as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical customer, with several distinct principal services or with a single service.
>
> There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment

5. *Bophuthatswana National Commercial Corpn vs. C & E Comrs [1993] STC 702, CA*
6. Art. 2(1), EU VAT (Sixth) Directive [2006/112/EC]

of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied[7].

Therefore, the main conditions laid down in CPP for determining as to whether a supply is a composite or mixed supply are summarised below:

1. The single supply must constitute one or more elements which is the principal service.
2. The remaining elements must be ancillary and integral to the principal service.
3. The ancillary elements must help in better enjoying the principal service supplied.

In contrast, when a day train trip was coupled with "fine wine and dining", a British Court held that the transaction was a mixed supply of transport service and catering service, as the catering was an aim in itself for the customer[8]. The reasoning behind this conclusion was that the supplier emphasized more on the food, wine and service while advertising for the trips.

Canadian and Australian approach towards Composite and Mixed supplies of service

In Canada, the guidelines addressing the composite versus multiple supplies of services issue is contained in Policy P-077R2, entitled "Single and Multiple Supplies". According to that policy, each supply should be considered distinct and independent, an "economically" single supply should not be artificially split for tax purposes, and a supply is a single supply when one or more elements constitute the supply and any remaining elements serve only to enhance the supply.

In Australia, the issue is settled in the Australian Taxation Office's (ATO) Goods and Services Tax Ruling (GSTR) 2001/8. As per the GSTR, the facts of the transaction are the principal determinants as to whether a bundle of services is a single or mixed supply. Accordingly, a mixed supply is one where the parts require individual recognition and retention as separate parts, due to their relative significance in the supply of service. In contrast, a composite supply is one where some parts are integral, ancillary or incidental to the other part/s and the incidental parts are insignificant in value or function and they merely complement the use or enjoyment of the dominant part of the service.

Transactions involving Tri-partite and Multi-party Services Agreements

Unlike a two-party service transaction, where the service is supplied and provided to the same entity, tripartite service agreements require a closer look. Determining the time and place of supply for goods based transactions involving multiple parties is simpler as compared to that of transactions in services, as the tangible nature of goods make it possible to determine where the goods are actually getting consumed. The intangible nature of services makes it very difficult to track its movement and place of provision and consumption.

In multiparty transactions examining the agreement or other reciprocal legal relationships is the starting point in analysing an arrangement to determine who is making a supply to whom. A closer look at complex multiparty agreements may reveal the following situations:

7. Card Protection Plan, at paragraphs 30 and 31 of the judgment
8. *Sea Containers Ltd. vs. Customs and Excise Commissioners, [2000] BVC 60 (United Kingdom)*

1. A supply made to one entity but provided to another entity;

2. Two or more supplies made; or

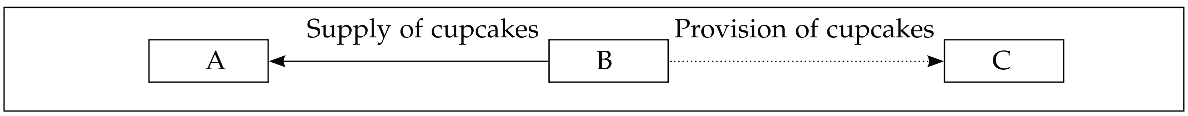
3. A supply made and provided to one entity and consideration paid by a third party.

The above-mentioned situations are explained through the following illustrations:

Illustration 1

A enters into a contract with B for B to provide goods to C. A is an individual, B is a baker, the goods are cupcakes, and C is A's sister:

Supply made to one person but provided to another person

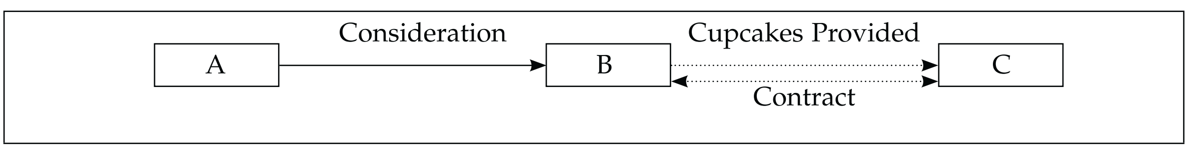


In the above illustration, the contract for providing cupcakes to C by B was made between A and B. Going by the contractual flow of the transaction, the supply was made by B to A, but actually provided to C. A is under a contractual obligation to make payment for the supply. The payment can be considered for availing the input tax credit if the supply was made in the course of and furtherance of the enterprise of A.

Illustration 2

Using the same example above, let us now assume a situation where A makes payment for the supply as a third party. In such a situation, the contract for the supply is entered into between B and C and the actual supply is provided to C only. A merely makes payment for the supply and he is under no contractual obligation to do so. Hence, he is not eligible for the input tax credit.

Third Party Payment for Services



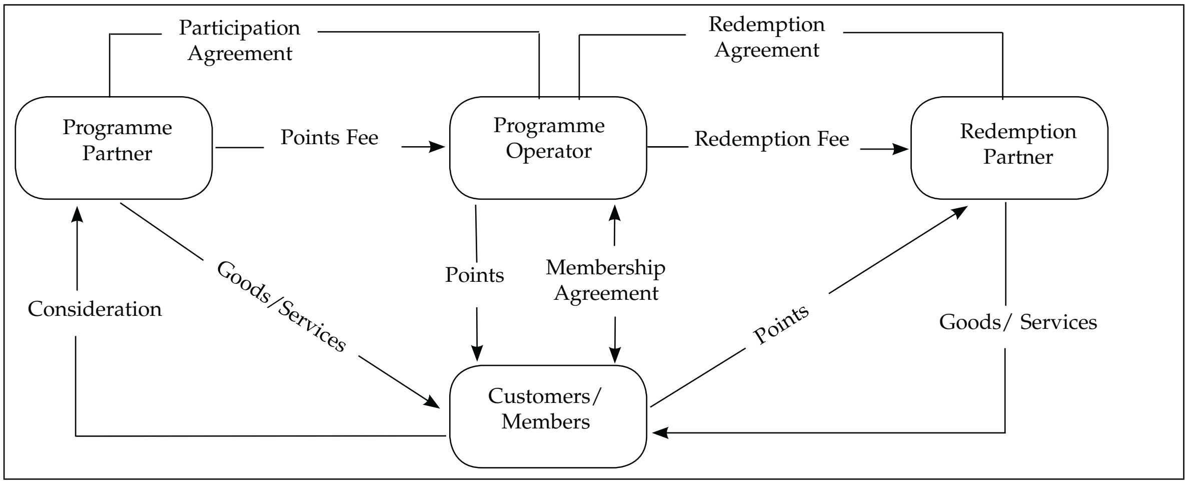
Going forward, under the proposed GST regime, a careful analysis of multiparty agreements will be needed in order to decide whether, looking at the social and economic reality of the transaction, a payment made by Person A has a direct link with the supply of services/goods by Person B to Person C.

Loyalty Programmes

Loyalty programmes are becoming increasingly popular as a business promotion tool amongst businesses. They help businesses garner customer loyalty and thereby help in driving sales and revenues upwards.

The operation of loyalty programmes is often complex involving the participation of multiple parties and the flow of considerations between them. This gives rise to complex VAT issues. As already discussed above, the starting point for determining the VAT liability in multi-party arrangements is the contracts between the parties. Before I start with the GST/VAT implications on such transactions, it would be beneficial for the readers to first familiarise themselves with the structure of loyalty programmes.

Structure of a Multi-party Loyalty Programme



In the above structure, the 'points fee' paid by the program partner is consideration for a supply by the operator to the programme partner of those points which are provided by the operator to the programme partner's customer upon purchasing services provided by the programme partner. This conclusion is consistent with the approach adopted towards such transactions in the UK[9] and Australia[10]. Further, there may be two or more supplies made by the operator to the partner. For example, in addition to the allotment of points, the partner might pay the operator separate fees for business promotion. This is treated as a separate supply and is subjected to VAT accordingly.

The consideration paid by the customer/member to the programme partner is wholly for the purchase of services and the same should not be apportioned between the services and points allotted.

The programme operator enters into a redemption agreement with the redemption partner wherein, the redemption partner must supply services or goods to the members of the operator upon redemption of the points allotted to them by the operator. The operator pays the redemption partner consideration accordingly.

Upon applying the 'follow the contract' principle explained in the previous section, the VAT liability in multiparty loyalty agreements is as follows:

1. The 'points fee' constitutes consideration for the supply of rights made by the

9. *Tesco Plc vs. Commissioners for Customs and Excise [2003] EWCA Civ 1367; Commissioners for Her Majesty's Revenue and Customs vs. Total UK Limited [2007] EWCA Civ 987*
10. *Saga Holidays Limited vs. FCT [2006] FCAFC 191; GSTR 2012/1 at para 62*

programme operator to the programme partner which are allotted to the members.

2. The payment made to the redemption partner by the operator constitutes consideration for the supply of services to the members who redeem their points allotted by the operator. The supply is that of rights to redeem which is provided to the members.

The programme partner can claim credit of the fee paid to the operator, and, the operator can claim credit of the payment made to the redemption partner. The entire transaction is a combination of multiple 'cupcake illustrations' explained above.

In contrast, in the cases of Loyalty Management UK Ltd.[11] and Baxi Group Ltd.[12], where the taxpayers were operating loyalty programms similar to the one explained above, the Court of Justice of the European Union (CJEU) held that the payment made by taxpayers to the redemption partner constitutes a third party payment for the supply of services/goods as the case may be, by the redemption partner to the member in exchange for the points allotted by the taxpayer/operator. The decision of the English Supreme Court on the matter is still pending.

The ramifications of this decision are catastrophic for multiparty transactions. The CJEU failed to properly appreciate the contractual relationship existing between the parties. As per established principles[13], if the programme operator could show that he had received something in benefit in return for the payment he made, he could recover VAT on that payment, on the basis that the payment was consideration for a supply of services to him. The CJEU's decision is a stark deviation from already established principles for interpretation of tripartite/multiparty transactions.

Conclusion

Services, by their very intangible nature give rise to complex issues, especially taxation related. Each transaction requires careful and close consideration. The Courts must delve into the social and economic reality of each transaction and follow the contract obligations existing between the parties before deciding the tax liability. The GST regime must strive to be a consumption tax in its true sense and shed the conflicting standards that existed under the previous indirect tax regime. The taxing of the services provided across India like broadcasting and advertising services will be a challenging task for Indian tax authorities under GST regime. The distribution of IGST based on the principles of destination based consumption tax will require a robust IT network.

Above all, unlike the current rigid taxation regime, the GST regime must be dynamic enough to adapt itself to the ever changing technological and social landscape of the world.

11. *Commissioners for Her Majesty's Revenue and Customs vs. Loyalty Management UK Ltd. [2010] EUECJ C-53/09*
12. *Commissioners for Her Majesty's Revenue and Customs vs. Baxi Group Ltd. [2010] EUECJ C-55/09*
13. *Customs and Excise Commissioners vs. Plantiflor Ltd. [2002] UKHL 33; Customs and Excise Commissioners vs. Redrow Group plc [1999] BVC 96*

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Interstate Supply of Goods & Services – Critical Issues

What is GST, Why GST must have been dealt with by the other authors. I therefore go straight to the subject proper.

Is it little early to write on this subject? In my opinion may be little premature, but we must start the thought process, so that when we see the exact text of the Goods and Service Tax, we would be able to digest the implication faster. My article therefore is not based on the actual text of the law, but the inferences drawn on account of many details now officially made available by Centre. Much of the concerns, doubts raised by me in this article may not prove right when the final Act comes in our hand. My request therefore to the readers is please take this as introduction of a subject which is being framed for the first time. The actual text of law may widely differ from the discussion made here.

As per the first discussion paper on GST, on interstate transactions of goods and services IGST (Integrated Goods and Service Tax) would be levied. Therefore there would be separate enactment for levy and collection of IGST.

The 122nd Constitution Amendment Bill, at the very threshold introduces a Non Obstinate Article 246A. Article 246A(1) empowers the State to make laws with respect to Goods and Service Tax Imposed by the Union or by such State. Mark the words "OR". Article 246A(2) entrusts the Parliament with exclusive power to make laws with respect to goods and service tax where such supply of goods or services or both takes place in the course of interstate trade or commerce. Of course this law will be effective from the date recommended by GST Council.

Article 246 of the Constitution which clearly demarcate the powers of Parliament and State Legislature continues to remain in force. The goods which are to remain out of the GST chain will be taken care by the original Article 246. The Non obstinate clause refers to Articles 246 and 254 only. Article 254 provides for general supremacy of Parliament over the State laws in case of inconsistency between laws made by Parliament and Legislatures of State.

Article 268A which empowers the Union to levy service tax presently is proposed to be deleted.

A new Article 269A is introduced to provide for apportionment of GST collected on supplies in the course of interstate trade and commerce between Centre and State. An explanation added to 269A clarifies that the 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 in course of Interstate Trade. This is an important deeming provision and gives some insight to the shape of things to come in GST regime. The power to formulate the principals to determine the place of supply as also when a supply of goods, or of service or of both takes place in the course of interstate trade or commerce is given to Parliament. Article 270 refers to taxes levied and distributed between Union and the State. Consequential changes are made in Articles 270 and 271.

Article 269A throws some light on the intention of the legislature as regards interstate supply of goods and services. Both Centre and State will have concurrent power to levy the tax on all goods and services. For Interstate transaction for goods and service an innovative model of Integrated GST (IGST) is proposed. The centre would levy IGST on Interstate transactions with appropriate provisions for consignment or stock transfer of goods and services. IGST would be allowed to be adjusted against the available Credit of IGST, CGST and SGST paid on purchases. As per first discussion paper, the State from where the movement begins i.e the Exporting State will transfer to the Centre the credit for SGST used in payment of IGST. The State which consumes the goods and service, i.e. the Importing State or the dealer in the importing State will claim credit of the IGST while discharging the tax on goods and services used in the payment of SGST. All the above information would be submitted to the Central agency which will act as a clearing house/ mechanism, who will verify the claims and inform the respective governments to transfer the funds. Therefore the grant of ITC/ set off under the GST System would be exclusively at the mercy network system. The problem which we are facing presently in the name of Match-Mis match, short filer, non filer, etc. would be multifold under the GST system. The four processes publicly made available for comments and suggestions need not be discussed here as they are discussed elsewhere.

The most important issue today is what is meant by interstate supply of goods and services. To understand that lets refer to next important amendment to Article 286 of the Constitution. Article 286 refers to "restriction to imposition of tax on sale or purchase of goods. Clause 1 debars the State from imposing the tax on sale or purchase of goods which takes place outside the State or in course of Import or Export of Goods. This clause will now apply to the supply of goods or of services or both. Similarly clause 2 of Article 286 requires the Parliament to formulate principal for determining when a sale or purchase of goods takes place in the eventuality mentioned in clause 1. Here also this clause will apply to the supply of goods or of service or of both. Clause 3 of Article 286 inserted by 46th Amendment will be deleted. This clause presently provides restrictions and conditions with regards to levy of tax on interstate sale of declared goods as also on Sale or Purchase of Goods covered by Article 366(29A)(b)(Works Contract), Sub-clause c(Hire Purchase Contract), sub-clause d(Lease Transaction). With the introduction of GST the distinction between the Works Contract, Lease Declared goods will be abolished. This clause would become redundant and therefore proposed to be deleted.

Article 366 defines various expressions used in the Constitution. Clause 12A is inserted to define "Goods and Service Tax". In terms of this new sub clause GST means "any tax on supply of Goods or Services or both except taxes on supply alcoholic liquor for human consumption". Unfortunately this clause loses its meaning unless it is defined as to what is meant by supply of goods or services. A common trader/ dealer relates sale as sale of goods and services to mean providing of services. The use of phrase 'supply is to give very wide meaning and to cover within the ambit of GST something more than sale *simpliciter*. We hope this does not invite prolonged litigation like in case of Works Contract. The supply would definitely involve two parties one who receives one who gives. GST proposes to levy the tax on the consignment transfer/stock transfers or any other transfer without intention of passing of property. For example goods transferred for job work, processing and returning to the owner. Goods distributed free as sample or gift, free incentive supply, free supplies issued to the employer, contractor or Manufacturer, transfer of goods for repairs not amounting to works contract. etc. What can be taxed under the law is the consideration received for such supply therefore in my opinion if there is no consideration for providing services or supplying goods there should be no GST. Therefore the taxation of stock transfer or consignment or any supply without consideration would require specific deeming provisions as we have under the CST Act for declaration in Form F presently. As stated earlier the explanation to Article 269A refers to import as deem interstate supply of goods and service, therefore it would be subject to levy of IGST.

Clause 26A newly inserted defines Services anything other than goods. This is too vast a definition. What is goods is already available in Article 366(12). Goods includes all materials commodities and articles.

What is interstate sale of goods is presently being governed by the provisions of Central Sales Tax Act, 1956. The settled law today is if there is movement of goods as a result of sale from one State to another, it is a clear case of interstate sale. The Courts have gone further to the extent that even if there is no covenant in the contract for interstate movement of goods but yet if it is proved that the goods in fact moved from one State to another, it would be a case of interstate sale. As per Explanation 2 to section 3 of CST Act, if the movement of goods commences and ends in the same State, it would not be treated as interstate, even if the goods have crossed one or more States. The operation of Central Sales Tax Act may continue for goods to remain out of GST chain. However, the CST Act in the present format cannot be applied to interstate supply of goods and services as the law applies to sale of goods and not to supply of goods. One of the three major objections by Select Committee of Rajya Sabha is with regard to lack of clarity on what is meant by supply of goods and services. Probably for defining interstate supply of goods the framers would be guided by the CST Act. This Act would be of some assistance in handling interstate supply of goods, but these principles cannot be mechanically applied to interstate supply of services.

To overcome the disputes arising in relation to place of service, the Union had introduced Place of Provision of Services Rules, 2012 w.e.f 1-7-2012.

"location of the service provider" and "Location of service receiver" are precisely defined. There are specific rules for internet services, on board services, goods transport, passenger transport etc. In short there is no concept of interstate service under these rules. Generally it is presumed to be provided at one place. Service tax being Central law, it may not have revenue implication. It is for these reasons it is difficult to fathom the intention of legislature to introduce the concept of interstate services. Services may be provided to more than one person at a time or at more than one place at a time

It would be challenging job to frame rules for internet services, whether it would be interstate supply of services. Defining what is interstate supply of service would be a herculean task.

No doubt some services like in-flight catering, services provided during journey, transport vehicles etc. can be in the nature of movement from one State to another. Interstate works contract involves supply of goods and services. Interstate leasing transactions in relation to goods would attract IGST. Similarly hiring of goods where there is movement of goods from one State to other would be subject to IGST. Therefore IGST is expected to be full of deeming provisions.

If well drafted, the IGST may take care of many debatable issues with regards to taxation of services with regard to intangible goods in past. Import shall be deem to be interstate supply of goods and services. That means import of services would be taxed under IGST.

[Contd. on Page 68]

Vinod Mandlik

Goods and Services Tax in India – An IT perspective

"A well-designed destination-based GST on all goods and services is the most elegant method of eliminating distortions and taxing consumption. Under this structure, all different stages of production and distribution can be interpreted as mere tax pass-through, and the tax essentially 'sticks' on final consumption within the taxing jurisdiction." (Dr. Vijay Kelkar)

GST is designed as a destination based consumption tax charged on each stage of value addition in the supply chain. Robust IT infrastructure is a prerequisite and the backbone for successful GST implementation. It is a must for efficient tax administration and the accounting of input credits. In this article an attempt is made to capture the features of IT infrastructure which is being created for tax administration, facilities available to the taxpayers and areas which the tax payers need to consider to make their IT systems GST ready.

By this time we all are aware that Indian GST will be dual tax i.e., CGST & SGST simultaneously levied by Union and State Government on supply of Goods and Services. On inter-State supply of goods & services IGST which comprises of CGST and SGST will be levied by the Union and the SGST portion of IGST will be transferred to the destination State by the Union. Without robust IT infrastructure for tracking credits it is impossible to implement IGST model. In early stages the Empowered Committee of State Finance Ministry and the Union Government realised the importance of IT in successful GST implementation and appointed committee of experts under chairmanship of Mr. Nandan Nilekani. The Group was assigned a task to provide IT policy framework for GST & solution architecture for GST common portal. The Empowered Group recommended IT architecture and policy framework implemented through Special Purpose Vehicle. In 2012, pilot run of GST portal was successfully completed in which 11 States and 10,000 dealers participated.

In March 2013, GSTN a section 25 (not for profit) private limited company is established for creation, monitoring and operating GSTIT infrastructure and facilities to the taxpayers. The key objective is to provide infrastructure and shared services to State and Union tax administrations and other stakeholders. GSTN had already floated Request for Proposal (RFP) and invited bids from interested vendors for implementing and operation of GST network. In 2016 when GST will be introduced it is expected that the successful bidder will be ready with a fully functional GST network.

Common Portal

A taxpayer having his establishment in any State or Union Territory in India is required to log in on common GST portal (website) for registration, return filing and tax payments. The portal will be connected to 'Tax administration system' of each State and Central Government. The States/ CBEC can choose to avail other value added services from the portal like processing of refunds, taxpayers audit & appeals etc. Small taxpayers not having IT infrastructure can avail services of the portal through Government facility centres like SETU which are already established in various parts of the country.

For information exchange and validation the GST portal will be integrated with IT systems of CBDT, MCA, and Customs etc. The portal will capture information of inter-State supply and IGST payable. Since the SGST credits will be available to setoff IGST liability, the portal will compute and facilitate inter-State settlements and net off IGST transfers among the States through RBI.

Tax Administration System (TAS)

The CBEC and States those who have not opted for value added services of GSTN will have their own tax administration systems for other tax processes like assessment, audit, refund, litigation etc. These systems will maintain tax payer's ledger, computation and accounting of taxes payable, refunds and input credits available to the taxpayers in a given period. There are various approaches for maintaining records of input credits in TAS system, GST council will decide the granularity level i.e., invoice level, dealer level etc., for capturing information from the taxpayers.

Policing through IT

The sale & purchase (supply) information captured in a given period from all the taxpayers will be given to the matching engine operating on predefined logic. The engine will provide "mismatch credit" data to the tax administration to follow up with the defaulters.

The matching engine, information sharing with customs, CBDT, MCA systems, data warehousing, use of data mining and data analytics tools will provide immense power in the hands of tax administration to combat common evasion practices like non-invoicing, under invoicing, missing dealer, credits claims on hawala bills.

Steps for the Taxpayers to make their IT systems GST ready

Majority of the businesses having turnovers above threshold limits are using either ERP packages or some kind of accounting software to record their business transactions. With the advent of cloud and platform computing even small and medium enterprises are using high end ERP systems to manage their businesses. These systems provide readymade reports for tax computation and reporting. The ERP software companies also provide updates/upgrades as and when the changes in tax laws are proposed.

For those who are not having such advanced ERP systems will get IT support from the GSTN portal in the form of free easy downloadable utilities to record transactions which will compute the tax and can be used for uploading returns on GST portal.

For making your IT systems GST ready, one will need to review the requirement under GST regulations and accordingly make the changes required in current IT system. Following steps are suggested to prepare your IT Change Request Plan which may be further required to be modified to suit your business.

- <u>Study of GST law and compliance requirements:</u> It is the general expectation that the GST council will make the model GST law, procedures, place of supply rules public 3-6 months before the date of implementation. One needs to study the law and procedures carefully, understand the registration, returns requirement applicable to the type of his business, tax rates applicable to the goods and services dealt, reports required to file returns and other compliances such as sales/ purchase register etc to the GST authorities.
- <u>Involvement of internal IT system owner:</u> After doing detailed study of the GST regulations and information needs to be captured in the system, you will need to involve the CTO/IT system owner in your

organisation. Your current IT system may not be capturing certain information in the form in which you will be required to submit to State/Central GST authorities. After deliberations and discussions with system folks, detailed impact analysis report and change management plan to be prepared with timelines.

- Customisation of ERP system: If your current ERP system/accounting package is not capable of providing information required for filing of returns and payment of taxes to State and Central authorities. You will need to engage with your IT service provider to implement a newer version of the ERP system or customisation of the current system to suit GST requirements.

- Cleansing of Vendor/client master: Under GST law, the authorities will be allowing input credits to the extent which gets matched in their systems. Therefore, it is imperative that the vendor master and client master in the system should be updated with currect and accurate details, GST Taxpayer numbers (TIN) of your vendors and clients.

- Creation of new ledger accounts for GST liability and input credits: Separate ledger accounts for capturing liability of SGST, CGST, and IGST payable in each State needs to be created in the system. Similarly for input credits under SGST, CGST, and IGST also separate ledger accounts should be opened in the accounting system.

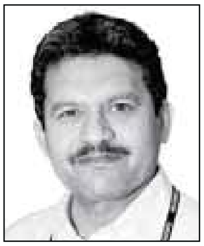
- Amendment in MIS reports: The ERP systems used by the business are having standard reports which help in furnishing compliance requirements to the tax authorities. Such reports may require changes in order to make them compliant to calculate GST payable in each State, furnish returns and details of sales and purchases to GST authorities.

- Tax codes creation: Old Tax codes created for charging VAT/Service Tax/ CST under the ERP system need to be closed down on introduction of GST and new statewise SGST, CGST & IGST tax codes applicable to goods and services in which you are dealing will need to be created.

- Invoicing requirements: Invoice is very important document in any value added tax system. It is equivalent to bank cheque. Input credit will be available only on the basis of valid "Tax Invoice" therefore the provisions in respect of invoicing, details and description to be mentioned in the invoices will need to be looked into and accordingly changes in the invoice formats available and issued in the system need to be modified.

- Review of Accounts payable processes: It is important for every business to reduce cost of transaction and thereby get cost advantage in the highly competitive market. Capturing every bit of GST credit will be the best policy to reduce cost of transactions and make your business competitive. You will need to review processes of issuance of PO till booking in accounts to find out and plug leakages in availment of input credits.

- Transitional provisions & legacy input credits: One will need to understand and analyse the transitional provisions under the GST specifically on usage of the State VAT/CENVAT balances in the books of account on the date of implementation of GST. Accordingly, the credits need to be used for payment of SGST or CGST within the period specified (if any). The IT System should recognise the requirements of transitional provisions and accordingly allow the use of such legacy input credits against the liability.



CA Madhukar Hiregange

Broad Based Sectoral Impact Analysis – Outsourced Manufacturing (Job Work Operations)

Background

The manufacturing industries (larger and medium) nowadays stick to their core competencies and get most jobs done on job work basis from others. The alternative nomenclatures used are: sub-contracting, loan licensing, processing or labour charges. At times the principal sends tools needed as well as the part/entire raw material required for the process free of cost. The material procured by principal may be sent directly to the job worker from the supplier. In certain situations, the finished goods may be sent directly from the job workers premises to the customer within or outside the State. The job worker invariably uses some consumables, machinery and tools for doing the job, which are procured by him on payment of local VAT and Central Excise duty. At times he may also use some own material which is transferred not consumed. He would also be using taxable input services for completing the job.

What is Job Work?

Job work is understood as the processing or working on goods supplied by the principal so as to complete a part or whole of the process. The job work undertaken maybe:

- the initial process,
- intermediate process,
- assembly,
- packing or any other completion process or complete manufacture.

The goods sent for job work may be raw material, component parts, semi-finished goods and the resultant goods could also be a variation of the same or the complete product.

The goods are returned back to the owner after such job work/processing. The property in goods remains with the person, who supplies the material. When there is no transfer of property in goods, there is no sale and no sales tax leviable on the same.

Tax Implication under Present Law

The CST/VAT would be applicable only where the job worker transfers any goods while doing the job work. Examples could be powder coating or electro-plating where powder or chemicals are procured by the job worker.

Excise duty is applicable where the process amounts to manufacture at the job worker's end. In M.M. Khambatwala's case (1996 (84) ELT 161 (SC)), the Supreme Court held that the job worker is to be considered as the manufacturer of goods although the raw materials are supplied by the principal. There is a small scale exemption however of ₹ 150 Lakhs which can be availed subject to eligibility. The valuation of job work in case of manufacture by the job worker could be at the ultimate sale price of the principal and would always include the value of material supplied free of cost.

Where the process amounts to manufacture, it cannot be said to be service. There are a few specific exemptions to industries such as textiles, printing where even if the value of manufacture was to exceed ₹ 150 lakhs there would be no liability.

Service tax is applicable for intermediate processes not amounting to manufacture. The major exemption is for those goods which are subject to Central Excise duty after further processing (intermediate processing).

Today lakhs of job workers are not registered under local VAT, Service Tax or Central Excise even though they may be at times liable under indirect taxes. The disputes presently faced could be on account of:

- Whether materials are transferred or consumed?
- Whether the material is negligible or substantial?
- Whether the charging of VAT on 75 % of value and Service tax on 70% is in order?
- Whether the CENVAT credit of capital goods and inputs can be availed while working under Notification 214/86-CE?
- Whether the billing of materials separately and labour separately takes the transaction outside works contract and consequently reverse charge not applicable?
- Whether the repackers/ minor processor of some fast moving consumer goods liable as deemed manufacturers are liable to pay excise duty on the entire value including material supplied? In this case the value of the goods supplied free of cost is also an issue.
- Whether the ₹ 150 lakhs exemption is available to branded products?
- What is to be done with the scrap or rejected material arising at the time of job work?

Job work under GST

The supply of goods to a job worker would be on payment of IGST if it is inter-State and on CGST and SGST when removed within the State. The levy shifting to supply would lead to all job workers whether big or small being forced to get under the GST regime. Tax would be payable on supply of materials by the principal to the job worker unless there is any exemption [like agriculture related processing]. Job workers under the ₹ 25 lakhs threshold may slowly find that they cannot afford the loss of credit on consumables, inputs or tools used.

The disputes referred to above would no longer exist for the principal or the job worker.

The features of job work under GST regime could be as under:

a. The job worker would avail the credit of GST charged and supply back with the applicable GST again on the value including the value add of goods and services supplied.

b. The job worker would also be eligible for the credits on materials, capital goods used in his job work activity. The differentiation between the consumables and goods transferred would become irrelevant.

c. There would be no need to issue any Form in case of inter-State job work.

d. The capital goods such as plant and machinery, mould and dies used for processing the customer's goods when supplied free of cost to job worker would be under payment of GST.

e. The valuation of such goods could be disputed and may need a valuation certificate to accompany the order or goods.

f. There is a proposal to charge 1% (akin to CST) accruing to the originating State for a short period under GST for supply of materials. This additional tax maybe applicable only when there is a consideration and therefore may not affect the job work transaction. Further it would not be applicable for intra-State job work movement.

g. The valuation of resultant goods could be based on the present Central Excise rules. For captive consumption of principal, the value of goods supplied along with job work charges could be reckoned. For supply to ultimate customer, the price to the customer may have to be adopted. For supply to depot of the principal the price at depot at the time of supply could be adopted.

Challenges/Impact of GST on Job Work

1. Lakhs of job workers would require to be registered under GST for the 1st time.
2. They may have to learn to account and bill properly.
3. Their turnover would multiply as value of material would get added.
4. There could be major valuation issues at the job workers end.
5. They could become cost effective due to capture of all hitherto missed credits under Central Excise as well as VAT.
6. The working capital requirement of the manufacturer would increase as GST would be payable on all supplies towards job work.
7. Job workers would also need more working capital as they would need to pay the differential GST.

Conclusion

It may take some time for the job workers to come to terms with need to be within GST. Extensive change management and training would be needed to get acceptability to GST. The manufacturer would surely see a reduced cost of manufacture due to seamless credit at all stages of job work. The savings in logistic costs due to GST may also be an incidental advantage. Feedback @ madhukar@hiregange.com.

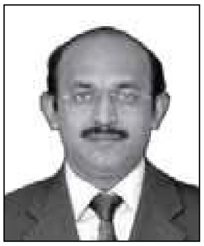
Acknowledgements to CA Vasant Bhat & CA Kevin Shah for inputs for this article.

[Contd. from Page 62]

If an NRI comes to India and provides service to business establishments in India where it would be taxed?

One of the major challenges would be with regard to grant of ITC under IGST. It is stated in first discussion paper that interstate seller will pay IGST on value addition after adjusting available credit of IGST, CGST and SGST on his purchases. The credit transfer mechanism between Centre and State and other processes now described, heavily relies on internet-network information. One mistake or lapse by one seller in Arunachal Pradesh to deposit the tax in his State, may result in denial of ITC to Maharashtra buyer. Too much reliance on the computerised data can at times result in absurd problems. We have seen in recent past the huge litigation on account of alleged non genuine dealers. The dealers are asked to submit confirmations, proof of payment etc. for grant of ITC. Whether such exercise is possible for interstate transactions? Its good to canvass about benefit of ITC and removal of cascading effect etc. Ultimately it is the tax payer who will suffer. It can be either you or me as a service providers.

Finally, let me hope we have ideal GST laws which would result in least harassment to the Taxpayer. Achhe Din ane wale hein????



Amitabh Khemka, *COO, Sthir Advisors LLP*

Broad Based Sectoral Impact Analysis – Goods and Services Tax – Likely Impact[1] – Transportation and Logistics

I. Industry

National Skills and Development Corporation has recently released a report – 'Human Resource and Skill Requirement in the Transportation, Logistics, Warehousing and Packaging Sector' – which lays out the dynamics of the industry and future outlook. The industry classification has been articulated, quite well in this report, as –

	Transportation	Warehousing	Value added services
Road	• Road-cargo transportation • Fleet management, network optimisation, route planning etc	• Warehousing related to inland distribution (inbound or outbound) • Transhipment centres	• Courier (express) • Cold chain • Freight forwarding • Packaging • Consulting
Rail	• Rail-cargo transportation	• Rail-side container depots • Inland container depots • Multimodal warehouses	• Dedicated rail container • Stuffing/de-stuffing • Consolidation
Water	• Coastal shipping and inland water transportation	• Container freight stations • Inland container depots • Port-based warehousing	• Freight forwarding • Freight consolidation • Customs clearance
Air	• Air cargo operations	• Air cargo transhipment warehouse near airports	• Express and courier • Freight forwarding • Customs clearance

1. This article does not cover impact in respect of passenger transportation

As per World Bank Group reports, ranking of countries for following stated aspects is as follows:

	Logistics Performance[2]	**Ease of Doing Business[3]**
United Kingdom	4	8
Singapore	5	1
United States	9	7
Hong Kong	15	3
China	28	90
Indonesia	53	114
India	**54**	**142**
Brazil	65	120
Pakistan	72	128
Sri Lanka	89	99
Nepal	105	108

The logistics performance is basis following parameters and India's ranking for each parameter is as follows:

	India's ranking[2]
International shipments	44
Timeliness	51
Logistics quality and competence	52
Tracking and tracing	57
Infrastructure	58
Customs	65

National Institute of Public Finance and Policy (NIPFP) has recently released a working paper[4] – 'Estimation of Unaccounted Income Using Transport as a Universal Input: A Methodological Note'. In this paper, the authors have developed a new methodology for estimation of unaccounted income[5] using road freight transport as universal input. The study finds one-to-one correspondence between business cycles in the transportation sector and those in the aggregate economy.

The above stated papers / reports help to understand the framework and the importance of the sector to the economy.

II. Impact of GST on Industry

Hon'ble Union Finance Minister, Mr. Arun Jaitley, explaining the important features of (Goods and Services Tax (GST), during the discussion in Lok Sabha on GST Constitutional Amendment Bill[6], on May 6, 2015, stated –

"…. you will not come across a situation where trucks are either waiting outside a State or outside a

2. A 2014 World Bank Report – Connecting to Compete: Trade Logistics in the Global Economy
3. A 2014 World Bank Report – Doing Business 2015: Going Beyond Efficiency
4. Working Paper released in April 2015 is authored by Sacchidananda Mukherjee, Associate Professor, NIPFP and R. Kavita Rao Professor, NIPFP.
5. Unaccounted income is classified into two broad groups – (a) incomes which should have been reported to tax authorities but were not, and (b) extent of under-reporting of national income and output.
6. The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014

city in order to enter. There will be seamless transfer of goods and services. The whole country, which is one-sixth of world's population, would become a single market. Therefore, it would give a necessary fillip as far as trade is concerned."

Considering the following key tenets of proposed GST in India –

— Development of a harmonised national market for goods and services

— Intended to remove cascading effect of taxes

— Subsuming Central Sales Tax (CST) (levied by the Centre and collected by the States), octroi, entry tax, purchase tax

— Levy of Integrated Goods and Services Tax on inter-State transactions of goods and services

the impact on the transportation and logistics sector could encompass –

— Consolidation of warehouses with large warehousing capacities

— Creation of national / regional level centralised warehousing with more value added services

— Streamlined and efficient supply chain with the use and integration of technology, including for material handling

— Faster movement / transit of goods

— Reduction of overall logistics costs including inventory carrying cost

— Increase in organised logistics service providers

— Increase in outsourcing of logistics related activities to logistics service providers, especially, value added services

— Higher investments into the sector – for infrastructure, capital assets and technology

Recently released report of Research Division of Crisil Ltd. stated that *"Manufacturers of non-bulk goods spend about 5-8% of sales on logistics. GST will save warehousing costs of 1-1.5% of sales in 3-4 years. Eliminating check-post delays will yield additional savings of 0.4-0.8%, thus taking overall savings to 1.5-2% of sales."* Subsuming of CST, entry tax and octroi and elimination of check posts are key for this savings. The report also states that '*… the consumer durables sector will be the biggest beneficiary of GST and could save 30% of logistics costs from the current levels of 7-8% of sales. For FMCG and pharmaceutical companies, cost gains may be a relatively lower at 15-20%.*' Consolidation of warehouses is imperative for this saving.

Higher load carrying vehicles would be required to cater to large warehouses and this would create transhipment centre, with less-than-truck load shipments, both for inward movements (into the warehouse) and outward movements (from the warehouse). It would improve the efficiency of the supply chain for the manufacturing sector and thereby enhance the competiveness of goods manufactured in India. GST would act as an impetus for improving the infrastructure (rail, road, ports, rail-road connectivity to the ports etc.) and to re-classify the transportation and logistics industry as 'infrastructure service providers'. GST could have a positive bearing on three parameters of World Bank for logistics performance index – (i) timeliness, (ii) logistics quality & competence and (iii) tracking & tracing.

III. Perceived as spoilsport to the impact

The spoilsport to the above stated positive aspects appear to be -

— levy of origin-based one per cent additional tax and

— specified petroleum products (which includes those used by transportation sector) not to be part of GST, till a notified date

Additional Tax

One percent additional tax is proposed to be levied as an *'**Arrangement for assignment** of additional tax on supply of goods to States for two years or such other period …...'.*[7]

This additional tax is proposed to be levied only on supply of goods in the course of inter-State trade or commerce as part of arrangement to settle the issue / concerns of certain States. It has also been provided[8] that such tax shall be deemed to have been assigned to the States from where the supply originates and principles would be formulated[9] for determining the place of origin from where the supply of goods take place in the course of inter-State trade of commerce.

Hon'ble Union Finance Minister, Mr. Arun Jaitley, during the discussion in Lok Sabha on GST Constitutional Amendment Bill, on May 6, 2015, admitting that this one per cent additional tax could have cascading effect, clarified on the levy as follows:

*"… This has been taken really **with a sense of settling the disputes.** Otherwise the disputes would have continued indefinitely. Why they would have continued indefinitely is **that the manufacturing States feel that on what they manufacture, the taxation advantage in terms of GST will go to the consuming States.** As the Hon'ble Member from the AIDMK mentioned – …. – that 'we have spent on infrastructure; we have become a manufacturing State. For what I get as taxations as manufacturing States, in the GST regime, may go to the consuming States. So, somebody else will benefit. How do you, therefore, compensate me?' This is not only an issue concerning **Tamil Nadu.***

***Maharashtra** had also raised this issue and **Gujarat** had also raised this issue.*

Now, in order to compensate the manufacturing States, once goods manufactured in their States go out,** various protections have been granted to them. The first protection is that we have said for a period of five years – and that is a part of the Constitution Amendment – any loss suffered will be borne by the Centre and we will compensate the States. **Secondly, as far as this one per cent additional tax is concerned, the manufacturing States, for two years by charging this, will set off any loss, which is likely.** This is in addition to the Central guarantee in the Constitution that we will make good the loss. **So, this will help those States. So, it has really been put for the benefit of those States.

Now, the GST Council …. itself has appointed a Sub-Group in order to see how there is no cascading effect…

*… we are fully seized of the concern of the manufacturing States. …. We are also seized of the fact how this one per cent additional tax itself should not have a cascading effect. …. …. **The States which are manufacturing States, for five years we have said that we will under-write the loss and you will get this one per cent additional tax which will be a great advantage to the manufacturing States.***

Views of the Government on Clause 18 levying one per cent additional tax was as follows, as noted in the Report[10] of the Select Committee on GST Constitution Amendment Bill:

*2.138 In this regard the Ministry of Finance, Department of Revenue has explained that since GST is a destination based tax, **the manufacturing States were apprehensive of their loss** in revenues. To allay their fears, and **to bring them on board,** a provision has been made for the levy of 1% additional tax on the supply of goods. This tax shall be credited*

7. Clause 18 of The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014
8. Clause 18(2) of The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014
9. Clause 18(4) of The Constitution (One Hundred and Twenty-second Amendment) Bill, 2014
10. Report presented to Rajya Sabha on July 22, 2015

to the exporting State. ….. Clause 18 in itself does not make any distinction of a "manufacturing state" and this tax ***shall be levied by all States <u>who send their produce outside the State</u>.***

From the clarification of the Finance Minister, views of the Government to Select Committee and reading of Clause 18, it appears that the one per cent is intended to be levied ONLY ONCE, that is by the manufacturing / producing State. This tax is meant to address the concern of the manufacturing States. Hence, *prima facie*, it does not appear that this additional tax should get levied on subsequent supply/ supplies, after the goods have been supplied from the manufacturing / producing State. The question arises on the manner / mechanism of implementation of this intent. Adding to the complexity, with due respect, the Select Committee has recommended that the word 'supply' in clause 18 should mean *"All forms of supply made for a consideration"*. The recommendation made doesn't seem to appreciate the intent of the levy. In case the additional tax gets levied as intended, then the supply chain structures, for the supplies made in the course inter-State trade directly by the manufacturing facility, should be neutral to this levy; in which event, it should not be that bigger a spoilsport as currently it is being envisaged. Alternate supply chain structures may emerge, however.

Petroleum products

The two key petroleum products used in transportation is petrol and diesel. The consumption[11] pattern of these products is as follows:

	Petrol (retail)	Diesel (retail & direct)
Passenger vehicles – Private & commercial cars, 2 & 3 wheelers, UVs	99.61%	28.48%
Buses / State Transport Undertakings	--	9.55%
Transportation – Trucks, Railway, Aviation, Shipping	--	31.97%
Others – Agriculture, industrial, non-industrial, mobile tower, construction	0.39%	30.00%
	100.00%	100.00%

GST is not proposed to be levied, till a notified date, on specified petroleum products (which includes those used by transportation sector). Central Excise duty and Sales Tax is proposed to be levied on such products. Hence, the tax paid would have cascading effect as the taxes paid would not be available as input tax credit against GST payable on transportation and logistics services.

The only option, which appears feasible, not to have such cascading impact, would be to allow abatement to the extent of the costs generally incurred towards petroleum products. Currently, under service tax law, abatement of 70 per cent is available with a restriction to claim input tax credit of duties / taxes paid on input, capital goods and input services. Under GST law, input tax credit would be available of GST paid on input, capital goods and input services; hence, the only amount towards which abatement is to be allowed is petroleum products. It is understood that diesel constitutes nearly /

11. Results of Study released by Ministry of Petroleum & Natural Gas for the period 2012-13 *vide* press release dated January 28, 2014 [Study conducted for Petroleum Planning and Analysis Cell]

more than 50 per cent of the total operating costs in case of road transport. GST may not entail abatement mechanism as a policy, however, for transportation (rail, road, air, water) sector it would be required; considering the total consumption of petroleum products by the sector and the higher contribution of petroleum products to the overall cost. Not having an abatement kind of mechanism, would increase the cost of transportation significantly, including for the assumption that the rate of GST for services is likely to be higher than the current rate of service tax.

IV. Rate of GST

For goods, there is likely to be two-rate structure – merit rate and standard rate. However, for services, it is expected that there would be only a standard rate. This appears to be basis the current rate structure for goods under State-VAT laws and for services under the service tax law. The question which needs to be raised is why there should not be a merit rate for certain specified essential services. Essential Services Maintenance related laws can be looked-upon for list of essential services. Such laws consider -

— *railway,*

— postal,

— telecommunication,

— *transportation of goods,*

— *transportation of passenger,*

— *services connected with ports, etc.*

as essential services.

Majority of the above essential services cover transportation and logistics directly. For such select essential services, there should, preferably, be a merit rate under GST regime, which could be same as merit rate for goods. The classification related issues / disputes should not arise, if the NIC classification (National Industrial Classification by Ministry of Statistics and Programme Implementation) is codified in GST related compliances for services and the rate of tax is basis such classification.

V. Place of supply

The current place of supply[12] under the service tax law, broadly, is as follows:

Service	Place of supply
Transport of goods (other than by mail or courier)	Location of destination of goods
Goods transport agency services (transportation of goods by road)	Location of the person liable to pay tax on freight amount
Hiring of all means of transport other than aircraft and vessel except yatches, upto a period of one month	Location of the service provider
Freight forwarder acting as intermediary	Location of the service provider
Freight forwarder acting as a principal	Location of destination of goods

12. Place of Provision of Services Rules, 2012

The key differential under GST regime would be that services would be rendered in respect of inter-State movement of goods and the States having a power to levy Inter-State services.

Once can only make a guess on place of supply under GST regime. For 'business-to-business' transactions, the place of supply could be based on location of the customer. For transactions other than 'business-to-business', one could perceive that place of supply may be on the following lines –

Service	Place of supply
Transport of goods	Location where transportation begins or Location of destination of goods
Warehousing and all other related services provided within the warehouse	Location of warehouse / Location of performance of service
Other services related to transportation and logistics	Location of performance of service

In case of multiple supplies or bundled supplies, the place of supply may be determined basis the separate supplies made on an individual basis.

The challenge would be charting the place of supply for different transactions and arrangements within the internal information technology system.

The logistics service provider would desire to ensure that the entire system is automated for day-to-day business and the enterprises buying such services would desire to ensure that the input tax credit is claimed & utilised and not locked-up.

VI. Other aspects from current law

Domestic reverse charge

The domestic reverse charge being currently applicable for goods transport agency services in respect of transport of goods by road, may find a place in GST regime, may be in the form of withholding of tax at source.

Out-of-scope and exemptions

Currently, the negative list contains the following services by way of transportation of goods –

— by road, other than GTA services or courier services;

— by an aircraft or vessel from outside India up to the customs stations of clearance in India; and

— by inland waterways

One can only make a guess about this at this moment of time. As far as exemptions are concerned, some of the exemptions, currently available in respect of transportation services may be continued. Services by way of giving on hire a means of transportation of goods, which is currently exempted, if not exempted under GST regime, would change the aspects of transportation of goods by road, for those making taxable supplies beyond the basic threshold exemption / limits under composition scheme.

CA Narendra Kumar Pati

Broad Based Sectoral Impact Analysis – (c) E-Commerce Transactions

Ecommerce (e-commerce) is not e-retailing. It is much more. It has expanded to every business stream. **Ecommerce (e-commerce)** or electronic **commerce**, a subset of e-business, is the purchasing, selling, and exchanging of goods & services, gaming, gambling, sharing of goods, services, knowledge & infrastructure over computer networks. Contrary to popular belief, ecommerce is not just on the Web. In fact, ecommerce was alive in business to business transactions before the Web, i.e. in the 70s via EDI (Electronic Data Interchange) through VANs (Value-Added Networks).

In the absence of boundaries and physical nature of e-commerce transactions relating to goods and services, taxation of such activities raises several issues. Ecommerce transactions are conducted worldwide—between parties residing in different states as well as countries. There is tremendous increase in the magnitude of cross-boundary transactions. By significantly reducing the transaction costs of communication and selling goods and services without regard to geographic boundaries or the size of the company, the tool of internet permits companies—that were earlier confined to local markets—to sell goods, services and information internationally.

While tax authorities may track those e-transactions where goods are delivered physically, for services and other intangible items tax authorities may have to struggle just to identify the transaction. The techniques employed in the transmission of digitized information create difficulties in identification of the source/origin and destination of both origination and consumption locations. Also, the technical feature of online transactions creates various problems for the taxing authorities, for instance, in establishing audit trails, verifying parties involved in transactions, obtaining documents, and fixing convenient taxing points. Internet operations lend anonymity to the parties in various ways despite the availability of email addresses and domain particulars. Concerns have thus been expressed that e-commerce could result in the evasion of taxes.

The dual GST proposed to be introduced is expected to expand the tax bases and simplify / harmonise the tax systems presently levied at both Central and State levels. The Central taxes levied at present in the name of Excise Duty & Service Tax, has a narrow base and multiple rates. It is levied on goods at the production stage, and value added in subsequent stages is not included in the base. In case of Services however it taxes all value additions till it reaches a consumer. In the proposed Central GST, the base will be expanded by merging the service tax with the CENVAT, extended to wholesale and retail levels and simplified to have only one or two rates. The merger of Central & State taxes in GST helps to ensure more comprehensive input tax credit and relieve the tax on exports. The

State GST will expand the base of the prevailing VAT to include services.

Utmost care has to be taken while drafting the legislation. The following aspect would have to be addressed both by the Govt. and the industry for implementation of GST into the e-Commerce platform:

1. Place of supply both for goods and service
2. Point of Taxation
3. Taxing the intermediaries
4. Bundled goods and services
5. Taxation of payment instrument like e Wallets
6. Treatment of discounts/ sales return
7. Registration and other formalities

These elements are common both to conventional business and to e-commerce. However they will put greater challenge requiring greater focus from Govt as well as from business community. These challenges are driven by few factors like (i) Borderless feature of internet and e-commerce; (ii) Virtual feature of e-commerce—leaving no signs of the transaction outside the internet; and, (iii) Anonymity associated with e-commerce. Perhaps, new concepts like the followings need to be included and addressed in the GST with full clarity;

- 'Information', 'intangible goods', 'data products' and 'electronic data' should be precisely defined either as service or goods. These items are most likely to be transmitted through electronic mode and across various states in India and also across various countries. Hence lack of clarity will play havoc among the tax payers. I am expecting that place of supply & place of provision will be drafted accordingly.

- Taxing ecommerce will affect domestic as well as international industries. Hence it should remain in harmony with tax laws of other jurisdiction to avoid double taxation and smooth transition. OECD (Organization for Economic Cooperation and Development) has been taking a lead in addressing challenges posed by e-commerce in the international tax regime since 1997. In 1998, the Ottawa Taxation Framework was designed with the following leading principle:

  "The taxation principles that guide governments in relation to conventional commerce should also guide them in relation to e-commerce…. Existing taxation rules can implement these principles. The application of these principles to e-commerce should be structured to maintain the fiscal sovereignty of countries, to achieve fair sharing of the tax base from ecommerce between countries and to avoid double and unintentional non taxation."

- Due to the primary objective of revenue generation, unrealistic compliance burdens are placed on e-retailers whose main concern may be with markets, growth and profit and not necessarily towards paying taxes. If workable rules, keeping this objective in view, are not placed in position, then several players may simply choose to ignore India as a favourable business jurisdiction.

  It can be suggested that ecommerce enterprises are given option to opt a particular tax jurisdiction for their all India indirect tax requirement. They should not be asked to register and comply with GST in each State. With technology evolution, it should not be difficult for the Govt. to facilitate this in the model of Large Taxpayers Unit (LTU) both for SGST & CGST.

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CA Udayan D. Choksi

Broad Based Sectoral Impact Analysis – GST Sectoral Impact Analysis – SME Businesses

The SME perspective

The SME universe in India consists of over 3.5 crore proprietorships and family run enterprises. They contribute about 37.5% of India's GDP and employ around 40% of our workforce. The GDP split is approximately 7.5% in manufacturing and 30% in trading and services. In other words, a significant quantum of economic activity is undertaken by this sector, and this has substantial implications from the GST preparatory and run-time operation points of view. Though different legislations apply different definitions for SMEs, and other criteria are applied by banks and stock exchanges, as tax people, we are principally concerned with the tax dimension to enterprise size.

The SSI exemption under Central Excise (Notification No. 08/2003-C.E.) provides for clearances up to the level of ₹ 1.5 crore/year being duty-free. As we know, this exemption is not available for goods bearing the brand / trade name of another person, subject to some important exceptions – including the ones to goods manufactured in a factory located in a rural area, and to goods in the nature of packing materials. A large number of SMEs have built their businesses on the basis of these exceptions. Similarly, the service tax threshold exemption up to an aggregate value of taxable services of ₹ 10 lakh/year keeps several small service providers outside the service tax net. Under the State VAT provisions, small businesses, typically with a turnover below ₹ 10 lakh/year are not liable for VAT; several States also have composition schemes, under which smaller businesses pay a lower rate of tax without taking benefit of the credit provisions. It is important to note that for several SME businesses, their size is not an external constraint but a matter of choice and that these businesses run successfully in their own ecosystem sans credit and catering to smaller consumers, typically at the end of the economic value chain.

The SME perspective incorporates answers to the questions about: (1) business model (manufacture or services or trading, and accordingly Central Excise duty or service tax or State value added tax, respectively), (2) whether registration is necessary or desirable given the commercial aspect of size of operation on the one hand, and compliance obligations on the other, and (3) the aspect of availability of credit and related profitability.

Impact of GST

The answers to the aforesaid questions will undergo a fundamental change on the transition to the GST regime. Very briefly stated, (a) all supplies of goods and services will be taxed, (b) there will be dual control by the Federal and State tax authorities, (c) established business concepts such as manufacture, sales in the course of import, transit sales, and job work will become irrelevant or get taxed differently, (d) there will be new rates of tax, (e) a requirement to register in multiple States is likely to arise – the exact details of which will be known only after clarity emerges on the place of supply rules, (f) new provisions relating to tax credits and possible challenges relating to accumulation will have to be dealt with, and (g) revised pricing workings will have to be made after incorporating the cost elements of the aforesaid dimensions to the business decisions. In the context of these changes, it is equally important, if not more, to consider the larger environment in which an SME is operating.

Starting with a value chain relating to the manufacture and movement of goods, we note that SMEs would typically find themselves playing the role(s) of (i) a vendor for goods, or (ii) a job worker, or (iii) a trader, or (iv) a service provider for transportation related, business related or professional services. An SME vendor for goods has to make decisions in relation to registration (some States apply purchase taxes in respect of transactions with unregistered dealers) and pricing – both of these aspects will require to be revisited, as discussed above. As job workers, SMEs currently operate under the job work exemption or the provisions of the CENVAT Credit Rules – these business models too, both in terms of operation as well as tax consequences will get revisited in GST. The place of supply rules, availability of credit, rates of tax and applicability of reverse charge provisions will dictate the decision making of SME service providers in the value chain in the switchover. Similarly, on the output side of the supply chain, there are similar decisions to be made regarding revisions from the existing business model.

Naturally, the larger corporate/multi-national companies, of whose ecosystem the SMEs form a part, will be analysing and planning for the switchover to GST given their own business parameters and priorities. These enterprises will typically be looking to consolidate their footprint (for efficiencies of scale, given the removal of tax distortions), to relocate infrastructure (related to the footprint consolidation and in view of the likely sunset on location-based tax incentives), and reworking of pricing and margins across their value chain. These decisions of the larger companies will have a substantial knock-on effect on SME businesses. As tax costs in the value chain change consequent to tax rate and credit-related amendments, the participants in the value chain will have to jointly agree on a revised pricing and distribution compensation structure. Second, given the IT-centric environment in which GST will operate, SMEs may have to undertake significant investment in IT infrastructure to work alongside the larger businesses. Third, working with the larger enterprises will also entail more onerous compliance obligations. Fourth, it appears that some of the distortions in the current system of partial or complete reverse charge which complicate and sometimes disturb the tax credit chain may continue. Finally, and possible more significantly, given the likely GST rates and the recommendations on refunds, it is almost certain that operating under GST will necessitate substantial increase in working capital requirements. The extent to which each of these effects will play out for a given enterprise will depend upon its role, size, spread, and capacity to negotiate.

This discussion would be incomplete without mention of reality that there are tax leakages in the present multi-point tax setup – the tax collection chain Terminates before the last mile and, as is well-known, a sizeable portion of trade takes place through the parallel economy. One of the reasons for this has been the reluctance of small businesses to necessitate interface with the tax department. Given the environment in which GST will operate, large corporates will have to address this reality and shepherd SMEs into compliance in the new setup if business is not to be disturbed.

On the services side, there is a variety of services to discuss in an SME context. This article touches upon only two of the emerging ones viz. e-commerce, and intermediaries for financial services. The ongoing controversy on the taxability of e-commerce marketplace models continues, and important questions as to the tax character of these arrangements are getting centre-staged – India (and the SME businesses in India) need to consider the international experience in this regard, following which the businesses operating in this sector may have to contend with new challenges regarding registration and compliance requirements relating to place of supply. In the financial services space, there is a credit flow challenge in respect of some intermediary services on account of the reverse charge. SME businesses in the service space will face such complexities under GST, the nature and extent of which will vary across service sectors.

Conclusion

The key takeaways for SMEs are that (1) the changes under the dual GST model will be significant, more so given their size, (2) the perspectives of large corporates and the SMEs will have to be realigned under the new system, and (3) they need to work on IT preparedness and prepare for greater compliance. In other words, far reaching changes are around the corner.

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- E-wallets (like Generic online e-Wallet, Company specific e-Wallet and Bank e-Wallet) are new products in ecommerce platform. Special attention should be given to design and tax these products. These are expected to be complex inviting special treatment in all aspects of taxation like classification, valuation, point of taxation, place of supply & provision etc.
- A number of transactions may happen without the identity of the seller or service provider being disclosed. So it should also be evaluated if these transactions can be taxed at payment gateways or at source / destination of the supply without requiring any tax registration.

Nevertheless, ecommerce within the country and beyond its borders is surging ahead at a healthy rate of growth. Technology has enabled the generation of e-Waybill in respect of the States of the Indian Union and the consigner has to feed the required particulars in respect of the State. These particulars require details in respect of information relating to the applicable taxes, e.g., VAT, TIN, CST, Local Body Taxes (LBT) and particulars of ST-Forms/VAT. Generation of e Waybill is a step forward in tax administration. Occasionally, State Governments have put online retailers and dealers under the tax scanner. For example, in September 2014, Amazon office in Karnataka came under scrutiny after tax authorities alleged that Amazon India — the domestic online market place owned Amazon.com Inc. — has been violating the current tax norms and also been evading value added tax in respect of a facilitation store created by it. A milestone reform will be achieved once GST sets in, bringing uniformity in tax rates across all States and standard procedures for maintenance of records. However, the categorisation of products traded through the electronic mode would continue to be an issue.

CA Sagar Shah

GST – Challenges of Preparedness for Business & Taxpayers

Introduction

The Goods and Services Tax (GST) would bring a paradigm shift in the indirect tax regime of the country and would have an impact on each and every part of the business. Underlying objective of GST is to widen the tax base, make tax laws unambiguous and consistent enabling maximum self-compliance by the dealers. The industry thus needs to take note of GST prepositions and plan to address the impact thereof earnestly. GST would be a consumption based tax rather than the hitherto origination based tax.

Implementation of GST in India would bring fundamental changes in the way entities conduct their businesses. So it is imperative to realise that besides tax, GST will also have an impact on procurement, pricing, warehousing and distribution, etc. GST would present a massive opportunity to structure the supply chains as per business dynamics, reduce business costs and achieve significant efficiencies.

GST: A Tax reform or a Business reform

The transition to new GST regime requires judicious planning. Business entities need to take many measures as part of their preparation for implementation of GST, the first and foremost being to understand the key areas of impact to their businesses. The impact would be on revenue, costing, procurement, business compliances etc. Once these key areas are identified it would be easier to define the essential transformation processes which will have to be dealt with.

If one has to look at the impact of GST from a macro perspective, the following are the three things that would be the most important:

1. **Business Objectives** – Product pricing, Restructuring of transactions and contracts, decisions on consolidation of plants, warehouses, working capital management

2. **Supply Chain** – Historically, tax structures have been a major determinant for designing of Supply Chains in

   a. Procurement: Influenced by import duties, availability of input tax credits

   b. Manufacturing: Influenced by fiscal exemptions/deferrals

   c. Distribution: Multi-tiered, influenced by State boundaries due to CST Implications

   Supply Chain designed purely on business parameters will unlock considerable values

3. **Information Technology** –

   a. Transition of IT Systems to the new tax framework

   b. Greater focus on flow of electronic information under GST.

   c. Robust IT Systems a pre-requisite

The Challenges

The first and foremost for any business to understand is how GST would change the world upside down. For this one needs to look at the current tax structure and the anomalies thereunder.

- Cascading Impact – Burden of tax on tax
- Non-availability of VAT Credit against CENVAT liability and vice-versa
- Non-availability of CST Credit against VAT liability
- Multiplicity of taxes at the Centre and State levels
- Multiplicity of Tax Rates

The challenges are more to understand and if I may say "unearth" would not be an understatement. Every sector, rather every company would have its own set of challenges. If one doesn't start thinking about what is going to happen to his business under GST at the earliest, it would rather make that business extinct.

One needs to understand that preparing for GST is not just about looking at a new tax but rather understanding the total impact on every dimension of its business. Let us look at some major impacts to various sectors and how they would get affected so as to enable preparedness.

1. Trading

a. A trader not eligible for credit of service tax, now would be effectively eligible. Hence he needs to see how his pricing can be reduced.

b. An importer trader who pays CVD and SAD has to forego CVD and claim refund of SAD in most of the cases in the current scenario. Under GST regime, this would mean IGST being charged on imports which would be fungible.

c. With the additional one per cent additional tax on inter-State sale, it might be cheaper to import rather than buy locally.

d. There would no more be exempt "In-transit" (sec. 6(2) of the CST Act) sales.

e. There would no more be the C, F and E form scenarios as applicable under the Central Sales tax Act.

2. Manufacturing

a. A manufacturer having a plant in one of the North Eastern states and claiming duty exemptions now would be moving to post tax cash refund. Hence he would be impacted adversely by his cash flow position.

b. A manufacturer claiming Package Incentive Scheme benefits (subsidies) for setting up a plant in the backward areas and getting refunds linked to his Central Sales Tax wouldn't get this under GST since "CST" would effectively be "IGST" and if the originating state would not get the tax then it would not allow any subsidy related to this. This would mean a huge loss for every company, say, manufacturing in Maharashtra and having major sale outside Maharashtra.

c. A manufacturer having multiple warehouses/consignment agents can now actually realign his model to move towards reducing the same.

d. A manufacturer may have to re-align his procurement strategies in line with the availability of credit that may lie unutilised. The current practice of procuring based upon fiscal incentives owing to multiplicity of tax rates and huge arbitrage therein (intra-state or inter-State) would move towards more of a business decision in terms of selection of the right vendor suiting his requirements.

e. Job working may now result in more cash out flow since there would be no exemptions like those available under the current law. Once the law moves to the concept of "Supply" it would mean an immediate tax payment thereby creating a larger working capital gap.

f. A manufacturer would want to consolidate multiple manufacturing locations to achieve path breaking shift in taxable events.

g. Rationalisation of stocking points, flexibility in pricing with abolition of MRP regime would all be decisions that a manufacturer may have to look into to achieve greater efficiency and effectiveness.

3. E-Commerce

a. The case of e-commerce sector presents one of the most recent examples of the challenges in taxation. The tax authorities at various levels seem to have failed to keep pace with the rapid developments in the e-commerce sector, the nature of business transactions and the relationship between the various stakeholders in the transactions. This lack of complete understanding has resulted into multifarious litigations and challenges for the e-commerce sector which would if not suddenly, definitely in the long run start impacting the sector.

b. The reach of a vendor in the pre e-commerce era was limited to the location of his shop or the immediate vicinity. The growth of e-commerce sector has opened vast avenues for such vendors where they can compete with multiple number of other vendors and may be supplying goods to end consumers located across India. The State Tax Administration does not, *per-se*, seems to be having any control mechanism to track the quantum of supplies made by such vendors. In such a scenario, the fact that in the absence of such control mechanism, quite some vendors may not be accurately reporting the whole sales revenues and may not be correctly discharging the taxes cannot be entirely ruled out.

c. Another challenge with regard to e-commerce transactions is on account of monitoring also. In certain States, it is a mandatory requirement to obtain an inward form from the range VAT department before buying the goods inter-state for self-consumption and a different form in case goods are bought for further sale or to be used in business. It is difficult for an end consumer to first understand the nuances of obtaining the forms, approaching the department for getting these forms and then providing the same to e-commerce vendor for movement of the goods. An end consumer may prefer to buy the goods from a brick & mortar store rather than going through these endless challenges for some discounts. This requirement of entry forms accordingly serves as an artificial barrier for free flow of goods from one State to another.

d. The underlying reason for the artificial barrier seems to be emanating on account of a taxation system which is origination based rather than destination based, in respect of inter-State transactions. Goods sold through brick and mortar store fetch revenue to the State Government but goods purchased through e-site doesn't when the same are being dispatched inter-state from another State. Say, a customer situated in State A bought certain goods from e-commerce site. The warehouse is situated in State B. The goods moved from State B to State A and the dealer charged Central Sales Tax from State B on the transaction. The State A lost the revenue as it is a inter-state sale. However if the same customer would have bought the goods from brick and mortar store within the State A, the State Government would have got the tax. Now, if we compare the same transaction under the GST scenario the Government of State A will be neutral as to whether the goods are bought by an end consumer from a brick & mortar store or an e-commerce site, since the State A would ultimately get the GST revenues in both the transactions. Thus, the same transaction which is considered as a loss to a State today will change completely and will result in a revenue for the State tomorrow.

4. Financial Services

Let's have a look at the number of issues that are present both under the VAT and Service tax laws currently:

- Tax treatment for income classified as "charges" or "commission" or "fees" and taxability of the same – whether exempt or taxable.
- Services provided in the State of Jammu and Kashmir.
- Tax liability under reverse charge mechanism.
- Tax treatment for import of gold bars / gold coins on consignment basis, which are stored by vault agents and thereafter transferred inter-State or intra State.
- Tax treatment for sale / auction of repossessed vehicles: This is a major area of concern for most of the banks.
- Different VAT rates for gold coins (Laxmi/ Ganesh idols engraved charged at higher VAT rate due to change in classification).
- Fungibility of credit against goods and services.
- Issue of exempt income and credit loss.

If there is one area where the world is looking at with great interest in India while taxing under GST is the financial services sector. Few of the above issues may become redundant or of less importance in GST but this may throw numerous new challenges especially around place of supply rules, exemptions and the credit mechanism. It would have to be seen as to how the B2B and B2C transactions are taxed and how the locations are determined and how banks and insurance companies gear up their systems to take into effect the multiple challenges thrown open. It would also be imperative to have the place of supply rules defined in a manner that would help achieve the real intention of GST and make it simple to understand, implement and administer.

5. Real Estate and Infrastructure

This is one sector which is eternally fighting between the overlapping of taxes *vis-a-vis* – immovable property, goods and services. The multiple valuation issues under multiple laws under the current regime would probably become a better scenario under GST. What however is missing is the real intent to get the real estate under the unfettered credit mechanism. It is estimated that a whopping amount of Rupees Eight lakh crores becomes a cost to the industry on account of non-eligibility of credit. The multiple challenges of multi state works contract and the inter-State works contract is perhaps one of the most unresolved challenges.

The IT Systems and ERP's

If one has to point out only one largest impact due to GST then surely for me it would be the IT systems which would be the backbone of any business.

a. Imagine disclosing sales made and purchases made from every State properly in the returns to be filed based upon the consumption. Not to mention whether you are dealing in goods or services.

b. Imagine mapping the purchases made from a supplier outside the State and making sure that he pays the IGST or else you lose the credit.

c. Imagine tracking the place of supply based upon the data fed into the system

d. Imagine preparing a reconciliation between your "Turnover" as per the financial statements and the "Turnover of good and services Supplied" as per the GST law which may even include transactions which may not necessarily have resulted in a financial transaction.

e. Imagine providing data to every State so that your assessments are done properly – not to mention which transaction would be assessed by Centre and which by State.

Operational Challenges and being prepared

Based on assessment of impact certain steps are required to be taken as part the preparation -

- Cancellation of earlier registrations
- Apply for new GST registrations
- Transitioning the credits under existing law to the new law
- Identifying the transactions under GST regime
- Change in current business processes – preparing SOP's and manuals
- Change in record keeping and accounting - training
- Redesign of procurement, sales and other contracts
- Change in product pricing
- Understanding quantum of GST liability and planning for the discharge
- Assessing the manner and quantum of input credit available under law
- Working towards bridging the working capital gap.
- Vendor and contractor trainings
- Checking refund scenarios and how one looks at being efficient in the same
- Creating files and trails for departmental audits and scrutiny's.

Conclusion

The implementation of GST in a true spirit is a business reform and it will change the way the businesses operate today. It would eliminate cascading effect of multi-layered taxes and would make the whole country a unified market. New business strategies entailing all the business aspects will have to be designed. GST is expected to facilitate seamless credit across the entire supply chain and across all States under a common tax base. It will result in efficient inter-State transportation, and bring down logistics costs. Transparency and simplicity in taxation may lead to increased compliance requirements.

The challenge of taxing services in the ever changing technological world is not a problem restricted to Indian sub-continent. Even the developed countries face the same challenge.

With complex business and IT systems, a period of 6 months also may not be enough for even a mid-size company to really implement GST. It is better that one starts early so that you are ahead of competition in this ever changing and dynamic business world.

CA Naresh K. Sheth, CA Shraddha Mehta

Goods and Services Tax – Business Process on Registration

Preamble and background

Goods and Services Tax ('GST'), so called game changer or revolutionary tax reforms, is on the anvil. Government is keen to bring GST as fast as possible. However political consensus for enactment of constitution amendment bill and GST Bill appears to be stumbling block for GST implementation.

Joint Committee ('JC') was constituted by Empowered Committee ('EC') of State Finance Ministers for making suitable recommendations to EC on processes for registration, payment, refund and returns.

JC has come out with its reports on above referred procedural aspects. Draft law and rules related to GST are not in place. Joint Committee has released the reports which are recommendatory in nature and yet to attain finality. These reports are put in public domain for deliberation and discussion in public in October, 2015. Nation is having unprecedented situation where stakeholders are told to deliberate on procedures without draft GST legislation and Rules. Is Government putting a cart before horse?

The Report of JC elucidates on following salient aspects:

- Assumptions
- Structure of registration number ('GSTIN')
- Procedure for obtaining Registration:
  - In case of New Applicants
  - In case of Migration of existing registrants
- Cancellation/Surrender of Registration
- Norms for blacklisting for dealers

In any tax system, registration of a business with tax authorities is a foremost fundamental requirement. Registration is essential for identification of the business for tax purposes and verification of compliance procedures. Hence, Registration under Goods and Services Tax ('GST') regime is of prime importance for the implementation and execution of GST law.

Registration is a first interaction between taxpayer and tax authorities. Historically, registration has been painful and time consuming process for excise, VAT and service taxpayers. It is said that well begun is half done. Granting registration should be rule and rejection should be an exception in GST regime. An efficient, time-bound and taxpayer friendly scheme would go long way in achieving an "excellence in taxpayer's service" and will create atmosphere of trust amongst taxpayers.

This article briefly deals with salient features and proposals of JC on registration, its probable impact on trade and nation, representation, suggestions etc. In absence of GST law and rules, discussion and deliberation has limitation of being tentative.

Lets us examine and evaluate important proposals of JC Report:

Threshold for Registration, Application for Registration and Input tax credit

A dealer will be liable to take registration under GST when he crosses the prescribed threshold of Gross Annual Turnover. On crossing said threshold, dealer will be required to apply for registration within 30 days. Registered persons will be able to take credit of taxes paid on inputs/input services/capital goods and pass on the credit of GST to his customers.

Para 2.1(1) on page 4 of the Report

Person without GST registration can neither collect GST nor claim any input tax credit of GST paid by him.

Analysis, implications and representation

Limitation of non collection of GST by dealer and non-claiming of input tax credit will apply to statutory period of 30 days granted for registration (where registration is applied in time) and also during the period from date of operation/ commencement of liability till granting of registration (where registration is applied after 30 days).

Delay in registration due to administrative, IT infrastructure and procedural problems can adversely impact registrant and trade at large.

Dealer / registrant doing cash sales will not be in a position to recover GST during this interim period.

Registrant should be allowed to apply for registration prior to reaching the threshold turnover like in service tax **OR**;

The registrant/ dealer should declare date on which liability to pay arises on his invoice along with declaration that he is applying for registration. Invoices issued after applying online, system generated acknowledgement number should be put on the invoice.

Registrant should be allowed to charge GST on said invoice. Buyers should be allowed input tax credit of such invoice.

Para 2.1(2) on page 4 of the Report

Effective date of registration would be date of application in all cases i.e. whether the application is filed within prescribed time limit of 30 days or otherwise. Taxpayer will be entitled to ITC in respect of all purchases from date of application if made within 30 days. In case of delayed registration, all Input tax credit during the period of application to registration will not be allowed.

Analysis, implications and representation

GST is a value added tax. Any person in a chain of transaction should be taxed only on value addition made by him in the chain. The denial of pre-application/ pre-registration input tax credit is not in consonance with basic cannons and principles of value added tax. The pre-registration Input tax credit should be allowed as being presently done in service tax.

Penalty should be prescribed for delayed registration instead of denial of input tax credit during pre-registration. Denial of credit would lead to double taxation resulting into cascading effect of taxation and inflationary trend.

Judiciary (in service tax and excise cases) consistently held that Input tax credit pertaining to pre-registration period should be allowed. Even VAT laws permit input tax credit for intervening period subject to certain safeguards.

Provision in present form is not in consonance with avowed objective of GST to provide ease of doing business and allowing seamless credit of input tax.

Para 2.1(2) on page 4 of the Report

There will be a threshold of Gross Annual Turnover including exports and exempted supplies below which any person engaged in supply of goods or services or both will not be required to take registration.

Analysis, implications and representation
Person having exclusively exempted supplies may also have to take registration even though he does not contribute any revenue to ex-chequer. Such type of registrations will burden tax administration and also inflict hardship on the citizens.

Only the taxable supplies should be considered for the purpose of threshold turnover to avoid registration of those persons not required to pay tax.

Para 2.1(2) on page 4 of the Report

Compounding Scheme
Registered person can opt to pay tax at specified percentage of compounding turnover without entering the credit chain. Assessee under compounding scheme will neither be allowed to collect tax from customers nor to claim any input tax credit.

Analysis, implications and representation
Where the terms of compounding are violated in mid- year, the consequences thereof should be clearly specified.

Para 3.7 of page 9 of the Report
Switching from Compounding Scheme to Normal Scheme and vice versa

Any taxpayer not under compounding scheme may opt for compounding scheme, if eligible, only from the beginning of next financial year. The application for the same should be filed before 31st March of the previous year.

Compounding dealer may be allowed to switch to Normal Scheme at any point of time during financial year.

Analysis, implications and representation
Assessee should not be deprived of his right of availing compounding scheme on account of delay in intimation or non-intimation before prescribed date. These are procedural lapses and there should be a provision for administrative relief in such cases.

It is stated that the compounding applies from beginning of Financial Year and intimation should be made before 31st March of previous financial year. There should be specific provision in the Act that above referred provision will not apply to person starting a new business at any time during the financial year.

Para (7) on page 5 of the Report
Person carrying on inter- state supply or person liable to pay GST under RCM will not be eligible for threshold or compounding.

Analysis, implications and representation
Logic and legislative intent to keep RCM and interstate supply out of threshold should be explained.

Every entity would practically be required to take registration. It will burden the tax administration. It will also inflict hardship on small traders and exempt entities to take registration, file returns etc. This may not justify the administrative cost.

Reverse Charge should totally be avoided in GST regime except for procurement of services from non taxable territory.

Alternatively, there should be threshold for RCM as well as interstate supplies to avoid hardship to smaller/non-taxable entities.

Para 8 on page 5 of the Report
UN bodies to claim refund of taxes paid by them.

Analysis, implications and representation
Whether it is fair to impose such procedural burden on UN bodies?

Refund as such is a always a strained area for tax payer as well as tax administration. The inefficiencies in granting refund would portray bad image internationally. The refund situation should be avoided altogether in such cases.

Supplier/ dealer should not charge GST to UN bodies on the basis of Unique Identification Number. Such number should be mentioned by supplier/dealer in his invoices. UN bodies should file periodic return of goods/services sourced by them. This would enable tax authorities to cross verify tax exemptions taken by dealers/vendors for supplies to UN bodies. Such supplies to UN bodies should be treated as export or zero rated taxable supplies for claiming input tax credit by vendors.

Para 10 on page 6 of the Report

Input Service Distributor
The concept of Input Service Distributor ('ISD') may continue in GST also if GST law so provides. They would be required to obtain GSTIN for distributing the credit of GST paid on services proposed to be used at multiple locations which are separately registered.

Analysis, implications and representation
Whether CGST, SGST and IGST will be allowed to be distributed across all locations in different states or different verticals in the same state?

Para 2.2 on page 7 of the Report

State wise multiple registration
Taxable person will have to take separate registration for each state.

Analysis, implications and representation
Many existing service tax assessees have centralised registration for its branches across the country (take e.g. of State Bank of India having thousands of branches which are centrally registered). Whether registration in such cases would be under automatic migration as existing assessee or will be treated as new assessee.

Para 2.3 on page 7 and para 3.6 on page 9
Multiple Registrations within one state to business verticals may also be permitted.

The input tax credit for one vertical will not be allowed to be set off with other verticals unless goods or services are actually supplied across the verticals.

Analysis, implications and representation
Term 'business vertical' should be clearly defined for this purpose.

GST Act treats all business verticals as one entity for threshold and recovery. Same treatment should be given to all business verticals for Input tax credit also.

Denial of Input tax credit of same legal entity (merely it has chosen to get all its verticals separately) is not in consonance with basic objective of GST to allow seamless credit of input taxes. It discriminates between two organizations, one that chooses single registration for all its verticals and those choosing to have separate registration for multiple verticals.

Para 2.4 on page 7 of the Report

Casual Dealers
Casual dealer is a supplier who is not registered on regular basis in other States and desires to conduct business in a particular State for a limited period. He can obtain registration in that State for that limited period. Casual dealers cannot opt for composition scheme.

In case of casual dealers desiring to take registration in a particular State for a limited period, they are required to estimate their liability and deposit the entire amount as an advance tax at the time of registration by way of deposit of 2 demand drafts (one for Centre and other for State).

Analysis, implications and representation
There will be dispute as to quantum of estimated tax liability to be worked out on the basis of

future sales. This subjectivity may result into delayed registration.

In certain projects like real estate etc., it will be an obstacle for dealer to shell out a huge amount of tax in the initial stages. It may affect investment in other States.

In respect of casual dealers following options may be thought of:

- Deposit of minimum reasonable amount; OR
- Bank guarantee equivalent to probable tax liability

Non-Resident dealer

Non-Resident Dealer is a person who in the course of business, makes an intra State supply of goods or services or both, but is not a resident in the State in which he has applied for registration, but is already registered in any other State. Even Non-resident dealers cannot opt for composition scheme. All the provisions of casual dealer will apply to non-resident dealer except for the provision of depositing advance tax.

Analysis, implications and representation

Such provisions are found in VAT law to safeguard State against probable revenue loss due to non-traceability of Non-Resident dealer after they leave the state. This concern is mostly addressed in GST regime as Non-Resident dealer would be registered in the State where they are based. Non-Resident dealer can charge IGST on supplies made by him in other State. If he defaults on payment, he is easily traceable by the State where he is registered. This avoids administrative hassles of granting registration and subsequently cancelling the registration. This will also relieve the dealers from all such hassles.

Structure of registration number

Goods and Services Taxpayer Identification Number ('GSTIN')

Under GST regime there will be 15-digit PAN based registration number termed as GSTIN having following structure:

- First two digits - state code.
- Next ten digits – PAN of dealer
- 13th Digit - alpha numeric indicating number of registrations a legal entity has within one state.
- 14th digit - kept blank for future use
- 15th digit - check digit number

Obtaining Registration

- Separate application forms are designed for:
  - Multiple Registration for business verticals of same legal entity
  - Application for registration in more than one State
  - Amendments in existing Registration
  - Cancellation of Registration

New Applicants

Procedure for applying for registration is summarized as under:

- Registration to be done online through GST common portal.
- Under GST regime, registration will not be allowed without a valid PAN and online verification of PAN will be mandatory.
- Facilities like 'Facilitation Center' and 'Tax Return Prepare Scheme' is also made available for the purpose of Registration.
- List of documents are provided in the Report which are to be uploaded/ submitted along with application of registration.
- Multiple applications can be filed at one go where a taxable person seeks registration in more than one state or for more than one business vertical located in a single/ multiple states.

- GST Common Portal to carry out real time preliminary verification of application.
- Registrant will have option to sign application form digitally using Digital Signature ('DSC').
- In absence of DSC, summary extract of submitted application form is to be submitted within 30 days otherwise registration will be cancelled.

Verification process of application form is summarized as under:

<table>
<tr><td colspan="2">Information and Documents to be uploaded on GST Common Portal</td></tr>
<tr><td colspan="2">Jurisdictional officer to examine and respond back in 3 days</td></tr>
<tr><td>If found in order</td><td>If not found in order</td></tr>
<tr><td rowspan="5">Portal will automatically generate registration certificate</td><td>Error/defect to be communicated to applicant within 3 working days.</td></tr>
<tr><td>Applicant to revert within stipulated period. (normally 7 working days).</td></tr>
<tr><td>On receipt of clarification/additional documents, concerned tax authority to respond within 7 working days.</td></tr>
<tr><td>If concerned authority does not respond within stipulated period, registration will be deemed to have been approved. Registration certificate will be generated automatically on Portal.</td></tr>
<tr><td>If clarification/adjudication found in order, Portal will automatically generate registration certificate.</td></tr>
<tr><td colspan="2">GST Registration Certification can be downloaded from site on grant of registration.</td></tr>
<tr><td colspan="2">If registration is refused, reason for refusal to be communicated to applicant through a speaking order which is appealable by applicant.</td></tr>
</table>

Para 6.3 on page 12 of the Report

Details and documents required for registration

Particulars	Document required to be uploaded	Analysis, implications and representation
Constitution of Business	• Partnership Deed in case of Firm • Registration certificate in other cases	
Details of Principal place of business	Own premises/in other cases also: Any document in support of the ownership of premises like latest tax paid receipt or Municipal Khata copy or Electricity bill copy Rented/Leased premises: A copy of valid Rent/lease agreement	In city like Mumbai, there would not be rent agreement for most of old tenancy cases. Sometimes tenancy is still in the name of old tenant or deceased tenant. The owners of the property not willing to part municipal receipt etc. In such a case, registration may be granted

Particulars	Document required to be uploaded	Analysis, implications and representation
	Other than rented/leased premises: A copy of consent letter, Customer ID or account ID of the property in the record of electricity providing company, wherever available should be sought for address verification.	on the basis of some alternate document such as address on bank statement, address on Income tax returns, shop and establishment licence etc.
Details of bank account	Opening page of the bank passbook held in the name of proprietor/ business concern – containing Account No., name of account holder, MICR and IFS codes and Branch details.	There is no pass book system in current account. Usually, bank provides the statement after month end. The applicant may miss the statutory time limit of 30 days. The banker's certificate or a cancelled cheque should be accepted.
Details of authorised signatory	For each authorized signatory – letter of Authorisation or copy of resolution of the Managing Committee/Board of directors	
Photograph	• Proprietary Concern – proprietor • Partnership Firm/LLP – managing/ authorised partners (maximum 10) • HUF – karta • Company – Managing director/ authorised person • Trust – managing trustee • AOP/BOI – Members of managing committee (maximum 10) • Local body/statutory body – CEO or equivalent • Others – Person in charge	Photograph of only authorized signatory should be asked for.

Paras 6.9(3) & (4) on page 17 of the Report:
Rejection by one authority will amount to rejection by both Centre and State.

Analysis, implications and representation
Registration is done by both the authorities on the basis of same form and same documents. The question of acceptance by one authority and rejection by another authority should not arise in such case.

The provision should be that once an application is accepted by one authority, same should be accepted by other authority.

The registering authority for Centre and State should be common and same in order to avoid duplication in verification processes and situation where one authority accepting the documents while others rejecting.

Para 6.12 on page 18 of the Report

Post registration verification
The GST common portal will provide a risk profile to the tax authorities based on the risk parameters made available by the tax authorities. The Centre/ State tax authorities will also have their own risk profile based on their own risk parameters. On the basis of both risk profiles, decision on post registration verification will be taken.

Analysis, implications and representation
Such provision encourages manual interaction between the tax department and assessee. It is advisable to avoid such interaction for obvious reasons. It is to be noted that there is no such post verification procedure by Income tax authorities after allotment of permanent account number or TDS number. This system of allotment is working without any major issue.

Existing Assessees

Migration of Existing Registrant
Migration of existing registrants under Excise, VAT, Service tax and other laws will start quite in advance.

In case of incomplete/incorrect data on State and Centre portal, fresh data will be collected from existing taxpayers.

If verification/updation not done by tax payers within stipulated period, GSTIN will be suspended till tax payer does the needful.

For tax payers registered under State VAT/ Excise
GSTIN will be generated by NSDL in case of all VAT TINs where PAN has been validated.

State authorities to communicate GSTIN to taxpayers and thereafter tax payers to fill additional data on GST portal

In cases where PAN is validated, but email or mobile numbers of dealers are not available, such dealers may be advised through newspaper advertisement to visit GST and provide required data.

For tax payers registered for Service Tax
Service tax payers need to intimate state as to where they would like themselves to get registered.

Service tax portal will check from GST Portal that whether GSTIN is generated and communicated to service tax payers. Thereafter tax payers are required to fill additional data on GST portal.

Para 11 on page 6 of the Report
All existing registered persons under Vat, Excise and Service tax would be allotted GSTIN on voluntary basis.

Analysis, implications and representation
Existing data bank of registration (with State and Centre) might be defunct, incomplete or incorrect. Migration of such data in GST will result in improper/incorrect registration under GST.

Before migration, existing data bank of registration should be cleaned to remove all defunct and non-operative registrations (i.e. who have applied for cancellation but numbers are not yet cancelled)

Adequate check is required where assessee has multiple registrations under various laws on one PAN in the same State or different State.

Cancellation/Surrender of Registration

Para 10 on page 23 of the Report

Cancellation on application by assessee
Cancellation/surrender of registration may be done by tax authorities in the following situations:

- Closure of business of taxpayer
- Gross Annual Turnover including exports and exempted supplies falling below threshold limit
- Transfer of business
- Amalgamation/demerger
- Non-commencement of business within stipulated time period

Analysis, implications and representation
Assessee should not be asked to file returns for the period between initiation of surrender request and formal grant of cancellation of registration.

The time limit for cancellation should be clearly stipulated in the law.

The registration number should be deemed to be cancelled where authorities have not cancelled such number within stipulated period.

***Suo motu* cancellation of registration by tax authorities:**
Tax authorities may *suo motu* cancel registration in following cases:

- Non submission of signed copy of the summary extract of submitted application form even after a reminder
- Contravention of GST provisions
- Continuous non-filling of returns during a predetermined period (say 6 months)

Analysis, implications and representation
Provision of *suo moto* cancellation by tax authorities may lead to chaotic situation. It will add to administrative burden of cancelling and restoring the numbers at later date. It will also inflict undue hardship on trade at large.

Instead of cancellation of number due to non-filing of returns, tax authorities should deal with defaulters by levying penalties for non-filing etc.

Norms for Blacklisting of Dealers for blocking tax credits

Page 51 of the Report
A system of GST Compliance Rating might be introduced wherein any fall in the rating below a prescribed level will have impact of blacklisting a dealer.

Profiles of blacklisted dealers would be posted in public domain. It may be notified (auto SMS) to all dealers who have pre-registered such dealer as their supplier.

Blacklisting will be done prospectively. Blacklisted GSTINs cannot be uploaded in purchase details. In other words, there will be denial of Input tax credit ('ITC') to buyers on such purchases. ITC reversal in the hands of buyers should take place for disowning any tax invoice with date prior to effect of blacklisting of the dealer. Once blacklisting is lifted, buyers can avail unclaimed ITC subject to such blacklisted dealers uploading the details along with tax and interest

Trigger for blacklisting:

- Continuous default for 3 months in paying ITC that has been reversed.

[Contd. on Page 104]

CA Mandar Telang

Analysis of Report of Joint Committee on Business Processes on GST – Payment

Recently, Empowered Committee released three discussion papers on business processes for GST on 'registration', 'payments' and 'refunds' for public comments. These discussion papers cover the proposed operational part and procedural aspects relating to the aforesaid compliances in detail. Ideally, being compliance procedures (which mainly form part and parcel of delegated legislation), these proposed business processes should be in line with and complete enough to deal with the compliances contemplated under the main GST enactment of Centre and States. However, since model GST Act of Centre and States is not in public domain, it may not be possible at this stage to comment upon its completeness or legality *qua* the proposed principal enactment. This article endeavours to cover and provide general information about the salient features of the proposed business processes relating to 'payments' under GST regime.

Introduction

1. Timely tax collection is the first and foremost objective of any tax law. The process of tax collection should be simple, universal (i.e., accessible to all taxpayers) and cost effective. It should enable the Government to collect tax from all the elements of society which fall under the legitimate tax levy. Recording of tax collection becomes the most important part in the entire collection process. It not only means recording of taxes into the treasuries of the Appropriate Government, but also emphasizes on need for granting timely and appropriate tax credits to individual tax-paying elements for the taxes that they have paid. It's very sorry to see that, the latter part of the transaction recording process (i.e. credit to taxpayer) does not find place in Para 5 of the Report of the Joint Committee on Business Processes for GST – Payments ("Payment Report") which deals with the 'objectives' of the said report. Equally shocking is to read following extract from Para 123 of the report explaining the thought processes of the Joint Committee behind the challan correction mechanism. The para explains a case of an error in challan due to punching of wrong registration number at the time of making payment.

"a) *Error in GSTIN: This may happen in situations where the payment of tax is being made by either authorised representative such as CA or any other person on behalf of the taxpayer.* ***Such kind of error will have no impact on the transfer of the funds to the account of the concerned Governments*** *as the money will be correctly transferred on the basis of CIN. Further once the payment* *confirmation is received by GSTN from the concerned bank then the amount will be credited to the ledger of the taxpayer whose GSTIN is mentioned in the electronic string that is relayed by the bank to GSTIN.. Therefore taking into account both the above factors as well as the fact that Challan has been generated by the taxpayer himself or through his authorized representative* ***and the mistake being committed has no impact on the funds with tax administration, there is no need for providing an error correction mechanism for the same. The authorised representative, acting as agent for the taxpayer should be responsible for the principal for any error committed while performing authorised acts and tax administration should have no role to play in this matter."*** *[Emphasis supplied in Bold]*

Author is of the view that the aforesaid para needs a serious review, as it depicts a narrow minded thought process with less or almost no regard to the tax-payer's satisfaction. If such reasoning is adopted, then there was no need for introducing TDS return correction process under the Income-tax Act, once the amount of TDS was deposited into Government treasuries

2. The Report focuses on maximum use of Information Technology to handle both receipts and payment process as it has been an experience of 'tax administrations' that more the systems and procedures are made electronic, more is the efficiency of tax administration and greater is the satisfaction of taxpayer.(Really.. ?) The proposed IT-driven collection process will also contribute to "Digital India" concept resulting into paperless transactions, faster remittance of tax revenue to Government, convenience of making payment online, electronic reconciliation of all receipts and speedy accounting and reporting.

GST Challan Form

3. Challan is the most important document, when it comes to payment of taxes. The Committee has designed one single challan for making payment of all taxes covered under GST basket. The draft format of challan covers all four types of taxes namely (i) CGST (ii) IGST (iii) Additional Tax and (iv) SGST **[Major heads]**. Different colour codes are used to segregate payments to be made to Union Government and State Government. Every type of tax is further sub-divided into 4 sub-categories namely (a) Tax (b) Interest (c) Penalty and (d) Others **[Minor heads].** Para 95 of the Report provides that, the interest, penalty, fees and other charges, if any, under GST, will need to be accounted for separately. Hence they would be reflected under separate heads in Tax Payment Challan. However, there is no separate column for "fees" in the present challan format. The challan format does not provide for any tax period. In this regard, para 124 of the Payment Report provides that, in view of recommended maintenance of cash ledger, the fields relating to 'tax period' and 'purpose' will not be captured in the challan.

4. From assessee and challan Identification point of view, challan contains following identification numbers which are generated at every stage through which the payment processes.

   - **GSTIN** – This is assessee's registration number under GST which facilitates identification of tax-payer making the payment. After successful payment, the credit of taxes will be reflected against such GSTIN ledger maintained at GSTN Portal.

- **CPIN** – This is a 14-digit (yymm followed by 10-digit) Unique Common Portal Identification Number assigned, only when the challan is finally generated. It facilitates identification of challan for the purpose of reconciliation in the course of clearing and settlement of the transaction. This number is generated by GSTN and it will signify that taxpayer's communication with GSTN portal is complete.

- **BRN/BTN** – This refers to Bank's Reference Number or Bank's Transaction No. This number is generated when transaction with Bank (E-FPB) is complete. It means that Taxpayer's communication with the Banking portal receiving payment is complete.

- **NEFT/RTGS Unique Reference No.** In case of NEFT/RTGS, tax payer can use services of any bank (not necessarily authorised bank) to make a remittance of taxes. In such case, BRN/BTN will be generated by directly by RBI, but only after taxes are remitted to it from remitter bank. In such case BRN will be generated by RBI. The remitter bank will generate Unique Transaction reference Number which will signify that, taxpayer's communication with such remitter bank is complete.

- **CIN** – In the entire payment clearing and settlement process, RBI plays a role of aggregator through its e-Kuber system. When the fact of receipt of tax payment at respective E-FPB is acknowledged by RBI, it will generate a 3 digit MICR based Bank Code linked to every CPIN and will communicate the same to GSTN through the E-FPB bank. Accordingly the concerned bank will create a 17 digit unique Challan Identification Number against CPIN (i.e. 14 digit CPIN + 3 digit Bank Code) and report the same to GSTN / Taxpayer along with its own Unique BRN. Such CIN is an indicator of successful transaction and will be used as the key field for accounting, reconciliation etc. by taxpayers, accounting authorities and tax authorities.

Stakeholders

5. Besides taxpayer, following stakeholders would be involved in the Payment Process:

   - Goods & Service Tax Network (GSTN)
   - Banks [including Electronic Focal Point Branches (e-FPBs) of authorised banks]
   - RBI [Including Central Accounts Section of RBI]
   - State/ Central Accounting Authorities
   - State/ Central Tax Authorities

5.1. **GSTN:** It is a "pass-through portal" that works as a common interface between taxpayers, authorised banks, RBI, accounting authorities and tax authorities. Its broad role in the entire payment process is as under:

   a. Generation of Challan along with CPIN –

   b. Facilitating e-payments by providing a linkage to Internet Banking interface of authorised banks and payment gateway of authorised banks for credit card / debit card based payments.

c. Sending of real time data based on particulars entered into by the taxpayer to authorized banks and receipt of real time data from IT systems (i.e.e-FPBs) of each authorised bank regarding successful completion of payment transaction by taxpayer i.e. CIN.

d. GSTN will also generate a recipt containing BRN Number, of collecting bank for tax-payer acknowledging receipt of payment by bank.

e. Once the amount reflected in the CIN, received from the bank is credited in the cash ledger of the tax payer, GSTN will lock that CIN to prevent its further use.

f. GSTN will provide real time data access to tax authorities for each successful transaction reported by bank.

g. On T+1 basis it would generate file containing all successful challans of the previous day and send it to Accounting Authorities. Further, at the end of day, it will also send details of CPIN generated for the particular day to the accounting authorities of Centre and States for estimation of revenue and fund management.

h. GSTN will also play a major role in system based reconciliation of data available with it *vis-a-vis* the data provided to it by RBI and communicate the reconciliation back to RBI and accounting authorities for rectification through memorandum of errors (MOEs).

5.2. **E-FPBs of Authorised Banks:** There will be a single e-FPB for each authorised bank for the entire country. All the payments made through internet banking / credit card / debit card or OTC payments will be credited to the head-wise accounts maintained at each e-FPB. Each e-FPB will open a major head-wise account of each Government. There will be 39 such Major Head Wise Accounts (29 for States, 7 for Union Territories & 3 for CGST, IGST and Additional Tax). As regards Additional GST, if it is decided that the tax will be collected by the respective State Government and retained by them, separate accounts for every State will have to be maintained. E-FPBs broad role in the entire payment process is as under:

a. Generating BRN/BTN

b. Sending real time data regarding successful completion of payment transaction by the taxpayer. (CIN).

c. On T+1 basis it would generate a major head-wise luggage file (with a Unique Serial No.) containing Government detailing receipts from all modes of payment on a particular day and send it to RBI and also to Accounting Authorities of Centre and each State (if the accounting authorities so desire).

d. At the end of every month it will prepare date-wise monthly statements (DMS) for each tax and Government and provide it to RBI and respective Government authorities if they desire so.

Minimum requirements to be met by a bank for being authorized for GST remittances are recommended in para 85 of the Report.

5.3. **RBI** – As mentioned above, RBI will act as an aggregator in the payment clearing and settlement process. As a sole banker of the Government, all the tax collection will ultimately be credited to Government Accounts with RBI. Hence, RBI will be the single source information for credit of the receipts to the Government Accounts and thereby simplifying accounting and reconciliation. Role of RBI is summarised below:

a. It will consolidate the luggage files received from e-FPBs of authorised banks, debit their accounts and correspondingly credit the CGST, IGST, Additional Tax accounts of Government of India and SGST account of each State/UT Government maintained by RBI.

b. As regards payments through NEFT/RTGS, RBI will directly act as authorized bank and give BRN/BTN.

c. RBI would send information in the form of digitally signed electronic scrolls to (after including therein transaction referred to in (b) above) to accounting authorities & to GSTN on daily basis. Generation of e-scrolls would signify the actual credit in the Government account. On receipt of consolidated transaction e-scrolls from RBI, GSTN would undertake preliminary system-based reconciliation and forward the same to the respective accounting authorities and to RBI on the same day. If any discrepancy is reported by Accounting Authority or GSTN, RBI would carry out correction mechanism with the authorised bank and thereafter report the corrected data to respective Accounting authorities and GSTN.

d. Central Accounts Section (CAS), Nagpur of RBI reports daily consolidated credits and debits to each Government and accounting authorities. GST credit will be one of the items reported by CAS in its daily statements. The scroll numbers mentioned above would be used by Accounting Authorities as credit identifier.

5.4. State/Central Accounting Authorities

i. Electronic Pay and Accounts Officer (e-PAO) of Centre and e-Treasuries of State Government

These Accounting authorities get various reports from various participants as under:

Sr. No.	Participant Sending Report	Type of Report	Timing
1	GSTN	Details of CPIN generated by GSTN for a particular day	T + 0 (EOD)
2	GSTN	Consolidated file of entire details of successful challans (bearing CIN)	T +1 (Morning)
3	GSTN	Result of Reconciliation by GSTN with the Bank's Consolidated Digitally Signed e-Scroll received by it from RBI and its Own Data	T + 1
4	E-FPB	Daily Luggage Files Major Head-Wise [bearing Unique Serial Number] detailing receipts from all modes of payments on a particular day	T +1 (Morning)

5	E-FAB	Date-wise Monthly Statements (DMS) for the preceding month	First day of every month
6	RBI	Bank's Consolidated Digitally Signed e-Scroll (along with challan details) pertaining to successful transaction of previous day	T+1
7	Tax Authorities	TAXPAYER Master which would be used by the Accounting Authorities for mapping the challan details with appropriate jurisdiction so as to enable the Government to determine revenue from each formation	Real Time Update

Their role is summarised below:

a. They will reconcile the challan details received from GSTN [Sr. No.(2) above] with the e-scroll information received from RBI [Sr.No.(6) above]. Readers may note that, report of same reconciliation done by GSTN [Sr.No.3 above] is also taken into account by e-PAO and e-Treasuries since it acts as additional validation in the reconciliation process.

b. They will also provide CIN-wise challan payment details to Tax Authorities daily or periodically for departmental reconciliation and for updating tax authorities database that the tax has been accounted for in Government's books.

c. They will provide verified Date-wise Monthly Statements (DMS) to Principal Chief Controller of Accounts, CBEC and Accounts General of States.

ii. Principal Chief Controller of Accounts, CBEC and Accounts General of States

They will reconcile DMS received from e-PAO and e-Treasuries with daily statements received from CAS of RBI, consolidate the total collection and forward the same to the office of CGA for further consolidation.

Modes of payment

6. Four modes of payments are proposed in the Report:

i. **Payment using internet banking through authorised bank or credit card / debit card** – The operational processes involved in each mode of payment are explained in the payment report in detailed manner. While most of us are already familiar with payment through internet banking, which is fastest and effective mode of payment; in case of payment by credit card, the taxpayer may be required to pre-register his credit card.

ii. **Over the Counter (OTC) payment through authorised bank** - It is proposed to restrict OTC payment mode for payments up-to ₹ 10,000 per challan only. OTC would include payments through cash, cheque or DD. Outstation cheques will be accepted only when they are payable at par at all branches of bank. Since system of manual challan will be discontinued and all the challans will be generated electronically through GSTN, in case of OTC mode of payment, taxpayer will have to first generate the challan by putting the relevant details into the GSTN system. At the time of generating challan, taxpayer may not have details of instrument, hence entry of instrument details is not a mandatory field in challan form. GSTN will provide a facility of saving the challan before finalisation. In such case, challan can be partially filled up and saved into the system and can be accessed at later point of time for finalisation. After the challan is generated, it will carry CPIN and the details on the same would not be allowed to be modified. Such CPIN will remain valid for 7 days. Hence tax-payer will be required to deposit the payment with the authorised bank within such period. If the challan has crossed its validity period of seven days, the bank's system will itself bar the acceptance of payment. After the challan is deposited into the authorised bank, the bank will generate its BRN. The report at Para 39 explicitly mentions that in such cases, although authorised bank branch would be permitted to accept the GST receipts, the credit should always be to the GST account maintained and operated by e-FPB. In case of cash payments or same bank's instruments, the payment would be realised immediately and CIN will be generated immediately at the authorised bank's system. In case an instrument drawn on another bank in the same city, the payment would not be realised immediately and hence CIN would not be generated. In such case, cashier should write system-generated acknowledgment number on the challan. As per para 43 of the report, it would not be necessary for taxpayer to visit the bank again for getting CIN as the same will be communicated to him from GSTN. However, if he does not receive any communication from GSTN within 3 days, he should visit the bank to ascertain the status of his report. If GST law provides, GSTN may provide for a mechanism to debar the taxpayers from availing OTC mode of payment, whose cheques have once bounced.

GST challan provides for payment for multiple taxes in one single challan. However, can payment be made by one single instrument or whether different cheques/DD be required to be issued depending upon the nature of tax (since the amount is required to be credited in 4 different accounts maintained by the bank)? Committee has discussed this issue in Para 37 of the Payment Report and has suggested that, in the interest of facilitating ease of payment, each e-FPB should maintain a GST pool account, so that taxpayer can issue only one instrument which will be written in the name of GST pool account of the concerned bank. At Para 91, it is categorically mentioned that, except in the case of remittance through any authorized bank including non-agency bank where the funds have to necessarily come to a designated account in RBI, there should not be mix-up of the funds belonging to two Governments. Accordingly appropriate safeguards are suggested in Para 37 of the report for segregation of GST common pool into respective accounts.

iii. **Payment through NEFT/RTGS from any bank** – Such mode of payment becomes applicable when taxpayer's bank is not authorised by the Government to accept the GST receipts. The payment process will be similar to that of OTC transaction. Taxpayer will have to generate Online Challan. The challan so generated will have CPIN and also NEFT/RTGS mandate associated with it. This mandate will contain NEFT/RTGS pooling bank account details (i.e. RBI) along with IFSC code of remitter bank. In this mode of payment, RBI would directly act as authorised bank. GSTN will remit the details of challan to RBI on real time basis. The CPIN and ECS mandate would be valid for 7 days within which payment is to be tendered, but will remain live with RBI for 30 days. The payment in this mode would be permitted only against cheque and no cash payments would be permitted to initiate NEFT/RTGS transactions. Reason for the same is however not clear. On receipt of amount, the remitter bank should generate UTR and convey the same to the taxpayer. The remitter bank would be required to transfer the amount to the designated account of the government in RBI along with the UTR. Taxpayer should thereafter login into GSTN portal and update the challan details with UTR. GSTN will then transfer the UTR details to RBI on real time basis. Once the RBI receives the payment in its account with NEFT / RTGS message, it will link up the payment with CPIN earlier received, generate the BRN and report the transaction to GSTN on real time basis generating CIN. Any payment received by RBI after 30 days would however be refunded by RBI to remitter bank.

iv. **Payment across the counter:** In exceptional cases (during the course of enforcement and anti-evasion investigation), the GST law may permit departmental officers to accept deposit of taxes and issue receipt to taxpayer. If the concerned person is not registered, departmental officer will create a temporary GSTIN which will be generated through separate module in GSTN common portal. Officer would then be required to generate challan using GSTN and deposit the amount to government. Temporary GSTIN will be subsequently linked to permanent GSTIN allotted to such taxpayer.

7. Salient features of the payment process explained above can be summarised as under:

(i) Challan will be generated electronically in all cases.

(ii) Any agency handling the payment process will merely add its unique ID and parameter to basic data received by it from another agency earlier in the work-flow chain and thereafter pass on the data to the agency next in the chain.

(iii) GSTN will have the primary anchor position in the payment process with responsibility for information flow to various agencies whereas RBI will have the primary anchor's role in relation to fund flow, information flow about receipts and correction of discrepancies noticed during reconciliation process.

(iv) There will be to and fro data transmission between GSTN, e-FPB of Authorised Banks, banks other than authorised banks (in case of NEFT/RTGS mode of payment), RBI, Accounting Authorities and Tax Authorities. GSTN and RBI will have the entire data of successful challans (CIN), which will form the basis of reconciliation.

(v) CIN will be sole indicator of the receipt of actual payment made by the taxpayer whereas transactions reported by RBI through e-scrolls would form basis of accounting.

Errors and Challan Correction Mechanism

8. The Payment Report has contemplated 3 possibilities of error *vis-a-vis* need for challan correction.

   (i) **Wrong quoting of GSTIN by taxpayer's authorised representative** – As mentioned above, a view has been expressed in the report, that no correction is warranted in this case since there is no impact on Government's tax collection. In author's view, such cases should definitely be addressed through appropriate correction mechanism. The automatic correction through GSTN portal may not be feasible in all such cases, as it might require the verification of genuineness of taxpayer's claim. However, GSTN should permit online correction if such request is generated from the Tax-payer's login whose GSTIN was erroneously quoted in the previous challan and if a matching request quoting the said request ID is also made from another Taxpayer's login, to whom credit of such amount should have been granted. Appropriate validation checks at the end of original GSTIN holder and new GSTIN holder may be incorporated to prevent misuse of this suggested facility. The GSTN may additionally ask for digitally signed NOC/ Affidavit of the account holder from whose bank accounts such erroneous payment had been made. In other cases, taxpayer may apply for refund.

   (ii) **Error in Major Heads** – The report envisages a situation where the amount has been credited to the wrong head of tax code due to mistake of the bank. However, the Report does not discuss the situation where such error happens at tax-payer's end at the time of processing tax payment. Such error can happen especially since the electronic challan permits the assessee to make payment of all taxes by a single challan. It is suggested that, challan correction may be permitted in such case if total challan amount remains unchanged.

   (iii) **Error in amount** – The report provides that, if the amount paid is in excess, then there is a provision for either claim of refund by the taxpayer or the amount can be carried forward to the next period and hence no correction mechanism is required.

9. CIN neither transmitted to GSTN nor conveyed in luggage files from Authorised banks to RBI and therefore not included in e-scrolls received from RBI

The report has also discussed the possibility of error in each leg of communication in Paras 105 to 120. These errors are not discussed here since tax-payer is not expected to play any role in such cases. However, Para No.117 assumes importance in this regard. It covers a case, where taxpayer has properly paid taxes into the Government account through authorised / non-authorised banks but the same has neither been reported to GSTN nor to RBI, thereby eliminating the transaction from system itself. This error will reflect a system failure at two ends and hence will never be captured in reconciliation process. The error will be noticed only when the taxpayer on not receiving a credit information SMS from GSTN or on not finding credit in his ledger informs GSTN. In such case following is expected out of tax-payer

a. In case of OTC payment through cash or instrument of the same bank, CIN would be available with the taxpayer and hence he should inform the GSTN the details of his CIN,

b. In case of OTC payment through authorized banks by instruments of other banks, CIN would not be reported, but taxpayer may be provided with GSTN generated acknowledgment number. Same can be used for tracing purposes. Similarly in case of NEFT/RTGC mode, UTR generated by remitter bank can be used for the purpose of identifying the transaction.

Under the scheme, each Authorised bank should have one or more service branch in each State to serve as GST help desk and receive queries / e-mails to resolve the issues from taxpayers, tax authorities and tax-administrators.

Conclusion

The Payment Report spread over 127 Paragraphs is a detailed discussion paper explaining the entire anatomy of the payment processing and its recording in IT driven manner. Although the final set of procedures may undergo several changes, the paper in its present form certainly helps in creating a background information behind the proposed GST infrastructure, and thus will serve as a useful reference in future.

Contd. from Page 94

- Continuous default for 3 months or any 3 month period over duration of 12 months in uploading sales details leading to reversal of ITC.
- Continuous short reporting of sales beyond a prescribed limit of 5% of total sales for a period of 6 months.

Analysis, implications and representation

This proposed scheme will inflict undue hardship to the *bona fide* dealers. This will lead to utter chaos and will hamper smooth flow of credit and thereby adversely affecting business and defeating the very purpose of GST i.e. ease of doing business.

The recovery of non-payment of tax by black listed dealers should be the responsibility of government and citizen should not be penalised for the same. Provisions as existing under the Excise/ Service tax law should be adopted.

Conclusion

This Report on Registration procedure gives the glimpses of GST legislation in making. Nation expects legislators to draft GST legislation by following best practices available by picking up benevolent, taxpayer friendly and just provisions from VAT, excise, and service tax legislation.

However, careful perusal of JC report give feeling that GST legislation is being drafted from tax administration perspective i.e. ease of tax collection, revenue targets, onus shifting to the taxpayer etc. it appears that in this law making process, interest of tax payer (main stakeholder) is being compromised. There is serious concern that GST legislation might adopt existing unjust, unfair and stringent provisions of present legislations which are subsumed in GST. Will the remedy (GST) will be worse than a disease (present indirect taxation system). Let us hope and pray that GST really becomes 'Game Changer' for nation and 'Welcome tax reforms' for citizens of the nation.

CA Mandar Telang

Analysis of the Report of Joint Committee on Business Processes for GST – Refund

1. Introduction

Joint Committee has recently released a discussion paper compiling its recommendations on Refund processes in GST regime. The Report titled "Report of the Joint Committee on Business Processes for GST on Refund Processes in GST regime" (Refund Report) runs into several pages and broadly covers the following aspects:

- Situations where refund would arise
- Refund Forms
- Time Period for filing Refund
- Supporting Documents in various cases
- Manner and timeframe in which refund applications may be scrutinised by Revenue authorities
- Interest on Refund
- Adjustment and Recovery of erroneous refund.

The purpose of this article is to cover the significant aspects covered in Refund Report and provide general information to the readers, about proposed refund processes under GST.

2. Adjustments and Excess Credits

(i) The report in para 2.1 acknowledges that, in the present taxation system, refund is considered as a strained area, both for the taxpayer and the tax administration. So in order to establish an effective and efficient tax administration system, it is essential that issue on which refund arises ought to be kept at minimum and clearly defined in the law. It would mean that refund should be treated as a last resort when, recourse to adjustments and 'excess credit' adjustments cannot be taken. The 'adjustment' would mean the setting off of refundable taxes against existing outstanding tax liability, and 'excess credit' would mean permission to use the refundable taxes against future tax liability.

(ii) As regards 'adjustments', para 15 of the Report provides for adjusting the refund claim against any amount of unstayed confirmed demand lying beyond the appeal period. The refund order may clearly state the amount so adjusted and particulars of adjusted demands. The Report is silent as to whether such adjustment should be made *suo-motu* by the Refund authorities or after giving the applicant opportunity of being heard.

Regarding 'excess credit' i.e. permission to use refundable taxes against future tax liability, some deliberations are made in para 2.1 (A)(vi) of the Refund Report. The discussion in the said paragraph is with reference to excess tax paid by taxpayer by mistake or through inadvertence by wrong mentioning of tax amount. It provides that where the amount has been mentioned wrongly, the refund of excess amount of tax, at the option of the taxpayer, would either be automatically carried forward for adjustment against future tax liabilities or be refunded on submission of application (return itself can be treated as a refund application) by the taxpayer. The automatic carried forward would be allowed if the excess payment was made against a return and not against any other liability. For this purpose, the Committee has suggested that, IT system should be in a position to make distinction between payment linked to return and payment in response to a specific demand arising out of audit. However, there is no specific field in the challan for this purpose. The GST law may provide for automatic set off if the excess payment of tax is not on account of difference of opinion between tax administration and the taxpayer. The GST law may also lay down time limit within which the excess amount of tax, as reflected in the return filed by a taxpayer for the relevant period, can be recredited *suo motu* and can be utilized by the taxpayer for payment of future tax-liability.

(iii) It therefore appears that, the self-adjustment of excess tax paid is permissible only if the following conditions are satisfied:

- Such excess payment shall be reflected in the return filed by the assessee as refund due.
- The excess payment should not have been made against a liability which is litigation prone due to differences of opinion between taxpayer and tax administrator.
- There may be time restriction for utilising such excess tax payment against future tax liability.

We must suggest that, keeping in view the objective of this Refund Report (i.e., reducing possibility of refund cases); adjustment of excess credit, may at the option of the assessee be permitted in more cases, and without keeping any restrictions mentioned above. Further, only in cases where adjustment exceeds a particular threshold should be taken up for detailed scrutiny.

3. Unjust Enrichment

At the outset, principle of "unjust enrichment" must be kept in mind while studying this Refund Report which is discussed at para 10 of this report. As GST is indirect tax levy, there is always a rebuttable presumption that the tax has been passed on to the ultimate consumer by the applicant. The burden of proof would always be on the applicant. Hence in all such cases, the Report recommends that Certificate of a Chartered Accountant certifying the fact of non-passing of the GST burden by the taxpayer must be submitted as a supporting document. The Committee has also suggested for keeping a threshold amount below which self-certification by the applicant himself would be sufficient. In all such cases, where test of unjust enrichment is not satisfied by the applicant, refund will not be granted.

The Report however provides for application for refund by ultimate customer in certain cases such as Deemed Export / UN Bodies/ International tourists etc. However, report is silent as to application by the end-consumer where taxes are collected from him, due to mistake of law or inadvertence.

4. Situations where refund would arise

The report discusses following nine situations which may result in refund of taxes (CGST, SGST & IGST) or amount paid as taxes. There is nothing in the report to suggest the refund of additional GST.

4.1. Excess payment of tax due to mistake or inadvertence – This refers to the situation where the taxpayer has made excess

The Report identifies three cases in which the said situation of excess tax payment may arise.

a) Wrong mention of major head of tax in challan (CGST/SGST/IGST)

b) Wrong mention of GSTIN

c) Wrong mention of tax amount.

As regards, first two situations, it is felt that recourse to refund provisions may be taken only if challan option of correction mechanism fails to address the issue. At present, no challan correction mechanism is contemplated in such cases. (Refer Para 123 of Report on Business Processes relating to Payments). However, this decision of the joint committee may be reconsidered keeping in view the difficulties experienced in the refund adjudication process. As regards the third situation, as stated above in Para 2(iii), the option of excess credit adjustment is provided only in limited cases.

Excess payment may occur not only due to error in punching the challan amount, but also due to calculation error, Ex: non-consideration of available Input Tax Credit (ITC) leading to excess cash payment. In such cases also, author is of the view that, self adjustment may be permitted by incorporating suitable reporting columns in the form of return.

Readers may note that, the principle of 'unjust enrichment' does not apply in cases where tax liability remains unchanged and the excess tax payment is resulted only due to error while discharging such tax liability to the Government. In all such cases, we should suggest that, 'self adjustment of excess credit route' may be permitted at the option of the assessee, without making any differentiation between payment by cash or ITC.

4.2. Refund of carry forward input tax credit

ITC is allowed to remove cascading effect and under modern VAT laws, tax is charged on value addition only and tax is not charged on tax. Therefore only, ultimate customer would be liable to bear the tax burden. In the hands of vendor/ supplier, ITC may be accumulated due to following reasons:

(a) Stock Accumulation

(b) Capital goods

(c) Inverted Duty Structure

(d) Partial Reverse Charge Mechanism (RCM) for certain services

In the first two cases, committee has recommended that GST law may provide that refund of carried forward ITC may not be allowed and such amount would be required to be used against tax liability on final output. As regards Inverted Duty Structure and cases involving partial RCM, refund may be granted subject to provisions of GST law. Committee has recommended that, suitable linkage between the refund application and blocking of "carry forward ITC" in the return/input tax credit account should be built in GSTN and refund back-end processing system, either by blocking the utilisation of such ITC at the time of submission of application for refund itself or by debiting the input tax credit account / cash ledger, at the time of issuance of sanction order. It appears that no refund would be permitted for ITC accumulated under full RCM cases.

4.3. Export Refunds

(i) Export of goods/services should be zero-rated which means that they would not suffer any actual tax liability, although inputs/input services for them would be tax paid. So there should be a mechanism to refund taxes paid by the exporter either on 'inputs' or on 'final product' to be exported, either in cash or by utilising ITC. Committee has recommended that, for simple, effective and hassle free refund claims, it's essential to devise a system based verification mechanism with minimum human intervention. It's recommended that linkage between GSTN and ICEGATE of customs administration may be established, so that online verification of the exports can be carried out. (Such linkage would any way be required to check that in case of imports IGST has been paid).

(ii) As per IGST model, there is a requirement for online filing of invoice wise sale/purchase details by the taxpayer along with monthly tax returns. The committee has recommended linking of these details with ICEGATE (in export cases). This would obviate the requirement of submitting copy of invoice for refund application (to verify if taxes are paid on final export products, or as the case may be on inputs). Further, as a result of proposed linkage between the two systems, shipping bill and packing list would be verified online. The time limit for filing refund application is generally linked to the date on which the proper officer under Customs gives "Let Export Order". This date can also be verified online. Hence only following documents would be required to be filed separately for refund application:

(a) Mate's Receipt / Transporter's challan

(b) Bill of Lading / Air-way Bill.

(c) Bank Realisation Certificate (BRC)

(iii) BRC may not be available, till the export proceeds are realized for which there is a statutory period of one year (as per RBI Guidelines). Hence Committee has recommended that, in case of export of goods, submission of BRC may not be insisted at the time of filing of refund application and *post facto* verification can be carried out by tax authorities. For this purpose, e-BRC module may be integrated in the Refund Process. If before the expiry of statutory time period, BRCs are not uploaded on the refund portal, it should generate alert/report for the concerned tax authorities to take up appropriate action.

(iv) However, in case of export of services, invoice & BRC would be the only documents that can substantiate the occurrence of export. Hence, Committee has recommended that, in the case of export of services, BRC would be required before sanction of the refund of GST paid on inputs (input services) / rebate of GST paid on exported services. There appears to be no solid reason for keeping the refund in abeyance till receipt of BRC, as the system of post verification of BRC stated above can also be made applicable to export of services.

(v) In case of taxes pertaining to final product, once the GST paid character of exported goods/ service is established, refund can be sanctioned. However, in case of refund of taxes on inputs/ input services, it is also necessary to verify their utilisation *qua* the exported goods/services. Therefore, in such case, a declaration to that effect, may be required to be filed by the applicant with proper officer declaring, *inter-alia*, input-output ratio for inputs on which refund is sought. Further, a simple formula can be adopted that will provide for proportionate credit based on export turnover divided by total turnover.

(vi) Committee has recommended that option to procure duty-free inputs may not be available in GST.

4.4. Deemed Exports

The concept of 'deemed export' is listed in Chapter 8 of the Foreign Trade Policy. Supplier of the domestically produced duty paid goods can seek refund of certain taxes paid on such goods as well as duty paid on inputs used in the manufacture of such goods, if they are supplied to EOUs/SEZs/Projects under International Competitive Bidding/ Mega Power Plants/ World Bank Funded Projects etc. The process of refund in case of deemed export would apply *mutatis mutandis* in the case of exports. The supplier of final goods, in the course of deemed export, will pay the IGST on his supplies and claim refund only if, the IGST amount has not been collected from the recipient. In such case recipient would not be entitled to avail any ITC thereof. If burden of IGST is passed on to the recipient, then the recipient would be eligible for refund of IGST. The committee has recommended that, a suitable validation to block such double claim should be built in the GSTN/ refund processing back-end system. In order to claim refund, it's not necessary for such recipients to be registered under GST. Hence, they would have to submit the copies of all invoices, etc. in case claim of refund is filed by them.

4.5. Tax Credit in respect of inputs used for manufacturing / generation / production/ creation of tax-free supplies or non-GST supplies, whether allowable?

The committee has expressed a view that, the GST design do not intend to exempt all the inputs/input services, if the final product manufactured/ produced using such inputs is either exempted or Nil rated (it should not include "exports"). The Committee has therefore recommended that, model GST law may provide that tax credits on the inputs (including input services or capital goods) used for supply of exempted / NIL rated / Non-GST goods or services should be treated as "ineligible ITC" and there should be appropriate provision in the return to provide the related invoice details. In case of mixed supplies, ITC may be allowed proportionately. The Committee has further recommended that, GST law may provide for full scope of other types of ineligible ITC such as those used in creation of capital assets/ goods etc. It appears that ineligible ITC would accrue to the importing States (consumption States) in accordance with place of supply rules. The mechanism for flow of such funds (attributable to ineligible ITC) to the importing State by way of system based apportionment in a consistent manner may be decided as a part of the return process.

At the outset, we must suggest that, the instances of "ineligible ITC" should be minimised under the GST regime and the same may be restricted only to inputs / input services or capital goods which are used exclusively for non-GST supplies (as distinguished from zero rated supplies). However, considering that the Refund Report merely deals with procedural and operational aspects and not the policy/law making aspects, appropriate recommendations mat be made in this regard in the draft Model GST law & rules, when the same will be released for public comments.

4.6. Other cases

(i) In many cases, suppliers follow year end and volume based discounts model, by issuing credit notes to its purchasers at the year end. Such practice results in reduction of tax liability at supplier's end and reduction of ITC at receiver's end. Committee has recommended that suitable provisions in this regard may be made in GST law for such discounts are trade practice and will have to be permitted in the GST regime. Author is of the view that, in such cases, self adjustment of taxes may be permitted, and refund route may be taken as a last resort at the option of the assessee.

(ii) Refund situation may also arise in the case of (a) provisional assessment or (b) refund of mandatory pre-deposit (made during the filing of appeal) arising in pursuance of appellate authorities order in assessee's favour or (c) taxes paid during investigation but no/less tax liability arises at the time of finalisation of adjudication order. As regards (b) & (c) the refund may not be kept in abeyance if the appellate/ adjudicating authority's order (in pursuance of which refund arises) is appealed against at the next higher appellate forum. However, GST law may provide for certain pre-defined period during which refund may not be granted which can be regarded as mandatory waiting period (during which authorities may file appeal and obtain stay against the order directing refund). Further GST law may provide for granting powers to senior jurisdictional authority for withholding refund, in exceptional cases, on the condition that, interest at appropriate rate has been paid.

(iii) GST law may make provisions enabling UN bodies/ CSD Canteens/ Para-Military Canteens to apply for refund. The process contemplates assigning a unique identification number (ID) to them, for this purpose. The GST law may also make provision for tax refund for international tourists.

5. Time Limit for filing of Refund Claim

(i) It's an established principle that, period of limitation prescribed for recovery of money paid under a mistake of law is three years from the date when mistake is known, be it 100 years from the date of payment. Thus if any amount is collected erroneously representing as tax which is not in force on the transaction in dispute, there is no time bar to the return of such amounts and the application for refund can be made after the mistake is known. The statutory time limit becomes applicable only in cases where amount to be refunded partakes the character of tax and such refund is arising out of tax incentive measures.

(ii) Committee has recommended time limit of one year from the relevant date for the purpose of filing of refund application. When the refund arises on account of excess payment of GST due to mistake or inadvertence, relevant date is proposed to be the date of payment, which is in direct contradiction with the principle stated above.

(iii) In case of export of goods, relevant date for the purpose of refund application (arising either due to refund of taxes paid on inputs or on final export product) would be the date on which proper officer gives "Let Export Order". However, in case of services, relevant date would be the date of BRC or date of export invoice whichever is later.

(iv) In case of provisional assessment, if refund arises, relevant date for application of refund would be the date of finalization of assessment order. Author is of the view that, in such cases, there is no need for a separate application and the refund may be directed immediately upon finalization of assessment.

(v) In case of amount paid as mandatory pre-deposit in the course of appeal hearing or amount deposited under protest during investigation, the relevant date for application of refund would be the date of communication of order of Appellate authority or adjudication order, as the case may be.

(vi) Where refund arises due to accumulated credit of taxes paid under partial reverse charge, relevant date would be the date of invoice. In this case, we should suggest that, relevant date could be the 'date of payment of taxes' or date of invoice whichever is later.

(vii) Similarly in case of refunds arising out of applications to be made by

Embassies or UN bodies or CSD Canteen etc., the relevant date would be the date of payment of taxes i.e., the date on which the suppliers are paid for their supplies.

(viii) In case of refund arising due to accumulated credit due to inverted duty structure, relevant date would be the last day of financial year.

The author is of the view that, time limit for refund application should be increased to 2 years from the relevant date. Further, a provision may be incorporated in the GST law itself, empowering senior level tax authority, for condonation of delay, in case the refund application is barred by limitation.

6. Interest on Refund

Committee has recommended interest at the rate of 6% in case of delayed payment of refund. It is proposed that, the GST law may provide for a prescribed time limit of 90 days from the date of refund application complete in all respects, within which refund has to be paid. The GST law may also provide that the interest will accrue from the last date when refund should have been sanctioned, even when refund is ordered to be paid by the order of Appellate authority in the appeal filed by the applicant against order of rejection passed by the refund sanctioning authority. This would discourage refund sanctioning authority from rejecting refund claims of frivolous grounds.

Author is of the view that the rate of interest of 6% appears to be too low for refund, especially where interest for delayed payment of tax liability is proposed to be 18% (or shall I say minimum 18%?). One of the reasons for low interest rates is that overpaid taxes are in the nature of State borrowings and hence interest rate should be lesser than market interest rate to discourage intentional overpaying. Another reason could be delays attributable to business processes relating to refund. It is increasingly felt that where payment of taxes and consequential interest thereon takes place during investigation or in respect of disputed tax liabilities, the entire amount of resulting refund (i.e. tax plus interest demanded on alleged non-payment of taxes) should qualify for interest. In such cases, difference between interest on refund and interest on outstanding tax liability should not be more than 2%. (This would obviate the possibility of frivolous and high-pitched demands). While in other cases, the gap must not exceed 3-5%.

7. General

(i) Committee has recommended that the State Tax authorities shall deal with SGST refund and Central Tax authorities shall deal with refund of CGST and IGST. Therefore, in case of exports where IGST would be applicable, refund would be paid by Central Tax authorities. However in case of refund related to inputs/input services attributable to such export, the refund of CGST, SGST or IGST may arise and the same needs to be paid by the respective tax administration.

(ii) The applicant shall be given option of filing refund application through the GSTN portal or through the respective State/Central Tax Portal. In case refund arises in different tax jurisdictions, it may be beneficial to file the same through GSTN instead of filing applications with different tax authorities. The application filed at GSTN portal will be forwarded to respective tax authorities.

(iii) In case refund arises due to excess payment through inadvertence or mistake, return itself would be treated as refund application.

(iv) A suitable validation to block use of same tax invoice for more than one refund claim would be built in the GSTN/refund processing back-end system. Further, "carry forward input tax credit" in the return / cash ledger would be reduced automatically, if the application is filed on GSTN portal itself. Similar validation checks would be incorporated on respective Central/State tax portals. On filing refund application, applicant will be provided with an acknowledgment number. Once the refund application is found to be complete in all respect, the same may be communicated to applicant *via* SMS and e-mail and the date of such communication shall be considered as the relevant date for the purpose of time-line prescribed for sanctioning the refund and initiation of interest clause.

(v) There may be certain goods on which Custom export duty may be leviable. It is recommended that, in such cases refund of ITC of GST paid on inputs /input services used for such exported goods may not be admissible, since such goods would not qualify for export incentives.

(vi) Due to system based refund verification, requirement of submitting documents like challans, copy of invoices with refund claim may be dispensed with/ restricted to exceptional cases. It appears that, the monthly statements of sale and purchase to be filed along with the return by dealers in GST would play a significant role in grant of refund. There is no however no mention in the Refund Report as to the procedure to be adopted in case of mismatch of entries. Therefore this area is going to be crucial in refund operations.

(vii) The Refund report also provides for review of processed refunds (post refund audits), system of compliance rating, pre-audit refund etc.

Conclusion

In developing countries like India, refunds under the tax-laws are broadly policy driven. Such policies are reflected in the statutes (including taxing statutes) governing the business transactions. Processes mentioned above are neither laws nor rules, but merely a set of instructions at operational levels. However, processes play a vital role in accomplishment of the policy objectives. We all know that the "ease of doing business" is perceived to be the most sought after policy objective of the current Government. It is for this purpose, our suggestions in tailoring these processes would play a major participatory role in policy making. Some suggestions are already incorporated in this article, which the readers may may give a thought before converting some / all of them into legal representations.

CA Bakul Mody

GST – Opportunities For Professionals

I Preliminary

GST is the biggest tax reform post independence, which is set to replace, the complex indirect tax regime currently being administered by the Centre, States and Local Authorities. GST is not only a tax reform but a business reform, which as per study conducted by National Council of Applied Economic Research, if implemented in the true spirit could boost GDP anywhere between 0.9% to 1.7%.

Regulatory reforms require studied & thoughtful considerations. Designing a tax system to streamline the prevalent complex indirect tax structure takes comprehensive dialogue, informed analysis, and time as well. The biggest challenge for GST and the Trade and Industry & Taxpayers generally is determining how this array of regulatory activities will affect their organisations and, as a result, anticipate the imminent changes they need to make and those they can put on a long-term plan. Trade & Industry can look to available guidance and regulatory trends to begin work to strengthen their risk controls and exercise prudent oversight.

Tax Regulators would focus towards the revenue neutrality of the tax rate, increasing investments, risk management in terms of revenue leakage, and capital management. The full spectrum of risks-revenue leakage, compliance costs, concentration risk, and the like and the processes in place to mitigate them will be part of the focus as seen through a regulatory microscope.

Considering the far reaching implications GST is likely to have, the need to demonstrate effective management of GST is paramount. Within the said risk management framework, there are many areas where trade & industry can build on existing sound practices. For example, the Corporate Boards and Senior Management can review their responsibilities and emphasize their accountability to manage organizational risks, even as they keep pace with innovation and changes in business models.

Introduction of GST is likely to create huge opportunities for professionals in the field of Indirect Taxation as well as other related areas like IT & Management / Business Consulting, before as well as after, introduction of GST.

The areas of opportunities for Professionals are elaborated hereafter.

II GST Specific areas of Opportunities for Professionals

2.1 Impact Review

- Detailed Study of GST Impact Analysis on an Organisation and recommend time bound course of actions

2.2 Policy related

- Evaluate procurement decisions (Domestic Supplies v Imports)
- Conduct Cost – Benefit analysis of inter-State vis-a-vis intra State transaction structuring and recommend changes (if required) in Supply Chain Management
- Study implications on existing units located in Tax Exempt Zones & units proposed to be set up in Tax Exempt Zones (Post GST)
- Analyse impact of Input Tax Credit Mechanism under GST & need for business restructuring (if required)
- Assess impact of Place of Supply Rules & Point of Taxation Rules and Reporting Changes that may be required in business processes
- Review Tax Clauses of existing agreements / contracts & advise on commercial terms (post GST) in the proposed agreements / contracts

2.3 Training & Orientation

- Evolve & participate in training & orientation programmes for senior executives & other employees

2.4 IT Infrastructure, Accounting & Compliance

- Advise on Financial and IT Systems to be put in place to ensure correct compliance under GST Regime
- Identify changes that business processes would have to undergo, in particular the accounting systems actually dealing with the changes, to the treatment of transactions and reporting obligations under GST Regime
- Advise on changes in invoicing, records maintenance, filing of returns & compliances generally under GST Regime
- Advise on compliances in regard to e-commerce transactions under the GST Regime

2.5 Business Processes and Accounting Systems

- Advise in implementing changes to be carried out in Business Processes & Accounting Systems

2.6 Team Efforts

- Advise on building GST Teams (Consisting of personnel from Tax & Finance and System Specialists) and responsibilities for GST implementation

2.7 Cash Flow & Working Capital

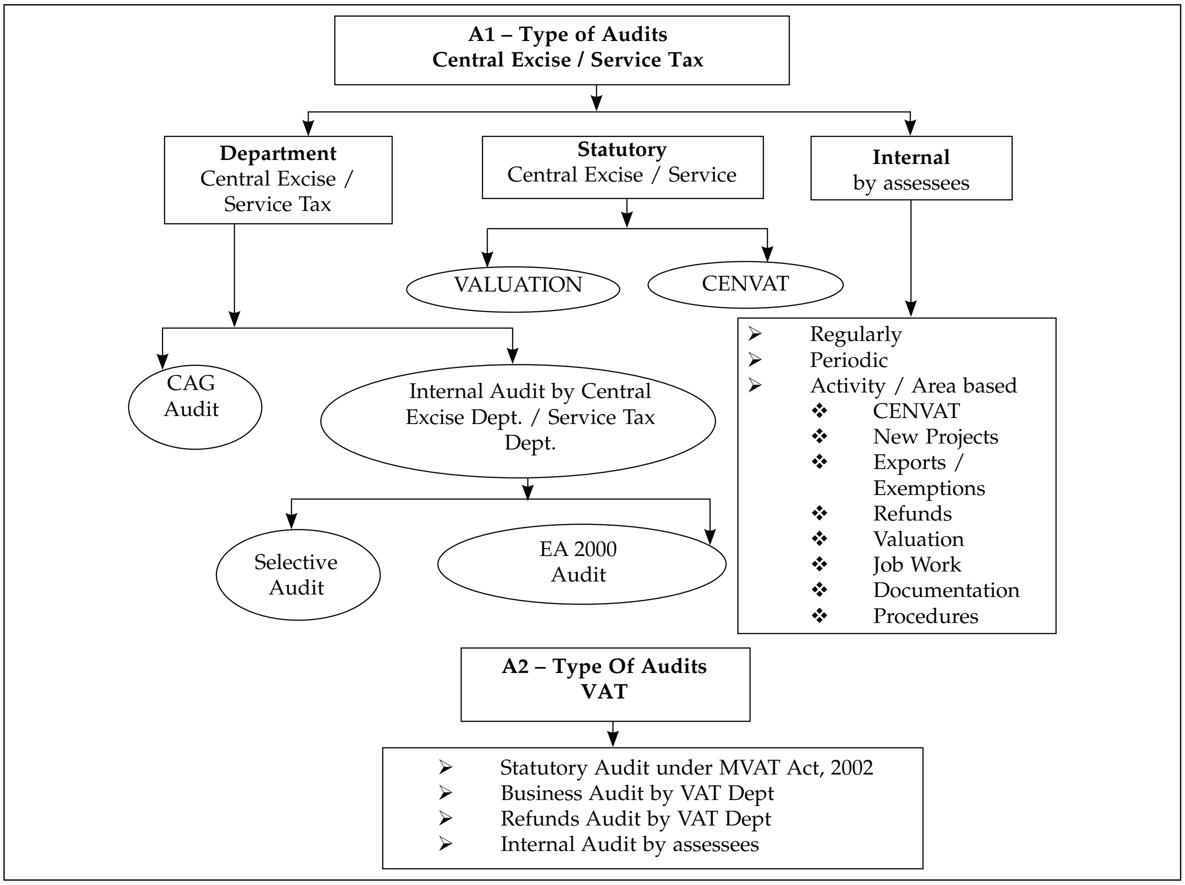
- Advise on Cash Flow & Working Capital Management under GST Regime

2.8 Zero rated Goods & Supplies

- Advise on Zero rated goods & services so as to ensure that exemptions entitled to are properly availed of & loss of refunds is avoided.

III Other Areas of Professional Opportunities under Indirect Taxation (Relevant under GST as well)

3.1 Audits



3.2 Compliances & Reviews

- Registrations, Amendments & Cancellations
- Invoices & Supplementary Invoices
- Input Tax Credit entitlements and duty / tax paid documents
- Output Tax Payable Workings
- Tax Payments (including interest as applicable)
- TDS from tax payments
- Maintenance & Preservation of records
- Review and Filing of Returns
- Revision of Returns
- Assessments & related
- Refund Claims & Assessments
- Registered Dealers
- Input Service Distributors

3.3 Support Services

- Attending to Scrutiny conducted by Tax Authorities
- Attending to Audits conducted by Tax Authorities
- Attending to Inquiries by Anti Evasion Wings, Revenue Intelligence Wings, Enforcement & Other Agencies

- Attending and Assistance in Search & Investigation proceedings by Tax Authorities
- Attending to Cross-Check inquiries
- Assistance in Summons Proceedings by Tax Authorities

3.4 Litigation Related Services

- Drafting of replies to Audit Objections
- Drafting of replies to Show Cause Notices
- Appearance before Adjudication Authorities
- Drafting of Appeals / Stay Petitions before Commissioner (Appeals)
- Appearance before Commissioner (Appeals)
- Drafting of Appeal / Stay Petitions before Tribunals
- Appearance before Tribunals
- Assistance in Drafting of Appeals before Courts
- Appearance before Courts
- Drafting of Applications before Authority for Advance Rulings & Settlement Commission
- Appearance before Authority for Advance Rulings & Settlement Commission

3.5 Advisory Services

- Routine Consultations
- Furnishing Written Opinion
- Study of Revenue Streams & their Taxability Position
- Assistance in Drafting Commercial Terms in Agreements & Contracts
- Participation in Structuring of Business Arrangements
- Options Evaluation of Business Proposals
- Evaluation of Indirect Taxes incidence for Proposed Contracts / Tenders
- Preparation of Systems & Compliance Manual (Indirect Taxes) for a New Company / New Project
- Preparing Briefs for Senior Counsel & related interactions
- Assistance in Representations before Govt. Authorities

3.6 Due Diligence

- Conduct Specialised Reviews for Overseas Buyers of Stake in Indian Companies
- Conduct Specialised Reviews for Prospective Investors in Indian Companies
- Detailed Review of Existing Companies proposed to be taken over/merged into another Company
- Review List of Pending Litigations with financial implications of possible adverse outcome
- Evaluations of Implications arising from a Proposed M&A Arrangement

3.7 Participation in Training / Orientation Programmes

- Orientation Programmes on Statutory Compliances for Staff Members of Accounts Dept.
- Orientation Programmes for Company Executives (different departments) as to new legislations/ regulations and the implications/ compliances arising therefrom
- Orientation Programmes for representatives companies having operations at different locations in the country
- Inter-Departmental Orientation Meetings as to the clarify about respective responsibilities [For e.g. CENVAT Credits in regard to a New Project]

Case Laws Index

R. P. Garg, *Advocate*

HOT SPOT
Chennai Properties assesses building rent under business head. An overreach (departure) or the law confirm?

The assessment of rental income from building of an owner has been in a hot controversy from very beginning of introduction of the taxing statute. Engraved once upon, it seems now has resurfaced.

The judicial consensus has reached a stage that each head is specific and mutually exclusive. If an income falls under one head it is charged under that head alone and a different or a residuary head cannot tax it. It is computed only under the distinct and separate manner provided therefor. To wit: income from employment is charged under the head 'Income from salary' under section 15 in the manner provided in sections 16-17; interest income from securities under the 'Interest on securities' earlier under section 18 in the manner provided in sections 19-21 (this head is now deleted since 1989); income from rents and leases of building and appurtenant land under the head 'Income from house property' under section 22 on the annual letting value and in the manner provided in sections 23 to 27; income from business under the head 'Profits and gains of business or profession' under section 28 in the manner provided in sections 28 to 44D; gains on transfer of capital assets under the head 'Income from capital gains' under section 45 in the manner provided by sections 46-55 and other incomes under the head 'Income from other sources' under section 56 in the manner provided in sections 57-59. Under each head the scope and contents of income is different and deductions, allowances, expenses and set offs are allowed differently and sparingly.

That gives rise to different tax incidence of an income, advantageous to some assessees in a set of circumstances and disadvantageous to others in different circumstance. Hence, writ at large!

Litigation witnessed the difference as more focal with regards to income from rentals of building and their inseparable and joint letting under sections 22, 28 and 56. Conflict of attribution of head reached first with the income from interest on securities. A separate head was given under the Income-tax Act as 'Interest on securities' given a head under 1922 Act by section 6(ii) and section 14(B) under 1961 Act until 1989. The conflict came to surface in cases of banks and finance companies dealing in securities as their business and the boiling question reached the Supreme Court as to which head to be attributed to interest income earned from securities, section 8 (section 18 of 1961 Act) being the 'Income from interest on securities' or section 10 (section 28 of 1961 Act) being the 'Income from business or profession'. It got settled in the case of *United Commercial Bank Ltd. vs. CIT (1957) 32 ITR 688* by stating interest on securities received by whomsoever and for whatever purpose had to be taxed under section 8 of 1922 Act and under no other section. It is irrespective of the fact whether securities are held by a banker as part of his trading assets in the course of his business.

Giving due consideration and perhaps realising the importance given to nature of activity, the Supreme Court in *CIT vs. Chugandas & Co. (1965) 55 ITR 17 (SC)* observed that 'it must, therefore, be held that even if an item of income is earned in the course of carrying on a business, it will not necessarily fall within the head "Profits and gains of business" within the meaning of section 10 read with section 6(iv). If securities constitute stock-in-trade of the business of an assessee, interest received from those securities will for the purpose of determining the taxable income be shown under the head "interest on securities" under section 8 read with section 6(ii) of the Act. It was observed that whenever the legislature intended to refer to a specific head of taxation as a condition for imposing an obligation or claiming a right, it has in terms referred to such a head. For instance, by section 18(2) liability is imposed upon any person responsible for paying any income chargeable under the head "salaries" to deduct income-tax and super-tax on the amount payable. Similarly, under section 18(3) the person responsible for paying income-tax under the head "interest on securities" is liable to deduct income-tax and super-tax at the prescribed rates on the amount of interest payable. Section 24 enables set-off in respect of loss sustained under any of the heads mentioned in section 6 against income, profits and gains from any other head in that year. These are some of the provisions in which reference is made to specific heads of taxation. The Supreme Court though, granted the exemption under section 25(3) available on business income to interest on securities distinguishing it as available to business income in general not restricted to income chargeable under the head 'business' section 10 of the Act.

House property income specific

Conflict was seen in the context of rental income from building as well, which is in focus of this write up. Here also Courts have invariably upheld assessment under section 9 (income from house property) because its income was derived *qua* ownership of building. Some of the crucial and important decisions on issue are discussed hereunder with their respective facts.

i) In *Commercial Properties Ltd. vs. Commissioner of Income-tax, Bengal [1928] 3 ITC 23* a registered company **whose sole object was to acquire lands, build houses and let them to tenants.** Even though the sole business of the company was the management and collection of rents from the properties, was assessed under section 9 of the Act. The income derived from 'property' was held to be the more specific category applicable to the case. It was besides the fact that the sole object was to acquire lands, build houses and let them to tenants. It was held that the income received by the appellant from shops is indisputably income from property; so is the income from stalls from occupants.

ii) In *Salisbury House Estate Ltd. vs. Fry (1930) 15 Tax Cases 266*, a case under UK Income Tax Act, 1842 where the assessee was a limited company formed for the express purpose of acquiring Salisbury House and utilising it. In this building there were 800 rooms which were let to tenants. The company also maintained a staff of servants to render various kinds of services to the occupants of the rooms. The company was assessed to income-tax under Schedule A (income from property) upon gross valuation of the premises. As the actual rent received was higher the Revenue wanted to assess income again under Schedule D. Thus even though the assessee was a company carrying on business or trade, income from the head "property" was taxed under Schedule A and not Schedule D supporting it with the view that different schedules being distinctly applicable to each individual head of income would exclude the applicability of any other head.

iii) In *Fry vs. Salisbury House Estates Co. Ltd. [1930] AC 432 (HL)* a company formed to acquire, manage and deal with a block of buildings, having let out the rooms as unfurnished offices to tenants, was held chargeable to tax under Schedule A to the Income-tax Act, 1918, and not Schedule D. The company provided a staff to operate the lifts and to act as porters and watch and protect the building; and also provided certain services such as heating and cleaning to the tenants at an additional charge. The House of Lords held the rents were profits arising from the ownership of land assessable under Schedule A and that the same could not be included in the assessment under Schedule D as trade receipts.

iv) In *East India Housing & Land Development Trust (1961) 42 ITR 49 (SC)*, a private company registered with the objects, amongst others, (1) to buy and develop landed properties and (2) to promote and develop markets. It in 1946 in the town of Calcutta it set up a market, constructed shops and stalls on platforms. The court examined the six heads of section 6 and ruled that the distinct heads specified in section 6 indicating the sources are mutually exclusive and income derived from different sources falling under specific heads has to be computed for the purpose of taxation in the manner provided by the appropriate section. If the income from a source falls within a specific head set out in section 6, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head. The Supreme Court held that the income derived by the company from shops and stalls was income received from property and fell under the specific head described in section 9. The character of that income was not altered either because it was received by a company with the specific object of setting up markets, or because the company was required to obtain a licence from the Municipality to maintain sanitary and other services, and resultantly had to maintain staff and to incur expenditure. The primary source of income from the stalls was the occupation of the stalls and it was a matter of little moment that the occupation which was the source of income was temporary.

v) *Karanpura Development Co. Ltd. vs. CIT (1962) 44 ITR 362 (SC)*, is a case of coal mining rights, not exactly the case of house property income. Though it had many objects but **restricted its business to clauses (1) and (52). Under clause (1), power was taken to purchase and acquire underground coal mining and relative rights. Under clause (52), power was taken to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company.** The assessee charged salami for said sub-lease at higher rates for granting sub leases. **The receipts were claimed to be capital receipts. The question before the Supreme Court was** whether the enhanced salami was not a capital receipt in the nature of enjoyment of property as landowner? The Supreme Court observed "Ownership of property and leasing it out may be done as a part of business, or it may be done as landowner. Whether it is the one or the other must necessarily depend upon the object with which the act is done. It is not that no company can own property and enjoy it as property, whether by itself or by giving the use of it to another on rent. Where this happens the appropriate head to apply is "Income from property" (s. 9) even though the company may be doing extensive business otherwise. **But a company formed with the specific object of acquiring properties not with the view of leasing them as property but to selling them or turning them to account even by way of leasing them out as an integral part of the business, cannot be said to treat them as landowner but as trader."**

vi) In *Sutan Brothers (1964) 51 ITR 353 (SC)* before a five Judges Constitution Bench, a limited company was the owner of a certain building constructed on plot which it had fitted up with furniture and fixtures for being run as a hotel. It let out the building fully equipped and furnished for a term of six years for running a hotel and for certain other ancillary purposes on a monthly rent of ₹ 5,950 for the building and a hire of ₹ 5,000 for the furniture and fixtures. The question in this appeal is how the income received as rent and hire is to be assessed. Reiterating that the several heads of income mentioned in section 6 of the Act dealt with separately in sections 7 to 12 are mutually exclusive, each head being specific to cover the income arising from a particular source and that it cannot be said that any one of these sections is more specific than another. Therefore, a particular variety of income must be assignable to one or the other of these sections. The object of the appellant company no doubt was to acquire land and buildings and to turn the same into account by construction and reconstruction, decoration, furnishing and maintenance of them and **by leasing and selling** the same, the Constitutional five judges bench held that activity contemplated in the aforesaid object of the company, assuming it to be a business activity, would not by itself turn the lease in the present case into a business deal as said so in East India Housing case.

vii) *S G. Mercantile Corpn. (P.) Ltd. vs. CIT AIR 1972 SC 732* noted 'that the liability to tax under section 9 of the Act is of the owner of the buildings or lands appurtenant thereto; he would be liable to pay tax under the above provision **even if the object of the assessee in purchasing the landed property was to promote and develop market thereon.** Further, it was held would also make no difference if the assessee was a company which had been incorporated with the object of buying and developing landed properties and promoting and setting no markets thereon. The income derived by such a company from the tenants of the shops and stalls, constructed on the land for the purposes of setting up market, would not be taxed as "business income" under section 10 of the Act.

viii) In *Chennai Properties (2015) 373 ITR 673 (SC),* a recent case of before the Supreme Court, a U turn is seen. In this case the company's main objective, as stated in the Memorandum of Association, is **to acquire the properties in the city of Madras (now Chennai) and to let out those properties.** The rental income received from such properties was its sole income. Basically, because of these two facts, that its Memorandum had renting out properties also as its main object and that the whole of its income was from rent, it is held that income from rent was chargeable as income from business and not from house property.

In this Chennai's case, the underground coal mining rights judgment of "Karanpura Developement" (supra) was followed. **The question before the Supreme Court was** whether the sums received as salami by the assessee for granting sub-leases were trading receipts and **not capital receipts in the nature of enjoyment of property as landowner.** It was held that the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The observations in Chennai's case about Karanpura case that the income which was received from letting out of those mining leases was shown as business income or that the Department took the position that it is to be treated as income from the house property are misquoted.

Sultan Brothers, the five Judges' Constitution Bench was discussed and distinguished by observing that 'the object of the appellant company, in this case, no doubt was to acquire land and buildings and to turn the same into account by construction and reconstruction, decoration, furnishing and maintenance of them and by **leasing and selling** the same **(letting clause was there in this case but misstated no such clause in Chennai case).**

Thus the consensus is rental income from building is income from house property. An exception was felt in the case of Chennai Property holding rental income as business income because of there being an object clause of letting out the property and the only source of income was from letting. This seems to be an overreach and not the confirmation of legal exposition. An object clause in the Memorandum prescribes an authority of the company to let the property and that does not necessarily could mean it is income from carrying on business. The income from the authorised activity is to classified for the purposes of assessment to one of the head specified in section 14 of the Act and as aforesaid the rental income from letting out a building by an owner falls under 'income from house property', even if the property was its stock-in-trade or letting was deciphered as one of the objects in its Memorandum or the rental income was the only source of its income.

EXCEPTIONS

Statute itself has carved out some exceptions for assessment of rental income which, summarised hereunder, are:

i) Occupation by assessee for its own business

The first exception is found in the language of section 22 itself. The use of the words "other than such portion of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income tax" excludes rental income from the assessment under section 22. The Delhi High Court in Ansal's case (2013) 354 ITR 180 (Del.) clarified that 'fact that the assessee itself is occupier, because it held the property till it was sold, does not exclude the property from the purview of section 22 by observing that "while there can be no quarrel with the proposition that "occupation" can be synonymous with physical possession, in law, when Parliament intended a property occupied by one who is carrying on business, to be exempted from the levy of income tax was that such property should be used for the purpose of business. The intention of the lawmakers, in other words, was that occupation of one's own property, in the course of business, and for the purpose of business, i.e. an active use of the property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. This contention is, therefore, rejected. Thus, this question is answered in favour of the revenue, and against the assessee."

ii) Inseparable letting

The second exception is engrafted in section 56(2)(iii) of IT Act, 1961 (corresponding to section 12 (4) of the 1922 Act) which put the inseparable joint letting of building and plant and machinery under the residuary head 'other sources'. This was explained also in Sultan Brothers case (supra), by the Supreme court with reference to section 12(4) of 1922 Act, that an inseparable letting of building and plant and machinery would be assessed under the head other sources, stating it as that 'it then becomes a new kind of income, not covered by section 9, that is, income not from the ownership of the building alone but an income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it'. Sections 9 and 10 were held not applicable and assessment has to u/s. 12(4).

Treatment of income for purposes of allowance of expenditure, set off of carried forward losses and other relief

Even though the income from rental is assessed as income from house property, the courts have allowed expenses and set off of business losses in case the letting was also in the specie of trading or business. This is illustrated in the case discussed hereinafter.

a) Cases of allowance of expenses

In *Mangalagiri Sri Umamaheshwari Gin and Rice Factory Ltd. vs. Guntur Merchants Gin and Rice Factory Ltd. (1926) 2 ITC 251*, where a limited company incorporated for the purpose of milling rice leased out the buildings, plant, machinery etc., to another company for a fixed annual rent, the lessees were to do the necessary repairs to keep the mill in good working condition and the lessors were to bear the loss of depreciation, the assessee company claimed depreciation and it was held that the company was carrying on the business of letting a rice mill and as such was entitled to a deduction for depreciation. This shows that it was clear from the facts of the case that the company was carrying on business of letting the mill for the purpose of being worked by lessees and it was under these circumstances that section 10 was held applicable.

In a similar other case of *Sadhucharan Roy Chowdhury, In re (1935) 3 ITR 114* it was held that letting of a jute press at rent was as much a business as the letting of a ship to freight or letting of motor-car or any other kind of machines or machinery for hire, and therefore allowances for depreciation were allowed alike.

b) Cases of set off losses

In *Commissioner of Income-tax vs. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC)*, a private limited company was carrying on banking business, its sources of income being banking business including interest from government securities. The carry forward business losses were claimed u/s. 24(2) against income from securities which was assessed under the head as 'Income from interest on securities'. As the securities formed part of the trading assets of the business and the income therefrom was income from the business and though for the purpose of computation of the income, interest on securities is separately classified, by section 6 as income by way of interest from securities, it was held it did not cease to be part of the income from business. Whether a particular income is part of the income from a business under section 24(2) of the 1922 Act falls to be decided not on the basis of the provisions of section 6 but on commercial principles. If the income from the securities was in the nature of income from its business, the loss could, in terms of that section, be set off against that income. United Commercial Bank Ltd. was explained to be decision not saying that the income from securities was not income from the business. Nor did the decision of East India Housing and Land Development Trust Ltd. say so.

In *CIT vs. Express Newspapers Ltd. [1964] 53 ITR 250 (SC)* the Court held that both section 26(2) and the proviso thereto dealt only with profits and gains of a business, profession or vocation and they did not provide for the assessment of income under any other head, e.g., capital gains. The reason for that conclusion is stated thus:

> *"...The profits and gains of business and capital gains are two distinct concepts in the Income-tax Act: the former arises from the activity which is called business and the latter accrues because capital assets are disposed of at a value higher than what they cost the assessee. They are placed under different heads; they are derived from different sources; and the income is computed under different methods. The fact that the capital gains are connected with the capital assets of the business cannot make them the profit of the business. They are only deemed to be income of the previous year and not the profits or gains arising from the business during that year."*

It will be seen that the reason for the conclusion was that capital gains were not income from the business. The said decision was mainly based upon the character of the capital gains and not upon their non-inclusion under the heading "Business". The limited scope of the earlier decision was found explained in *Commissioner of Income-tax vs. Chugandas & Co. [1965] 55 ITR 17 (SC)* wherein it was held that interest from securities formed part of the assessee's business income for the purpose of exemption under section 25(3). Shah J., speaking for the court, observed:

> *"The heads described in section 6 and further elaborated for the purpose of computation of income in sections 7 to 10 and 12, 12A, 12AA and 12B are intended merely to indicate the classes of income: the heads do not exhaustively delimit sources from which income arises. This is made clear in the judgment of this court in the United Commercial Bank Ltd.'s case (supra), that business income is broken up under different heads only for the purpose of computation of the total income: by that break up the income does not cease to be the income of the business, the different heads of income being only the classification prescribed by the Indian Income-tax Act for computation of income."*

Applying the same principle, the Court held that under section 24(2) of the Act the income from the securities which formed part of the assessee's trading assets was part of its income in the business and, therefore, the loss incurred in the business in the earlier year could be set off against that income also in the succeeding years.

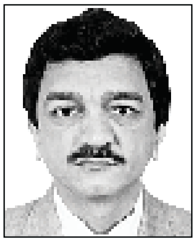
c) Business income relief

In *CIT vs. Chugandas & Co. (1965) 55 ITR 17 (SC)* where a firm dealing in securities was allowed relief u/s. 25(3) eligible for business income The heads described in section 6 and further elaborated for the purpose of computation of income in sections 7 to 10 and 12, 12A 12AA and 12B are intended merely to indicate the classes of income: the heads do not exhaustively delimit sources from which income arises. This is made clear in the judgment of the Court in the *United Commercial Bank Ltd. vs. CIT [1958] 32 ITR 688 (SC)* that business income is broken up under different heads only for the purpose of computation of the total income: by that break up the income does not cease to be the income of the business, the different heads of income being only the classification prescribed by the Indian Income-tax Act for computation of income.

CONCLUSION

To conclude, when a building is held by a owner, be it by way of an investment or stock-in-trade, the rental income (annual letting value) thereof is to be charged to tax u/s. 22 of the Act as 'income from house property', be the letting is part of its objects in Memorandum or that it is the only source of income of the company. It would be and has to be computed after allowing a statutory deduction of 30% of annual value and interest on borrowed capital for acquisition, construction, repairs, renewal, or reconstruction thereof u/s. 24 of the Act and not as income from business.

However, if the building is held part of its stock-in-trade and the assessee is doing business of buying and selling the landed properties, developing, constructing and letting them on hire, the income therefrom, though would be assessable under the head 'income from house property', all the expenses would be allowed as business expenditure, set off and carry forward losses shall be set of and allowed against such income, as though computed u/s. 22 of the Act. This would, however, be excepting allowance of interest on borrowed capital for acquisition, construction and repairs etc. because of the fact that interest is allowed u/s. 24(b) and same expenditure cannot be allowed twice over-once u/s. 24(b) and again under section 36/37. Deduction of 30 % u/s. 24(a) is not an allowance of any expenditure and therefore would not be a bar against allowance, set off or carry forward and set off of business expenditure other than interest.



B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

S. 32: Even prior to the insertion of "intangible assets" in s. 32, intellectual property rights such as trademarks, copyrights and know-how constitute "plant" for purposes of depreciation. The department is not entitled to rewrite the terms of a commercial agreement

Mangalore Ganesh Beedi Works vs. CIT, Mysore & Anr.

[Civil Appeal Nos. 10547-10548 of 2011, dated 15th October, 2015]

In this case the appellant was a partnership firm formed on 28th February, 1940. Due to differences between the partners, the firm was dissolved on 6th December, 1987 as per Clause 16 to the Partnership Deed. On dissolution of the firm, the partner who offers and pays highest price would acquire the firm name and all the trademarks used in the course of the business. Pursuant to the petition filed, the High Court *vide* its letter dated 14th June, 1991 held that the firm was dissolved with effect from 6th December, 1987 and directed the sale of its assets as a going concern to the highest bidder amongst the partners. Accordingly, the auction was carried out and three erstwhile partners who formed an association of persons (AOP) bid the highest amount.

The AOP filed its return of income for the year ended 31st March, 1995 and claimed deduction of legal expenses of ₹12,24,700/-. The AOP also claimed deduction u/s. 35A and 35AB and depreciation u/s. 32 of the Act towards acquisition of intellectual property rights such as rights over the trademarks, copyrights and technical know-how. In the alternative, the assessee treated intellectual property rights as plant and claimed depreciation.

The A.O. rejected the claims of expenses, deduction and depreciation whereas the Commissioner (Appeals) allowed the claim of legal expenses but dismissed the appeal regarding deduction and depreciation on intellectual property rights.

The Tribunal dismissed the appeal of the Revenue and thus confirmed allowance of legal expenses incurred by the assessee. The Tribunal had also allowed the appeal of the assessee and thus upheld the claim of deduction and depreciation in respect of intellectual property rights. Allowing the reference of the Revenue, the High Court answered both the questions in favour of the Revenue and against the assessee. The

Supreme Court held that legal expenses incurred by the assessee is for the purpose of protecting its business and therefore, it is allowable as business expenditure. Secondly, it was held that there is a clear finding of fact by the Tribunal that legal expenses incurred by the assessee were for protecting its business and that the expenses were incurred after 18th November, 1994. There is no reason to reverse this finding of fact particularly since nothing has been shown to conclude that finding of fact was perverse in any manner whatsoever. The Supreme Court further held that if the finding of facts arrived at by the Tribunal were to be set aside, a specific question regarding a perverse finding of fact ought to have been framed by the High Court. The Revenue did not seek the framing of any such question. Therefore, the Supreme Court held that the High Court was not justified in upsetting a finding of fact arrived at by the Tribunal, particularly in the absence of a substantial question of law being framed in this regard.

In respect of claiming deduction u/s. 35A and 35AB and depreciation u/s.32 on trademarks, copyrights and know-how, the Supreme Court held that intellectual property rights have a value and there is a tacit acceptance of this in *Bharat Beedi Works Pvt. Ltd. vs. CIT [(1993) 3 SCC 252 para 13]* wherein it has been observed that there is a value attached to a brand name. The Supreme Court did not answer the question regarding applicability of sec. 35A and 35AB of the Act and kept it open for an appropriate case as the assessee had submitted that it would be satisfied if the benefit of sec.32 r.w.s.43(3) of the Act is considered and allowed. Answering this question, the Supreme Court held as under:

(i) The definition of 'plant' in Section 43(3) of the Act is inclusive. A similar definition occurring in Section 10(5) of the Income-tax Act, 1922 was considered in *Commissioner of Income-tax vs. Taj Mahal Hotel [(1971) 3 SCC 550]* wherein it was held that the word 'plant' must be given a wide meaning. The question is, would intellectual property such as trademarks, copyrights and know-how come within the definition of 'plant' in the 'sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it'? In our opinion, this must be answered in the affirmative for the reason that there can be no doubt that for the purposes of a large business, control over intellectual property rights such as brand name, trademark etc. are absolutely necessary. Moreover, the acquisition of such rights and know-how is acquisition of a capital nature, more particularly in the case of the Assessee. Therefore, it cannot be doubted that so far as the Assessee is concerned, the trademarks, copyrights and know-how acquired by it would come within the definition of 'plant' being commercially necessary and essential as understood by those dealing with direct taxes.

(ii) Section 32 of the Act as it stood at the relevant time did not make any distinction between tangible and intangible assets for the purposes of depreciation. The distinction came in by way of an amendment after the assessment year that we are concerned with. That being the position, the assessee is entitled to the benefit of depreciation on plant (that is on trademarks, copyrights and know-how) in terms of section 32 of the Act as it was at the relevant time. We are, therefore, in agreement with the view taken by the Tribunal in this regard that the assessee would be entitled to the benefit of section 32 of the Act read with section 43(3) thereof;

(iii) The Supreme Court further observed that by denying that the trademarks were auctioned to the highest bidder, the Revenue actually seeking to re-write clause 16 of the agreement between the erstwhile partners of MGBW. The said clause specifically stated that the going concern and all the trademarks used in the course of the said business by the said firm and under which the business of the partnership is carried on vest in and belong to the highest bidder. Therefore, it could not be concluded by the Revenue that the trademarks were not auctioned and only the goodwill in the erstwhile firm was auctioned. The Act does not clothe the taxing authorities with any power or jurisdiction to re-write the terms of the agreement arrived at between the parties with each other at arm's length and with no allegation of any collusion between them. 'The commercial expediency of the contract is to be adjudged by the contracting parties as to its terms.' *(D. S. Bist & Sons vs. CIT [1984] 149 ITR 276 (Delhi) referred).*

MAT Provisions not Applicable to FIIs/FPIs

Castleton Investment Ltd. .. Appellant

vs.

Director of Income-tax, (International Taxation-I), Mumbai .. Respondent

With

CIVIL APPEAL No.4560 of 2013 dated 30th September, 2015.

The basic issue in this appeal was pertaining to applicability of sec. 115JB in respect of foreign company which does not have any permanent establishment in India.

The Counsel appearing for the appellants drew the attention of the Court to a circular of the Board dated 2nd September, 2015 which states that MAT provisions will not be applicable to FIIs and FPIs not having permanent establishment in India for the period prior to 1-4-2015. This was followed by Press Release dated 24th September, 2015 in which two alternatives are mentioned when provisions of sec. 115JB of the Act shall not be applicable to a foreign company under certain circumstances.

The learned Attorney General made a statement at the Bar that the Government would abide by the decision which has been taken in the aforesaid circular dated 2nd September, 2015 and Press Release dated 24th September, 2015. Accordingly, the appeal was dispose of.

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Ashok Patil, Mandar Vaidya & Priti Shukla
Advocates

DIRECT TAXES
High Court

REPORTED

1. Section 240 – Revised return held to be invalid – Department ought to return the tax and interest offered by the assessee based on the invalid return – AY 1992-93

K. Nagesh vs. ACIT (2015) 125 DTR (Kar.) 50

The word 'Return' in sec. 240 should be understood as a return in terms of sec. 139 of the Act. If the return in not in conformity with sec. 139, it ceases to be a return under section 139, the word return means a legal and valid return. The Tribunal holding that the term return means both valid and invalid return is not justify able, as under Article 265 of the Constitution of India no tax can be levied and collected except with authority of law. In the instant case if the return is declared invalid by the department and also by the Tribunal, then the return has to be ignored, and the department is not allowed to withhold the tax and interest paid by the assessee on such return once the return has been annulled.

2. Sec 37 – Expenditure incurred in developing a machine which was never used and the same was dismantled and the parts were used as parts where possible – expenditure allowed as revenue expenditure – AY 1998-99

CIT vs. Britannia Industries Ltd. (2015) 125 DTR (Cal.) 111

The assessee had developed four machines for the purposes of its own business. But by the time the machines were developed the assessee realised that the technology used had already become outdated, hence no use to them. The machines were dismantled so that the same do not fall in the hands of competition and some of the parts were used as spares. The appellant wrote off such expenses on the development of the machine as revenue expenditure. On appeal to the High Court by the department, the High Court held that the expenditure is allowable as revenue expenditure as the machines were never used and the parts were used as spares.

3. Sec. 260A, 269, 271-E, 275(1)(c) – Penalty for failure to comply with the provisions of s. 269T – Bar of Limitation – AY 2005-06

PR. Commissioner of Income Tax vs. JKD Capital & Finlease Ltd. (2015) 94 CCH 0053 Del HC

While finalising the assessment order, the AO imposed penalty u/s. 271(1)(c) and 271E for violation of the provisions of s 269T of the IT Act. AO referred the matter to the Additional

CIT. Additional CIT sought explanation from assessee. Since the assessee failed to furnish the required information, the Additional CIT confirmed the penalty in the sum of ₹ 17,90,000. CIT(A) thereafter deleted the penalty on the ground that in terms of s 275(1)(c), the penalty order could have only been passed on or before 30-6-2008 and therefore, the penalty order passed on 20-3-2012 was barred by limitation. ITAT affirmed the order of the CIT(A) by referring to the decision of this Court in *CIT vs. Worldwide Township Projects Limited.* ITAT held that admittedly, u/s. 271E(2), any penalty u/s 271E(1) can only be imposed by the Joint CIT. Initiation of penalty proceedings does not hinge on the completion of the appellate quantum proceedings. Considering that the subject matter of the quantum proceedings was the non-compliance with s 269T, there was no need for the appeal against the said order in the quantum proceedings to be disposed of before the penalty proceedings could be initiated. Further there was no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice u/s. 271E of the IT Act. Additional CIT ought to have been conscious of the limitation u/s. 275(1)(c). No order of penalty could be made u/s. 271E, after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice u/s. 271E beyond 30-6-2008, the Additional CIT defeated the very object of s 275(1)(c) of the Act. Revenue's appeal was dismissed.

4. Sections 45, 48, 50C – Capital Gains – Special provision for full value of consideration in certain cases – AY 2003-04 & 2004-05

Commissioner of Income Tax vs. Shimbhu Mehra (2015) 94 CCH 0051 All

Assessee was co-owners of a land 'X' which was mortgaged with Bank for the loan taken by the firm in which the assessees were partners. On account of the non-payment of the outstanding dues, and during the pendency of the proceedings, one time Settlement was arrived at, on the basis of which, the assessees negotiated and entered into an agreement on 4-7-2001 with subsequent purchaser to sell the land at specified price. In furtherance of the concerned agreement, the assessees received part consideration through which the liabilities of the Bank were cleared and upon receiving the payment the Bank lifted the encumbrances and released the mortgaged property on 21-11-2001. Thus, Agreement to sell the land under consideration was made on 4-7-2001. Sale deed was executed in April, 2003, the sale consideration agreed upon was paid in April, 2003 and the possession of the land was handed over to the transferee after execution of Sale Deed. Assessees had filed their separate return, which was processed u/s. 143(1). In the return, the assessees showed the income received from salary, income from other sources and long term capital gains. Subsequently, AO had received a notice u/s. 148 for reopening assessment and had assessed capital gains u/s 50C on grounds that since the sale deed was executed in April, 2003, the provision of Section 50C, which came into effect from 1-4-2003 would be applicable. First Appellate Authority had held that the provision of Section 50C comes into play on the date when the property was transferred and since the transfer took place on 1-7-2001 and, therefore, the provision of Section 50C, which came into effect from 1-4-2003 was not applicable. First appellate authority had held that a capital gain was not taxable and the amount of capital gains assessed was deleted. First Appellate Authority held that the provisions of section 50C were not applicable. Tribunal confirmed order of CIT(A). On Revenue appeal in HC, HC observed that it was held by Supreme Court that once an agreement to sell was executed in favour of some person, the said person gets a right to get the property transferred in his favour and, consequently, some right of the vendor was extinguished. Moment an agreement to sell is executed between the parties and part consideration was received, the transfer for the purpose of section 50C takes places and computation u/s. 48 will start accordingly, for the purpose of calculating the capital gains u/s. 45. Court further held that it was clear that the transfer of the property took place in the year 2001 when the provision of section 50C was not in existence. Consequently, the AO was not justified in making the reassessment and computing the capital gains by invoking the provision of section 50C, which was clearly not applicable in the assessees' case. Accordingly Revenue’s appeal was dismissed.

5. Sections 10A, 260A, 263, 80HHC – Exemptions – Profit and gains derived from eligible undertaking – AY 1991-92 & 1992-93

Thomson Press (India) Ltd. vs. CIT (2015) 94 CCH 0042 Del. HC

Assessee credited interest on surplus generated from its undertaking in books of account maintained for that undertaking. Correspondingly, contra entry was passed by assessee in books of account maintained in respect of its Head Office. AO did not reject inclusion of such interest as profits and gains of undertaking, that were deducted by assessee from its total income for computing its taxable income. CIT considered assessment orders passed by AO to be erroneous as prejudicial to interest of Revenue. Consequently, CIT passed orders u/s. 263, that were upheld by Tribunal. On appeal in HC, issue to be considered was if claim of assessee for including notional interest as profit and gains derived from eligible undertaking for purposes of s 10A was sustainable in law. Assessee’s appeal was dismissed in HC and court held that, profits and gains derived by assessee from industrial undertaking to which s 10A applied was not included in total income of assessee. Only those profits and gains of assessee which had direct nexus with undertaking to which s 10A applied, would be excluded from income of assessee. Apparently, interest credited by assessee in books of eligible undertaking was notional and practically unconnected with eligible undertaking; interest had been credited on the surplus generated, which had been transferred from accounts of eligible undertaking to head office. Interest credited did not represent any real inflow of funds to assessee. Assessee merely reflected inflow of funds in separate books maintained with respect to eligible undertaking with corresponding outflow of funds in books maintained with respect to head office. Interest credited by assessee in books of its eligible undertaking was not earned from its business but was only notional credit in books on surplus as generated by eligible undertaking. Interest could not be considered as profits and gains derived by assessee from eligible undertaking as it did not bear direct nexus with activities of eligible undertaking.

6. Section 37 r/ws. 35AB – Whether revenue expenditure or capital expenditure

DCIT vs. Anil Starch Products Ltd. {2015} 232 Taxman 129 (Guj.)

The assessee incurred certain expenditure towards use of know-how. The agreement entered into with the party supplying the know-how (a foreign company), revealed that the assessee had only the use of the know-how for which the assessee was paying a lump sum amount. As per the agreement, all information and know-how furnished by the foreign company remained the property of that company; the payment was made as a lump sum consideration to such foreign company for only use of the know-how for the purpose of its running business for a limited period. The Tribunal noted that there was no purchase of the same from the foreign company. According to the Revenue, the expenditure being for the purpose of know-how would attract section 35AB and would oust section 37. Whereas the contention of the assessee was that if the expenditure was, otherwise of revenue nature, section 37 would apply and not section 35AB; section would apply only where the expenditure was otherwise of capital nature. This stand of the assessee was accepted by the Tribunal and full deduction of the amount was allowed by the Tribunal. On appeal by the Revenue, it was held, upholding the Tribunal's view & dismissing the Tribunal's appeal, that even the AO was of the view that the expenditure was revenue in nature and this fact was not disturbed by the CIT(A). The CIT(A) proceeded to hold that it would be hit by section 35AB of the Act and therefore, not allowable deduction under section 37(1) of the Act. In such a case the decision of the Apex Court in *CIT vs. Swaraj Engines 309 ITR 443 (SC)* would be directly applicable. In the said case the Hon'ble Apex Court held that if the expenditure is of revenue nature, section 35AB would have no application. Hence the expenditure was an allowable deduction u/s. 37 of the Act.

UNREPORTED

7. Section 147 – Reopening – Information received from Investigation wing – Whether would clothe the assessing authority with the jurisdiction

CIT vs. Multiplex Trading & Industrial Co. Ltd. Income Tax Appeal No. 356 of 2013 dated 22nd September 2015. (Delhi High Court.)

The original assessment was a scrutiny assessment and the transactions in question had been examined and verified by the AO during the initial assessment proceedings which culminated in the assessment order. The assessment was re-opened, after expiry of four years, based on information received by the AO from the Investigation Wing that the Assessee had obtained accommodation entries from certain entry operators during the relevant period; there was no allegation in the reasons recorded that there had been any failure on part of the assessee to disclose true particulars. In course of the original proceedings, the assessee had placed full material(s) on record. The AO did not dispose off the objections of the assessee to the re-opening. The Hon'ble Court held that information from Investigation Wing can constitute 'information' for the purpose of re-opening (i.e. 'information' that was not available at the time of original proceedings). However this would not validate re-opening beyond four years where there had been no failure on part of the assessee. On analysis of the facts/evidence the Hon'ble Court arrived at the conclusion that there was no failure on part of the assessee and hence its was held that the re-opening was bad & illegal.

8. Sec 153C – Jurisdiction – whether available upon discovery of computer hard discs/data at the premises of the searched person

CIT vs. RRJ Securities Income Tax Appeals Nos. 164-175-176-177 of 2015 dated 30th October, 2015. Delhi High Court

Search and seizure operations were undertaken under section 132 of the Act in the case of Chartered Accountant of the assessee. ('searched persons') on 20th October, 2008. Certain documents belonging to the Assessee Company and a computer hard disk containing soft copies of working papers, balance sheets and data for income tax filings, were seized during the search. The AO of the searched persons recorded a 'Satisfaction Note' on 8th September, 2010 to the effect that the documents seized and the data contained in the hard disk belonged to the assessee and, hence, section 153C was trigerred.

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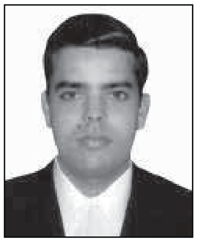
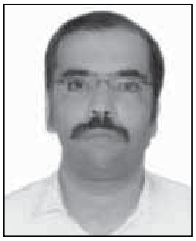

Jitendra Singh & Sameer Dalal
Advocates

DIRECT TAXES
Tribunal

REPORTED

1. Capital Gain – Section 54F of the Income-tax Act, 1961 – Amount invested in purchase of flat on leasehold basis for the period of 999 years out of Long Term Capital Gain arising from sale of shares –Assessee is eligible to claim deduction under section 54F of the Act. A.Y.: 2007-08

Capital Gain – Section 54 r.w.s. 54F of the Income-tax Act 1961 - Wrong claim of deduction made under section 54 could not be the ground to deny the benefit under section 54F. A.Y.: 2007-08

ACIT, Ahmednagar vs. Smt. Asha Ashok Boob [2015] 69 SOT 321 (Pune – Trib.)

The assessee during the relevant assessment year earned long term capital gain on sale of shares. The assessee made investment in purchase of flat on leasehold basis for the period of 999 years. The Assessing Officer while finalizing the assessment denied the deduction as the assessee had claimed deduction under section 54 instead of correct provision section 54F. Further the assessee had not taken possession of the flat till the passing of assessment order and she was only a lessee for a lease period of 999 years. On appeal, the First Appellate Authority directed Assessing Officer to allow the claim of deduction under section 54F in respect of amount which the assessee had paid within period of three years form the date of transfer of the original asset. The learned CIT(A) further opined that merely because the assessee had made a wrong claim under section 54, the same could not be a ground to deny the benefit of deduction under Section 54F to which the assessee was otherwise eligible.

The Department being aggrieved by the Appellate Order preferred an appeal before the Hon'ble Appellate Tribunal, Pune. The Hon'ble Tribunal allowed the claim of the assessee by observing that the assessee has utilised part of the Capital Gains towards purchase of flat which is not in dispute. Hence, the assessee is eligible to claim the benefit of deduction under section 54F of the Act on the investment made before the due date of filing return under section 139(4) of the Act.

2. Deduction of Tax at Source – section 194H of the Income Tax Act, 1961– The assessee sold prepaid vouchers to its distributers at lower rate than its face value – Difference between face value and selling price cannot be regarded as commission

requiring deduction of tax at source under section 194H. A.Y.:2008-09

Vodafone Essar Gujarat Limited vs. ACIT, TDS Circle, Ahmedabad [2015] 60 taxmann.com 214 (Ahmedabad – Trib.)

The assessee engaged in the business of providing mobile services, was subjected to survey on its business premises on 26-8-2008. During the course of survey the Assessing Officer observed that the assessee has sold its prepared vouchers to its distributors at prices less than its face value. The Assessing Officer further observed that there exists relationship of principal and agents between assessee and distributors and therefore, the difference between the selling price and face value is nothing but the commission on which tax has to be deducted under section 194H. As the assessee has not deducted TDS on the said payment, the Assessing Officer proceeded to hold the assessee as an assessee in default under section 201 of the Act. On appeal, the First Appellate Authority upheld the action of the Assessing Officer.

The assessee being aggrieved preferred an appeal before the Hon'ble Appellate Tribunal, Ahmedabad. The Hon'ble Appellate Tribunal allowed the appeal filed by the Assessee by observing that section 194 H comes into play only in a situation in which "any person, ... responsible for paying . . . . . . to a resident, any income by way of commission" pays or credits such "income by way of commission". However, since, at the time of selling prepaid cards, the assessee is not in possession of any income belonging to the distributor. Accordingly, the question of any income accruing or arising to the distributor at the point of time of sale of prepaid card by the assessee to the distributor does not arise.

UNREPORTED

3. Deduction with respect to newly established 100% export oriented undertaking – Section 10B of the Income-tax Act, 1961– where the assessee is manufacturing entity approved as 100% EOU by Development Commissioner SEZ – the claim of deduction under section 10B of the Act cannot be denied. A.Y.: 2010-11

Unique Gem & Jewellery vs. ACIT [2015] ITA No. 1825/Mum/2014 (Mumbai-Trib.) A.Y.: 2010-11

The assessee is partnership firm engaged in the business of manufacturing diamond studded gold jewellery. The assessee is approved as 100% EOU by Development Commissioner, SEEPZ, SEZ, Government of India. During the relevant assessment year assessee claimed deduction under section 10B of the Act. The assessee's business premises were subjected to survey action under section 133A of the Act. The Assessing Officer on the basis of materials gathered during the course of survey action observed that the assessee is not carrying on any manufacturing activity. The Assessing Officer further observed that the activities claimed to have been carried on by the assessee cannot be considered as eligible manufacturing activity as per the definition of the term "manufacture" given under SEZ Act. The Assessing Officer accordingly held that the assessee is not eligible for deduction under section 10B of the Act. On appeal, the First Appellate Authority confirmed the action of the Assessing Officer.

The assessee being aggrieved by the order passed learned CIT(A) preferred an appeal before the Hon'ble Appellate Tribunal, Mumbai. The Hon'ble Appellate Tribunal allowed the claim of the assessee by observing that the assessee has imported diamonds, purchased gold locally and exported the jewellery. Thus, the articles purchased and the articles exported are two different articles. The export of jewellery cannot be carried out without manufacturing the same. The assessee has also explained about its manufacturing process. Even though the conversion of gold into mountings is carried out through outsourcing, final shaping of jewellery and fitting of diamonds were carried out at the place of the assessee. Hence, the activities carried on by the assessee should be considered as manufacturing activity only. Therefore, the assessee is eligible to claim deduction under section 10B of the Act.

4. Amounts not deductible – Deduction at source – Section 40(a)(ia) of the Income-tax Act – No TDS is required to be deducted under section 40(a)(ia) of the Act if the expenses are nothing but reimbursement to the sister concern. A.Y.: 2006-07 & 2007-09

ACIT-2(3) vs. M/s. Simmonds Marshall Ltd. [2015] ITA No. 1686 & 1687/Mum/2012 (Mumbai-Trib.)

The assessee is the manufacturer of self-locking nuts. During the assessment proceedings the Assessing Officer observed that the assessee has debited various expenditures under different heads of expenses viz., rent, operating expenses, agency charges, security expenses and gardening expenses. The Assessing Officer noticed that the assessee has not deducted tax at source on these payments. Thus, the Assessing Officer disallowed the said expenditure invoking the provisions of section 40(a)(ia) of the Act. On appeal before the First Appellate Authority it was explained that the said expenditure was incurred towards reimbursement to the sister concern. The learned CIT(A) after considering the evidences and explanations of the assessee, directed the Assessing Officer to delete the disallowance made under section 40(a)(ia) of the Act.

The Department being aggrieved by the said Appellate Tribunal preferred the appeal before the Hon'ble Appellate Tribunal, Mumbai. The Hon'ble Appellate Tribunal dismissed the departments appeal and observed that all the impugned payments are nothing but reimbursement of expenses. Thus it can be safely concluded that there is no element of any margin or profit. Hence, no disallowance can be made under section 40(a)(ia) of the Act.

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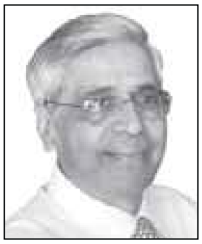
On the aforesaid basis, proceedings were initiated under section 153C and a notice dated 8th September, 2010 for the AYs 2003-04 to 2008-09 was issued to the assessee. The assessee, before the CIT(A) and the Tribunal, succeeded on merits but was not successful on the issue of jurisdiction u/s. 153C. The assessee's contention was that the initiation of proceedings under section 153C of the Act was without jurisdiction as no relevant material belonging to the assessee was found during the search conducted in the case of the searched persons. The Revenue countered by contending that the hard disk seized from the premises of the searched person belonged to the assessee since the information contained therein related to the assessee and the same was sufficient to initiate proceedings under section 153C of the Act. The Revenue further contended that at the stage of initiation of proceedings under section 153C of the Act, it is not necessary for the AO to conclude that the documents or the material reflect any undisclosed income. It was held that the *sine qua non* for initiating assessment u/s. 153C is that material should "belong to" the assessee and merely "pertaining to" the assessee would not suffice. The computer hard disks may be pertaining to the assessee but cannot be said belonging to the assessee. Further, the said hard disk also did not contain any incriminating material as the data on the hard disc only supported the return filed by the assessee. Accordingly, it was held that there was no jurisdiction to assessee the assessee u/s. 153C, for concluded assessments (i.e. those which are not abated).



CA Sunil K. Jain

DIRECT TAXES
Statutes, Circulars & Notifications

NOTIFICATIONS

Income-tax (Thirteenth Amendment) Rules, 2015 – Amendment in Rule 2BB for the purpose of Section 10(14)

In the Income-tax Rules, 1962, in rule 2BB, in sub-rule (2), Prescribed allowances for the purposes of clause (14) of section 10 in the Table, against serial number 11, in the entry under column (2) relating to "name of allowance", after the words "who is blind", the words "or deaf and dumb" shall be inserted.

(Notification No.75/2015 [F.No.142/02/2015-TPL]/SO 2604(E), dated 23-9-2015)

Income-tax (Fourteenth Amendment) Rules, 2015 - Substitution of Rule 29C and Form No. 15G and Form No. 15H

The Central Board of Direct Taxes made the rules further to amend the Income-tax Rules, 1962, called the Income-tax (14th Amendment) Rules, 2015 which shall come into force on the 1st day of October, 2015. In the Income-tax Rules, 1962 for rule 29C, the following rule now substituted:

"29C. Declaration by person claiming receipt of certain incomes without deduction of tax.—

(1) A declaration under sub-section (1) or under sub-section (1A) of section 197A shall be in Form No. 15G and declaration under sub-section (1C) of section 197A shall be in Form No. 15H.

(2) The declaration referred to in sub-rule (1) may be furnished in any of the following manners, namely: (a) in paper form; (b) electronically after duly verifying through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (7).

(3) The person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A, shall allot a unique identification number to each declaration received by him in Form No.15G and Form No.15H respectively during every quarter of the financial year in accordance with the procedures, formats and standards specified by the Principal Director-General of Income-tax (Systems) under sub-rule (7).

(4) The person referred to in sub-rule (3) shall furnish the particulars of declaration received by him during any quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in the statement of deduction of tax of the said quarter in accordance with the provisions of clause (vii) of sub-rule (4) of rule 31A.

Consequently in Appendix-II of the said rules, for Form No.15G and Form No.15H, the new Forms respectively have been substituted.

(Notification No.76/2015 [F.No.133/50/2015-TPL]/SO 1663(E), Dated 29-9-2015)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Inter-Governmental Agreement and Memorandum of Understanding (MOU) between Government of India and Government of USA to Improve International Tax Compliance and to Implement Foreign Account Tax Compliance Act of USA

An Inter-Governmental Agreement and Memorandum of Understanding (MoU) between the Government of the Republic of India and the Government of the United States of America to improve International Tax Compliance and to implement Foreign Account Tax Compliance Act of the United States of America was signed at New Delhi in July, 2015

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 the Central Government notified that all the provisions of the said Agreement between the Government of the Republic of India and the Government of the United States of America for the exchange of information with respect to taxes, as set out in the said Agreement, shall be given effect to in the Union of India with effect from the 31st August, 2015, that is, the date of entry into force of the said Agreement.

(Notification No.77/2015 [F.No.500/137/2011-FTD-I]/ SO. 2676(E), dated 30-9-2015)

Income-Tax (Fifteenth Amendment) Rules, 2015 – Amendment in Rule 11DD and omission of Form 10-I *vis-a-vis* section 80 DDB

The Central Board of Direct Taxes made the following rules further to amend the Income-tax Rules, 1962, called the Income-tax (15th Amendment) Rules, 2015 and shall come into force on the date of publication in the Official Gazette. In the Income-tax Rules, 1962 in rule 11DD, for sub-rules (2) and (3), the following sub-rules have been substituted:

"(2) The prescription in respect of the diseases or ailments specified in sub-rule (1) shall be issued by the following specialists: (a) for diseases or ailments mentioned in clause (i) of sub-rule (1) – a Neurologist having a Doctorate of Medicine (D.M.) degree in Neurology or any equivalent degree, which is recognised by the Medical Council of India; (b) for diseases or ailments mentioned in clause (ii) of sub-rule (1) – an Oncologist having a Doctorate of Medicine (D.M.) degree in Oncology or any equivalent degree which is recognised by the Medical Council of India; (c) for diseases or ailments mentioned in clause (iii) of sub-rule (1) - any specialist having a post-graduate degree in General or Internal Medicine, or any equivalent degree which is recognised by the Medical Council of India; (d) for diseases or ailments mentioned in clause (iv) of sub-rule (1) - a Nephrologist having a Doctorate of Medicine(D.M.) degree in Nephrology or a Urologist having a Master of Chirurgiae (M.Ch.) degree in Urology or any equivalent degree, which is recognised by the Medical Council of India. (e) for diseases or ailments mentioned in clause (v) of sub-rule (1) – a specialist having a Doctorate of Medicine (D.M.) degree in Hematology or any equivalent degree, which is recognised by the Medical Council of India:

Provided that where in respect of any diseases or ailments specified in sub-rule (1), the patient is receiving the treatment in a Government hospital, the prescription may be issued by any specialist working full-time in that hospital and having a postgraduate degree in General or Internal Medicine or any equivalent degree, which is recognised by the Medical Council of India.

(3) The prescription referred to in sub-rule (2) shall contain the name and age of the patient, name of the disease or ailment along with the name, address, registration number and the qualification of the specialist issuing the prescription:

Provided that where the patient is receiving the treatment in a Government hospital, such prescription shall also contain the name and address of the Government hospital."

In the said rules, in Appendix-II, Form No. 10-I is omitted.

(Notification No.78/2015 [F.No.142/20/2015-TPL]/SO 2791(E), dated 12-10-2015)

Atal Pension Yojana (APY)

The Government of India has introduced a pension scheme called the Atal Pension Yojana (APY), with effect from 1st June, 2015, pursuant to the announcement in the budget for 2015-16 on creating a universal social security system for all Indians, especially the poor, the under-privileged and the workers in the unorganised sector. APY is being administered by the Pension Fund Regulatory and Development Authority (PFRDA) under the overall administrative and institutional architecture of the National Pension System (NPS).

APY is open to all citizens of India who have a savings bank account. The minimum age of joining APY is 18 years and maximum age is 40 years as per the detailed features and eligibility of APY.

(Notification F.No.16/1/2015-PR- Atal Pension Yojana, dated 16-10-2015)

Section 35AC of The Income-Tax Act, 1961 – Eligible Projects or Schemes, Expenditure on – Notified Eligible Projects or Schemes

In exercise of the powers conferred by sub-section (I) read with clause (b) of the Explanation to Section 35AC of the Income-tax Act, the Central Government, on the recommendation of the National Committee for Promotion of Social and Economic Welfare, hereby notified the institutions approved by the said National Committee, mentioned in column (2) of the said Table and approves the eligible projects or schemes specified to be carried on by the said institutions and the estimated cost thereof as mentioned in column (3) of the said Table, and also specified in the column (4) of the Table the maximum amount of such cost which may be allowed as deduction under the said section 35AC for the period of approval.

(Notification No.220/2015 [F.No.V.27015/3/2015-SO (Nat.com)]/SO 2854(E), dated 16-10-2015)

Income-Tax (Sixteenth Amendment) Rules, 2015 – Amendment in Rule 10B and Insertion of Rule 10CA as Regards Arm's Length Price of an International Transaction

The Central Board of Direct Taxes made the following rules further to amend the Income-tax Rules, 1962, called the Income-tax (16th Amendment), Rules, and shall come into force on the date of their publication in the Official Gazette. In the Income-tax Rules, 1962,—

(I) in rule 10B, some insertions have been made and;

(c) after the proviso, the following proviso shall be inserted :"Provided further that the first proviso shall not apply while analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014."; (ii) after sub-rule (4), the following sub-rule shall be inserted, namely:—

"(5) In a case where the most appropriate method for determination of the arm's length price of an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014, is the method specified in clause (b), clause (c) or clause (e) of sub-section (1) of section 92C, then, notwithstanding anything contained in sub-rule (4), the data to be used for analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be:

(II) after rule 10C, the following rule and also an illustrations has been inserted, "10CA. Computation of arm's length price in certain cases.—

(1) Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in sub-section (1) of section 92C results in determination of more than one price, then the arm's length price in respect of such international transaction or specified domestic transaction shall be computed in accordance with the provisions of this rule.

(2) A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm's length price shall be determined on the basis of the dataset so constructed:

Provided that in a case referred to in clause (i) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,—

(i) the most appropriate method used to determine the price of the comparable uncontrolled transaction undertaken in the current year shall be applied in similar manner to the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1) :

Provided further that in a case referred to in clause (ii) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in the financial year immediately preceding the said financial year undertaken the same or similar comparable uncontrolled transaction then,—

(i) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall be included in the dataset instead of the price referred to in sub-rule (1):

Provided also that where the use of data relating to the current year in terms of the proviso to sub-rule (5) of rule 10 B establishes that,—

(i) the enterprise has not undertaken same or similar uncontrolled transaction during the current year; or

(ii) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction, then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall not be included in the dataset.

(3) Where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:—

(i) where the prices have been determined using the method referred to in clause (b) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of sales which has been considered for arriving at the respective prices;

(ii) where the prices have been determined using the method referred to in clause (c) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs which has been considered for arriving at the respective prices ;

(iii) where the prices have been determined using the method referred to in clause (e) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices.

(4) Where the most appropriate method applied is a method other than the method referred to in clause (d) or clause (f) of sub-section (1) of section 92C and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule (5) and sub-rule (6).

(5) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (4), then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(6) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range referred to in sub-rule (4), the arm's length price shall be taken to be the median of the dataset.

(7) In a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset:

Provided that, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(8) For the purposes of this rule,—

(a) "the thirty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least thirty five per cent of the values included in the dataset are equal to or less than such value :

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the thirty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(b) "the sixth-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least sixty five per cent of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number , then the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(c) "the median" of the dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least fifty per cent of the values included in the dataset are equal to or less than such value :

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the median shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

(Notification No.83/2015 [F.No.142/25/2015-TPL]/SO 2860(E), dated 19-10-2015)

CIRCULARS

Section 37(1) of the Income-Tax Act, 1961 – Business Expenditure – Allowability of – Non-applicability of Rule 9A of The Income-tax Rules, 1962 in case of abandoned feature films

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A of Income Tax Rules, 1962.

2. In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

3. The matter has been examined in light of judicial decisions on this subject. The order of the Hon'ble Bombay High Court dated 28-1-2015 in ITA 310 of 2013 in the case of Venus Records and Tapes Pvt. Ltd. on this issue has been accepted and the aforesaid disputed issue has not been further contested. Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is not to be treated as a capital expenditure. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed, as per the provisions of section 37 of the Income-tax Act.

4. Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, already filed on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all Officers concerned.

(Circular No.16/2015 [F.No.279/Misc./140/2015-ITJ], dated 6-10-2015)

Section 2(1A), read with Section 2(14) (Iii), of The Income-Tax Act, 1961 – Agricultural Land – Measurement of distance for purpose of Section 2(14) (Iii)

(B) for period prior to Assessment Year 2014-15

"Agricultural Land" is excluded from the definition of capital asset as per section 2(14)(iii) of the Income-tax Act based, *inter alia* on its proximity to a municipality or cantonment board. The method of measuring the distance of the said land from the municipality, has given rise to considerable litigation. Although, the amendment by the Finance Act, 2013 w.e.f. 1-4-2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods.

2. The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon'ble Bombay High Court *vide* order dated 30-3-2015 in ITA 151 of 2013 in the case of Smt. Maltibai R. Kadu has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e. in relation to assessment year 2014-15 and subsequent assessment years. For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.

3. Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.

(Circular No.17/2015 [F.No.279/Misc./140/2015-ITJ], dated 6-10-2015)

Section 143 of the Income-tax Act, 1961 – Assessment – General – Use of e-mail based communication for paperless assessment proceedings

In order to improve the taxpayer services, enhance the efficiency and to usher in a paperless environment for carrying out the assessment proceedings, CBDT has decided to initiate the concept of using e-mail for corresponding with taxpayers and sending through e-mails the questionnaires, notice etc. at the time of scrutiny proceedings and getting responses from them using the same medium on a pilot basis. This would eliminate the necessity of visiting the Income-tax Offices by the taxpayers, particularly in smaller cases, involving limited issues and where taxpayer is able to provide details required by the AO without necessitating his physical presence.

2. Steps are being taken by CBDT to devise suitable mechanism for setting up a standardised platform for making such e-mail based communications between the taxpayer and the Income-tax Department seamless and user friendly. To start with, it has been decided to launch a pilot project in this regard in five non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad & Chennai stations. Initially, 100 cases for e-hearing could be identified in each of these charges and major part of assessment processing should be conducted in electronic mode. Also, the cases covered under the aforesaid pilot project should be those which have been selected for scrutiny on the basis of AIR/CIB information or non-matching with 26AS-data. Consent of taxpayers should also be obtained in the beginning and cases of only willing taxpayers be considered under the pilot project. The officers of the Department, through their official e-mail IDs, can interact with the taxpayers at their e-mail IDs as mentioned in the respective returns of income.

3. Board desires that necessary steps may accordingly be taken for initiating the pilot project on top priority.

(Letter [F.No.225/267/2015-ITA.II], dated 19-10-2015)

Aayakar Sampark Kendra (ASK) - Redressal of grievances received from taxpayers by email at said Kendra

Aayakar Sampark Kendra (ASK) is one of the initiatives of the Income Tax Department to provide Taxpayer Information and Services to the taxpayers across the country. At present five call centres of Aayakar Sampark Kendra (One NCC at Gurgaon and four RCCs at Jammu, Jangipur, Kochi and Shillong) are functioning to answer queries related to the status of PAN & TAN applications, procedure of filing of Income tax & Wealth tax returns, downloading of calls and other general queries. Taxpayers have also been provided a facility to register grievances through email through the call centres of ASK. At present the grievances are received by e-mail at ASK call centres on following e-mail ids:

(i) ask@incometax.gov.in

(ii) pan@incometax.gov.in

(iii) refunds@incometax.gov.in

The nature of grievances received at ASK is broadly as below:—

- PAN Correction/De-duplication
- TAN Correction/De-duplication
- Pending Refunds
- Refund Adjustment against Demand
- e-filing Rectification/Intimation u/s. 143/154
- Payment of taxes under OLTAS etc.

In order to provide quick resolution of taxpayer's grievance, wherever action is required to be taken by the officers in field formation, the Aayakar Sampark Kendra should forward the e-mail to concerned GT (Admn. & CO) for onward transmission to respective Jurisdictional Pr.CCIT/CCIT/Pr.CIT/CIT/Assessing Officer for necessary action. The taxpayer may also be informed so that he may do further correspondence with the concerned officer.

(Letter F.NO.DGIT(S)/DIT(S)-V/Ask/2015-16/11972, Dated 20-10-2015)

PRESS RELEASES

Section 115JB of The Income-Tax Act, 1961 – Minimum Alternative Tax –

Government decided to amend Income-tax Act, 1961 so that with retrospective effect from 1-4-2001, provisions of Section 115JB shall not be applicable to a Foreign Company if that Foreign Company is a resident of a Country having DTAA with India and such Foreign Company does not have a Permanent Establishment within definition of that term in relevant DTAA

After due consideration of the various aspects of the matter, the Government of India has decided that with effect from 01.04.2001, the provisions of Section 115JB shall not be applicable to a foreign company if —

- the foreign company is a resident of a country having DTAA with India and such foreign company does not have a permanent establishment within the definition of the term in the relevant DTAA, or
- the foreign company is a resident of a country which does not have a DTAA with India and such foreign company is not required to seek registration under Section 592 of the Companies Act 1956 or Section 380 of the Companies Act 2013.

An appropriate amendment to the Income-tax Act in this regard will be carried out. Earlier, the issues relating to taxation of foreign companies, having no permanent establishment in India, have been under consideration of the Government. In this regard, the Government has already clarified the inapplicability of MAT provisions to FIIs/FPIs. The Government has now considered the issue of applicability of MAT under section 115JB of the Income-tax Act to foreign companies having no place of business/ permanent establishment in India.

(Press Release, Dated 24-9-2015)

Regularisation of Assets held abroad by Person Resident in India under FEMA, 1999

In connection with the declarations made by persons resident in India under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Black Money Act), it is clarified that:

(a) No proceedings shall lie under the Foreign Exchange Management Act, 1999 (FEMA) against the declarant with respect to an asset held abroad for which taxes and penalties under the provisions of Black Money Act have been paid.

(b) No permission under FEMA will be required to dispose of the asset so declared and bring back the proceeds to India through banking channels within 180 days from the date of declaration.

(c) In case the declarant wishes to hold the asset so declared, she/he may apply to the Reserve Bank of India within 180 days from the date of declaration if such permission is necessary as on date of application. The Reserve Bank of India will deal with such applications as per extant regulations. In case such permission is not granted, the asset will have to be disposed of and proceeds brought back to India.

Necessary notification under FEMA is being issued separately.

(Press Release: 2015-2016/754, dated 24-9-2015)

Protocol Amending Convention and Protocol between India and Israel for Avoidance of Doube Taxation and for Prevention of Fiscal Evasion with respect to Taxes on Income and Capital

The Union Cabinet has approved the protocol amending the Convention and the Protocol between India and Israel, for avoidance of double taxation and for prevention of fiscal evasion with respect to taxes on income and on capital. The Protocol provides for internationally accepted standards for effective exchange of information on tax matters including bank information and information without domestic tax interest. It is further provided that the information received from Israel in respect of a resident of India can be shared with other law enforcement agencies with authorisation of the Competent Authority of Israel and vice versa. The Protocol further provides for 'Limitation of Benefits' Article as an anti-abuse provision aimed at preventing misuse of the Convention. The provisions of this Article enable use of the provisions of domestic law and measures concerning tax avoidance or evasion in the event of misuse of the Convention.

Background: The existing Double Taxation Avoidance Convention (DTAC) between Indian and Israel was signed in 1996. Both the Indian and Israeli sides agreed to update Article 27 on the 'Exchange of Information' in India-Israel DTAC to meet internationally accepted standards.

(Press Release, dated 7-10-2015)

Protocol amending Convention and Protocol between India and Vietnam for Avoidance of Doube Taxation and For Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital

The Union Cabinet has approved the Protocol amending the Agreement between India and Vietnam for the avoidance of double taxation and for prevention of fiscal evasion with respect to taxes on income. The Protocol provides for internationally accepted standards for effective exchange of information on tax matters including bank information and information without domestic tax interest. It is further provided that the information received from Vietnam in respect of a resident of India can be shared with other law enforcement agencies with authorisation of the Competent Authority of Vietnam and vice versa.

Background: The existing Double Taxation Avoidance Agreement (DTAA) between Indian and Vietnam was signed in 1994. Both the Indian and Vietnamese sides agreed to update Article 27 on the 'Exchange of Information' in India-Vietnam DTAA, to meet internationally accepted Amending Protocol for the purpose.

Press Release, dated 7-10-2015

Income from display of rough diamonds in Special Notified Zone Carried out on or After 1-4-2015 not to be Taxable under Provisions of Income-Tax Act, 1961

It has been decided that the income arising out of the activity of mere display of uncut diamond (without sorting or sale) inside a Special Notified Zone carried-out on or after 1st April, 2015 will not be taxable under the provisions of the Income-tax Act, 1961. Legislative amendment in this regard will be carried-out through Finance Bill 2016. Earlier, a "Special Notified Zone" was established in the Bharat Diamond Bourse. To facilitate the participation of leading diamond mining companies of the world in this zone, the matter of taxation of income arising from the activity of mere display of uncut diamonds (without sorting or sale) in the Special Notified Zone was being considered by the Government.

(Press Release, dated 16-10-2015)

CBDT launches "E-Sahyog" pilot Project of Income-Tax Department

The Income-tax Department is committed to the 'Digital India' initiative of the Government of India and launched an "e-Sahyog" pilot project which furthers the Department's commitment to work in an e-environment and reduces the need for the taxpayer to physically appear before tax authorities.

The "e-Sahyog" project launched on a pilot basis is aimed at reducing compliance cost, especially for small taxpayers. The objective of "e-Sahyog" is to provide an online mechanism to resolve mismatches in Income-tax returns to taxpayers whose returns have not been selected for scrutiny, without visiting the Income Tax Office. Under this initiative the Department will provide an end to end e-service using SMS, e-mails to inform the taxpayers of the mismatch. The taxpayer will simply need to visit the e-filing portal and log in with their user-ID and password to view mismatch related information and submit online response on the issue. The responses submitted online by the taxpayers will be processed and if the response and other information are found satisfactory as per automated closure rules, the issue will be closed. The taxpayer can check the updated status by logging in to the e-filing portal.

Also launched a drive to provide public service by holding "special PAN camps in remote areas". Under this drive, special PAN camps are being held over two days at forty-three remote semi urban and rural locations across India in the first instance to facilitate obtaining of PAN by persons residing in such areas. More such camps will be held through the year. The camps will ease the burden of compliance for persons residing in remote semi urban and rural areas who wish to enter into transactions of purchase or sale above rupees one lakh and will be required to quote PAN as announced in the Budget speech of 2015-16. The objective of the Income Tax Department is to make life as easy as possible for the assessees and difficult only for those who consciously evade taxes. These digital initiatives will help in creating a positive environment.

These initiatives of the Department are expected to significantly reduce the burden of compliance on taxpayers and enhance the taxpayer satisfaction.

(Press Release, dated 27-10-2015)

Taxation of income from off-shore Rupee Denominated Bonds-Reg: The Reserve Bank of India has recently permitted Indian corporate to issue rupee denominated bonds outside India. The matter of taxation of income from such bonds under Income-tax Act, 1961 has been considered by the Government. In so far as taxation of interest income from these INR off-shore bonds in the case of non-resident investors is concerned, it is clarified that withholding tax at the rate of 5 per cent, which is in the nature of final tax, would be applicable in the same way as it is applicable for off-shore dollar denominated bonds. Further, it has been decided that the Capital gains, arising in case of appreciation of rupee between the date of Issue and the date of redemption against the foreign currency in which the investment is made; would be exempted from capital gains tax. Legislative amendment in this regard will be proposed through the Finance Bill, 2016.

(Press Release dt. 29th October, 2015)

INSTRUCTIONS

Section 92C, read with Section 92CA, of the Income-tax Act, 1961 – Transfer Pricing – Computation of Arm's Length Price – Revised and updated guidance for implementation of Transfer Pricing provisions

The provisions relating to transfer pricing are contained in sections 92 to 92F of the Income-tax Act. These provisions came into force w.e.f. Assessment Year 2002-03 and have seen a number of amendments over the years, including the insertion of Safe Harbour and Advance Pricing Agreement provisions and the extension of the applicability of transfer pricing provisions to Specified Domestic Transactions.

In terms of the provisions, any income arising from an international transaction or specified domestic transaction between two or more associated enterprises shall be computed having regard to the Arm's Length Price. Instruction No. 3 was issued on 20th May, 2003 to provide guidance to the Transfer Pricing Officers and the Assessing Officers to operationalise the transfer pricing provisions and to have procedural uniformity. Due to a number of legislative, procedural and structural changes carried out over the last few years, Instruction No. 3 of 2003 is being replaced with this Instruction to provide updated and adequate guidance on the transfer pricing provisions pertaining to international transactions.

(Instruction No. 15/2015 [F.No.500/9/2015-APA-II], dated 16-10-2015)


CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION
Case Law Update

A. Supreme Court Judgments

1) MAT provisions – Not applicable to foreign companies not (a) having a PE in India (b) required to seek registration under section 592/380 of the Companies Act

Castleton Investment Ltd. vs. Director of Income tax (IT) – Civil Appeal No. 4559 and 4560 of 2013

Facts

1. In an application filed by Castleton Investments Ltd., a Mauritian company, the AAR in its ruling reported in [2012] 24 taxmann.com 150 (AAR-New Delhi) had held that Minimum Alternate Tax provisions contained in section 115JB of the Act do not distinguish between domestic and foreign companies and that difficulty in preparing accounts could not be the reason for non-applicability of MAT provisions to foreign companies. This ruling was contrary to the Ruling of the AAR in the case of Timken Co. [2010] 193 Taxman 20 (AAR - New Delhi) which stated that the MAT provisions are not applicable to a foreign company which has no presence or PE in India.

2. Consequently, the assessee filed an appeal before the Honourable Apex Court.

Judgment

1. The Hon'ble Apex Court noted Press Release dated September 24, 2015 which states that the Government had decided that with effect from April 1, 2001 the provisions of section 115JB of the Act shall not be applicable to a foreign company if–

- The foreign company is a resident of a country having DTAA with India and such foreign company does not have a permanent establishment within the definition of the eterm in the relevant DTAA, or
- The foreign company is a resident of a country which does not have DTAA with India and such foreign company is not required to seek registration under section 592 of the Companies Act, 1956 or section 380 of the Companies Act, 2013.

An appropriate amendment to the Income-tax Act in this regard is to be carried out.

2. The Hon'ble Apex Court further noted Instruction No. 9 / 2015 dated September 2, 2015 issued by the Central Board of Direct Taxes (Ministry of Finance – Government of India) which states that the field authorities were to take into consideration the above position and keep in abeyance, for the time being, the

pending assessment proceedings in the case of FIIs/FPIs involving the above issue. They were further advised not to pursue the recovery of outstanding demands, if any, in such cases.

3. Since the learned Attorney General made a statement at the Bar that the Government would abide by the decision which had been taken in the aforesaid Instruction dated September 2, 2015 and Press Release dated September 24, 2015, the Hon'ble Apex Court disposed of the appeals in terms thereof.

B. AUTHORITY FOR ADVANCE RULINGS

2) Services provided by Chinese subsidiary of Indian holding company in connection with procurement of goods by Indian company from Chinese vendors involving specialized services of market research, information on new developments was taxable as fees for technical services on the gross amount @ 10 per cent.

Guangzhou Usha International Ltd In re – (2015) 62 taxmann.com 96 (AAR – New Delhi)

Facts

1. The applicant, a company registered under the laws of China was a wholly owned subsidiary of an Indian company – Usha International Limited engaged in the business of import and export of household electrical appliances and equipment and provision of related services to the Indian company.

2. The applicant had approached the AAR with the following questions:

a. Whether the fee received / receivable from Usha International for providing services in connection with procurement of goods by Usha International from vendors in China and other related serviced provided in China were taxable in India?

b. If the fee received/receivable was taxable in India, then under what category and rate would it be taxed and whether tax would be imposed on the full amount received or would it be restricted to the 10 per cent markup earned over and above actual cost?

Ruling

3. To determine whether the said transaction was taxable in India, the AAR referred to Article 12 of the India-China Double Tax Avoidance Agreement and also took note of the China-Pakistan DTAA relied upon by the applicant and held that there was a distinction between the two treaties as the India-China DTAA uses the words provision of services of managerial, technical or consultancy nature and the China-Pakistan DTAA uses the words provision of rendering of any managerial, technical or consultancy services. It held that provision of services was wide than provision for rendering of services and therefore covered those services which were rendered in the one contracting State (China) as long as they were used in the other contracting state (India).

4. The AAR held that the applicant was not only identifying the products but also providing information on the new developments in China with regard to technology / product / process upgrades which required skill, acumen and knowledge. Further, referring to the service agreement it held that the applicant had the skill and knowledge in the field of evaluation of credit, organisation, finance and production facility of an organisation and in giving expert advice for improvement of high quality of standard. Accordingly, the AAR was of the view that the services provided by the applicant to Usha International fell under the consultancy services and therefore taxable as fees for technical services under the India-China Double Tax Avoidance Agreement.

5. Relying on the Rulings in the case of DANFOSS Industries Pvt. Ltd. (AAR 606 of 2002)

and Timken India Limited (AAR 617 of 2003), it held that tax was to be imposed on the entire amount received by the applicant from Usha International and would be taxable at 10 percent.

C. High Court Judgments

3) Certificate of residence issued by Mauritius is sufficient evidence of residence under the DTAA. Further, the expression "liable to taxation" in the definition of resident contained in the DTAA means the "right of Government to tax" and not "actually taxed"

Serco BPO (Pvt.) Ltd. vs. Authority for Advanced Rulings – (2015) 60 taxmann.com 433 (Punjab & Haryana)

Facts

1. The petitioner, incorporated on January 20, 2002 entered into a share purchase agreement with Blackstone Mauritius, Barclay (H&B) Mauritius Ltd., HDFC, SKM Technology and other individual shareholders ('Sellers') for the purchase of the shares held by the Sellers in an Indian company i.e. SKR BPO Services. The Petitioner filed an application before the Authority for Advanced Rulings ('AAR') to determine whether the capital gains arising on the transfer of shares in the hands of Blackstone Mauritius and Barclay Mauritius was taxable having regard to Article 13(4) of the DTAA between India and Mauritius and whether or not there was any liability to deduct tax at source under section 195 of the Act.

2. The AAR refused to rule on the merits of the matter as it was of the view that this transaction was *prima facie* designed for avoidance of income tax in India and therefore the application was not admissible under proviso (iii) to section 245R(2) of the Act. Aggrieved, the petitioner filed a writ petition before the High Court with the plea to decide the issue on merits and to declare the transaction as not one designed for avoidance of tax.

Judgment

1. The Hon'ble High Court held that neither was there a single finding of fact in relation to the *prima facie* finding that the transaction was designed for avoidance of tax in India nor was there any reference to a document which led the AAR to this finding and that the petitioner had submitted all necessary documentation which had been confirmed by the Departmental Representative. The High Court also noted that Blackstone and Barclay had held shares in SKR BPO for a period of 6 years, running its business and employing over 1,000 people. Considering that the matter was heard by the AAR on several occasions over 4 years which exceeded the stipulated time of 6 months for the issue of rulings in the case of AAR, the High Court decided to hear the matter on merits.

2. The DR contended that Residency Certificate issued in favour of Blackstone and Barclay were irrelevant as they could not be considered as residents of Mauritius since they did not conduct any business, have any manufacturing unit or render any services in Mauritius and that the real beneficiaries of the transaction i.e. the shareholders of Blackstone and Barclay, did not actually reside and carry on business for gain in Mauritius. The Court held that it was incumbent on the Indian authorities to accept the Residency Certificate issued by the Mauritian Authorities without questioning its validity as it would indicate a breakdown in faith reposed by the Government of Indian in the Government of Mauritius. Reference was made to CBDT Clarification dated March 1, 2013 issued in light of section 90(5) of the Act, wherein it is stated that the Residency Certificate produced is to be accepted without the Income-tax Authorities going beyond the said certificate and questioning the residential status.

3. Additionally, the High Court dismissed the contention of the DR that the DTAA was not applicable to Blackstone and Barclay as there was no capital gains tax leviable in Mauritius as a result of which Blackstone and Barclay would fall outside the definition of resident

in the DTAA which contains the words "liable to taxation". It held that the words "liable to taxation" mean that the Government is entitled to tax that person and not that the tax has to be actually paid.

4. Therefore it quashed the order of the AAR and held that no capital gains tax was to be paid by Barclay and Blackstone in respect of the sale of shares and accordingly no tax was to be withheld.

4) Passing of a book entry towards payment of royalty to a non-resident which was subsequently reversed would not give rise to an obligation to deduct tax at source.

Director of Income-tax vs. Ericsson Communications Ltd. – (2015) 61 taxmann.com 117 (Delhi)

Facts

1. The assessee, a wholly owned subsidiary of Telefonakitiebolaget LM Ericcson, Sweden ('TLME), was engaged in the business of installation and commissioning of telecom projects and related information systems. The assessee entered into an agreement with TLME for the use of its trademark 'Ericsson' pursuant to which it was to pay royalty at 1 per cent of its total sales. The said amount of royalty was accounted for in the books of account of the assessee; however since the payment of royalty was not permissible as per the Industrial Policy in force at the material time, the assessee made a corresponding reversal entry nullifying the original entry.

2. As per the Revenue, the credit entry of royalty made in the books of account of the assessee gave rise to an obligation to deduct tax at source under section 195 of the Act and therefore the AO raised a demand under sections 201(1) and 201(1A) of the Act.

3. Aggrieved, the assessee filed an appeal before the CIT(A) who held in favour of the revenue on the ground that as per the terms of the agreement, the income has accrued in the hands of TLME and therefore section 195 of the Act was applicable.

4. Further appeal was filed with the ITAT, wherein it was held that there was no accrual of income on account of royalty and therefore ruled in favour of the assessee. Aggrieved by the order of the ITAT, the Revenue preferred an appeal before the High Court.

Judgment

1. The Hon'ble High Court, referring to the facts and section 195 of the Act, observed that the obligation to deduct tax at source in section 195 of the Act would only arise if the payer owes a sum chargeable to tax to the non-resident or the said sum is acknowledged as a debt payable to the non-resident by crediting account of the non-resident in its books.

2. The Court held that since the assessee reversed the royalty entry in its books of account as the same was not within the Industrial Policy, it had neither paid the royalty nor reflected the same as payable and therefore there was no income chargeable to tax accruing to TLME. Mere passing of book entries which were reversed could not lead to an obligation to deduct tax at source under section 195 of the Act.

5) Removal of filter by the ITAT which was accepted by the TPO would not be feasible as companies eliminated by the filter could not be brought back for examination. High or low turnover was not reason to justify exclusion of a comparable but since the TPO had applied a lower limit of ₹ 5 crore there was no justification in not applying an upper turnover filter

Commissioner of Income-tax vs. Nokia India Pvt. Ltd. – ITA No. 676 / 2015 (Delhi) – AY 2002-03

Facts

1. The assessee, a wholly owned subsidiary of Nokia Corporation, Finland, has four distinct business segments – 1. Trading segment 2. Segment engaged in providing technical services in respect of installation of phones 3. Segment for research on interest security appliances and network management called NIC Research Centre and 4. Research and Development segment called Nokia Net R & D. During the relevant year, the assessee had entered into international transactions with its AEs. Transactions with NIC Research Centre and Nokia Net R & D were benchmarked using the TNMM method and the respective operating margins of the segments were 5 and 7 per cent respectively.

2. The TPO rejected the comparables selected by the assessee for the two divisions and applied revised filters arriving at a set of 60 comparables with a margin of 19.17 per cent which was reduced to 15 per cent after working capital adjustments. Aggrieved, the assessee filed an appeal before the CIT(A) who by excluding 32 companies deleted the TP addition on the following grounds:

a. 13 companies were excluded on the ground that they did not satisfy the filter of depreciation to total cost less than 5 per cent or greater than 50 per cent which was applied by the TPO itself

b. 2 companies on the ground that they had related party transactions in excess of 25 per cent; and

c. 17 companies on the ground that the though the TPO had applied a lower turnover filter of excluding companies having turnover less than ₹ 5 crore he had failed to apply an upper turnover filter. The CIT(A) applied an upper turnover filter of ₹ 50 crore and therefore excluded the said companies.

3. The Revenue filed an appeal before the ITAT challenging the order of the CIT(A). The ITAT did not approve of the application of the depreciation filter as the effect of higher amount of depreciation in the initial years of the asset is offset by a lower amount of cost of repairs and with the increase in life of the asset the depreciation decreases but repairs increase. However it held that it was unable to order for the removal of this filter as the TPO had itself applied the filter and must have excluded companies based on it, which could not be brought back. Further it upheld the exclusion of companies based on the Related Party transaction filter. With regard to the turnover filter, the ITAT held that high or low turnover was not reason to justify exclusion of a comparable but since the TPO had applied a lower limit of ₹ 5 crore there was no justification in not applying an upper turnover filter and upheld the CIT(A)'s upper turnover filter of ₹ 50 crore. Accordingly, the appeal was dismissed and the Revenue filed further appeal before the Hon'ble High Court.

Judgment

1. The Hon'ble High Court held that since the TPO had accepted the depreciation filter and did not provide any reasoning for not implementing an upper turnover filter, the order of the ITAT was to be upheld and accordingly ruled in favour of the assessee.

6) In application of the CUP method the authorities have to go by what was actually paid or charged in the comparable uncontrolled transaction and not the price payable or chargeable in case of an eventuality, which never occurred

CIT vs. Bumi Highway India Ltd. – ITA No. 621 / 2015 (Delhi) - AY 2007-08

Facts

1. During the relevant year, the assessee undertook two international transactions – pertaining to interest payable on External

Commercial Borrowings ('ECB') and interest receivable on loan advanced to its AE. In relation to the interest receivable on loan to its AE, the assessee had charged interest @ 9% p.a. and justified the ALP of the transaction using the CUP method taking the interest it paid on loans taken from Bank of Nova Scotia at 9% as comparable. In its loan sanction letter, Bank of Nova Scotia further stated that in the event of default in repayment of loan, it retained the discretion to charge the assessee a higher interest rate of the Prime Lending rate plus 4% or interbank call money market rate plus 4%, whichever was higher (in this case the interest rate was at 18.50%). The assessee had not defaulted in its repayments to Bank of Nova Scotia and thus continued to pay 9%.

2. The TPO and DRP were of the view that since the AE had persistently defaulted in payment of principal and interest towards the loan advanced by the assessee, interest should have been paid at 18.5% and accordingly made an adjustment.

3. Aggrieved, the assessee filed an appeal with the ITAT, wherein it was held that Rule 10(B)(1)(a) providing the mechanism for application of the CUP method, contemplated that what was to be taken as a comparable was the price charged or paid for an actual transaction and not the hypothetical or illusive price paid and since the assessee never defaulted in its payments to Bank of Nova Scotia there was no occasion to consider 18.5% as the benchmark.

Judgment

1. The Hon'ble High Court upheld the order of the Tribunal and stated that in the application of CUP Method one has to go by what is actually charged in the comparable transaction and not a hypothetical transaction. The DRP had proceeded on a hypothetical presumption, without there being an actual instance of default in repayment of the loan by the assessee to Bank of Nova Scotia and therefore there was no question of substituting the 9% interest actually paid with the hypothetical interest rate of 18.50%.

7) Reference to TPO for the determination of ALP of international transaction could only be made by the AO if there was an assessment pending before him as the determination of ALP envisages computation which is only possible during assessment

Commissioner of Income-tax vs. XL India Business Services Pvt. Ltd. – ITA No 713 / 2015 (Delhi) – AY 2007-08

Facts

1. The assessee filed its return of income for AY 2007-08 on October 29, 2007. On December 24, 2009, the AO without having any assessment proceedings pending before him made a reference to the TPO under section 92CA(1) of the Act for determination of the ALP of the international transactions entered into by the assessee with its AEs for IT enabled services pursuant to which the TPO submitted its report to the AO on the basis of which the AO issued a notice u/s. 148 of the Act proposing to reopen the assessment. The DRP dismissed the objections filed by the assessee and held that the reassessment proceedings were valid. Subsequently, the AO passed a reassessment order making an addition to the total income of the assessee.

2. Aggrieved, the assessee filed an appeal before the ITAT challenging the jurisdiction of the AO to issue notice under section 148 of the Act in substitution of regular assessment proceedings. The ITAT held that unless an income-tax return in respect of which notice under section 143(2) of the Act can be issued was pending before the AO, no reference could be made to the TPO.

3. The Revenue preferred appeal before the High Court against the order of the Tribunal.

Judgment

1. The Honourable High Court held that section 92(1) of the Act dealing with the determination of the ALP of international transactions uses the word "computed" and that computation of income could only take place during assessment proceedings and therefore the provisions do not envisage the AO making a reference to the TPO for determination of ALP when there was no assessment proceedings pending before him. It was held that the reference made to the TPO was without jurisdiction and the resultant report issued by the TPO could not be used as the basis for initiating reassessment proceedings under the Act.

8) Onsite work sub-contracted to foreign AE subject to supervision and control of the Indian assessee is eligible for benefit under section 10A of the Act – Section 10A to be interpreted liberally subject to fulfillment of conditions prescribed therein.

Commissioner of Income-tax vs. M/s. Mphasis Software & Service India Pvt. Ltd. – ITA No 263 and 264 / 2014 (Karnataka) – AY 2007-08

Facts

1. The assessee was engaged in the business of development of software and rendering of business process outsourcing services, both domestic and export. The work was of two types – 1. Contracts entered into by its AE with the end customer for which the offshore work was outsourced to the assessee and 2. Contracts entered into by the assessee with the end customer for both offshore and onsite work, with the onsite work outsourced to the AE. It claimed a deduction under section 10A of the Act for the export revenue earned from both contracts.

2. With regard to the second type of contracts, the AO denied deduction under section 10A of the Act on the ground that the on-site development work outside India was not carried out by the assesse through its own personnel. Aggrieved, the assessee filed an appeal before the CIT(A) who upheld the addition. Further appeal was filed before the ITAT, wherein the addition made by the AO was deleted.

3. Accordingly, the Revenue filed an appeal before the High Court to determine this issue. Further, the Revenue contended that the deduction was not to be allowed under section 10A as the manufacture or production was done outside the free trade zone.

Judgment

1. The Honourable High Court observed that the agreement entered into between the assessee and the AE provided that the work outsourced to the AE was subject to supervision and pervasive control of the assessee. For clarity sake, it held that there was no issue regarding the offshore work carried out by the assessee. Referring to clarificatory Explanation 3 to Section 10A, it held that the said explanation does not limit the benefit u/s. 10A of the Act but in fact enlarges its scope and that the Explanation does not lay down a requirement that the onsite work of software development should be carried out by the personnel of the assessee itself and therefore it would be wrong to deny benefit under section 10A on this ground. It further observed that the onsite work had been done under the direct supervision and control of the assessee through the AE which would be construed as being done by the assessee itself and since the ownership of the software product was with the assessee it was the assessee's product and therefore allowed benefit under section 10A of the Act.

2. In dealing with the contention of the Revenue that the onsite work should have been carried on in the Free Trade Zone, the High Court held that this interpretation of section 10A would lead to the ignorance of Explanation

3, rendering it inconsequential and therefore dismissed it.

3. It was also held that section 10A of the Act was a beneficial piece of legislation in order to encourage setting up of business to earn foreign exchange and should be interpreted liberally once the assessee has complied with all conditions prescribed therein.

D. Tribunal Decisions

9) India-USA DTAA - Reimbursement of the cost of software purchased off the shelf - Whether a group entity situated in india is liable to deduct TDS u/s. 195 on the reimbursement made to the non-resident parent company, in respect of the software purchased by the parent company off shelf - Held: No. In assessee's favour.

Lionbridge Technologies Pvt. Ltd. vs. ITO 2015-TII-139-ITAT-MUM-INTL

Assessment year 2007-08

Facts

i) The assessee is a member of Lionbridge Technologies Inc, USA, and is engaged in rendering software services. Lionbridge Technologies Inc, USA had entered into an agreement with various vendors namely Microsoft Inc. USA and Skillsoft, for the purchase of Standard off the Shelves Software to be used by Lionbridge entities across the globe. Lionbridge USA had made the payment to the vendors for the purchase of software, which in turn was reimbursed by the various group entities using the software. Lionbridge USA allocated the cost of the software amongst various group entities based on headcounts i.e. the number of desktops in each office. The said allocation was made on cost and no mark-up was charged by Lionbridge USA.

ii) The assessee being one of the group entity, made the payments to Lionbridge USA as reimbursement of the cost of the software. The assessee's stand was that the acquisition of the software for the use of software does not give rise to 'royalty' or 'income' in the hands of the recipient, because it was purchased off shelf and was merely a reimbursement of cost.

iii) The AO however held that the assessee should have withheld the tax on the amount remitted to Lionbridge USA, as such a payment amounts to payment towards 'royalty'. Accordingly, he treated the assessee as in default u/s. 201(1) and calculated the amount of TDS deductible and interest thereon u/s. 201(1A). On appeal, the CIT(A) confirmed the action of the AO.

Decision

On assessee's appeal, the Tribunal held, in its favour, as follows:

i) It is seen that Lionbridge USA has entered into an agreement with vendors like Microsoft Inc. for the purchase of Standard off the Shelves Software to be used by Lionbridge group entities across the globe. The cost of the purchase of the software has been allocated amongst various group entities based on allocation key of number of desktops in each office. The said allocation was made at cost and no mark-up was charged. Accordingly, all the group entities had reimbursed their share of cost to Lionbridge USA. It has not been disputed that the cost of reimbursement paid to Lionbridge USA is not chargeable to tax in India. The assessee was not required to withhold the tax u/s. 195 and this proposition is well supported by a decision of Supreme Court in the case of GE India Technology Centre P. Ltd.

ii) It is not a question where Lionbridge USA has developed software which has been given for use to the assessee. The software has been purchased from Microsoft, the cost of which has been distributed amongst all the group entities.

It is pure case of reimbursement of cost and admittedly, there is no mark-up. Accordingly, there was no liability to deduct TDS on such reimbursement of cost.

iii) On first proposition, the Supreme Court in the case of G.E. India Technology Centre P. Ltd. has elaborated this concept and deductibility of TDS by observing that:

"The obligation to deduct tax at source is limited to the appropriate proportion of income chargeable under the Act forming part of the gross sum of money payable to the non-resident. This obligation being limited to the appropriate proportion of income flows from the words used in section 195(1), namely, "chargeable under the provisions of the Act". It is for this reason that *vide* Circular No. 728 dated October 30, 1995 the CBDT has clarified that the tax deductor can take into consideration the effect of DTAA in respect of payment of royalties and technical fees while deducting TAS....The application of section 195(2) presupposes that the person responsible for making the payment to the non-resident is in no doubt that tax is payable in respect of some part of the amount to be remitted to a non-resident but is not sure as to what should be the portion so taxable or is not sure as to the amount of tax to be deducted. In such a situation, he is required to make an application to the ITO (TDS) for determining the amount. It is only when these conditions are satisfied and an application is made to the ITO (TDS) that the question of making an order under Section 195(2) will arise...."

Therefore, following the aforesaid ratio and principles of the Supreme Court, which is applicable in the present case also, the Tribunal held that the assessee was not liable to deduct TDS u/s. 195, as sum paid to non-resident i.e. Lionbridge US is not chargeable to tax in India.

10) India-UK DTAA – Payment of Legal fees to a partnership Firm - Whether the benefit of Indo-UK Treaty is available to the Partnership firm registered in the UK, even though the firm is not recognised as taxable entity under the taxation provisions of UK – Held : Yes; in favour of the assessee.

DDIT vs. M/s. Zee Telefilms Ltd. 2015-TII-164-ITAT-MUM-INTL

Assessment Year: 2001-02

Facts

i) The assessee is an Indian media and entertainment company. The assessee had engaged the "Millbank Tweed Hadley and Mccloy", a Solicitor firm for its proposed ADR offering. It had paid fees to the Solicitors and deduced tax at source. Thereafter, it had filed a return as a representative of the above said solicitor firm declaring the total income as NIL. Accordingly, the entire amount of TDS deducted by assessee was claimed as refund.

ii) The AO noticed that a partnership firm was not liable for taxation in the UK. The AO took the view that the benefits of Indo-UK tax treaty could be availed only if the solicitor firm can be considered as tax resident of UK and since the solicitor firm was not a taxable entity, the AO took the view that it cannot claim the benefit of Indo-UK Treaty. Thus, the AO held that the fee received by the Solicitor firm was in the nature of fee for technical services.

iii) The CIT(A) held that the fees received by the assessee Solicitor firm was not in the category of fee for technical services, but it would fall under the category of fee of independent personal services. Thus, granted relief by considering the provisions of Indo-UK DTAA.

Decision

On appeal, the Tribunal held in favour of the assessee as follows:

We notice that in the case of *P&O Nedlloyd Ltd. & Ors vs. Assistant Director of Income Tax (International Taxation-II, Kolkata) on*

7 November, 2014 in W.P. No. 457 of 2005 and W.P. No.458 of 2008 (2014-TII-70- HC-KOL-INTL) the Calcutta High Court has expressed the view that the benefit of Indo-UK Treaty is available to the Partnership firm registered in UK even though the firm is not recognised as taxable entity under the taxation provisions of UK. By respectfully following the decision of the High Court, we hold that the assessee is entitled to Indo-UK DTAA benefits and accordingly dismiss the appeal filed by the Revenue.

11) India-Israel DTAA - Article 13 - Whether when the expenses are reimbursable in nature, they are not liable to tax – Held: Yes. Whether services rendered without imparting any knowledge or skills are not in the nature of fees for technical services - Held: Yes; Whether when the facts are identical, and the difference is only in figures, then deviating from the decision of the earlier AY's order of the CIT(A) in the absence of any valid reason is not sustainable in law and the same against the principles of consistency - Held: Yes; in assessee's favour.

ADIT vs. TTI-Team Telecom International Ltd. 2015-TII-154-ITAT-MUM-INTL

Facts

i) The assessee is a developer and provider of next generation Operations Support Systems (OSS) to large communications service providers. The assessee had incurred expenditure on behalf of its 100% subsidiary company, TTI-India on reimbursable basis.

ii) During assessment, the AO treated the same as 'Fee for Technical Services' (FTS) and held that such receipts were taxed on the receipt basis only and relied on the Article 13 of the Indo-Israel Treaty.

iii) On appeal, the CIT(A) held that the assessee had not 'made available' of any Technical Services. Also the FTS definition of Indo-Israel Treaty was the same as Article 12(4) of the Indo-Canada Treaty in view of the 'Most Favoured Nation' clause. Thus, held that incurred expenditure did not constitute as FTS.

Decision

The Tribunal held in assessee's favour as follows:

i) For AY 2005-06, the CIT(A) held that since the assessee merely rendered services without imparting any knowledge, skills etc. to TTI-India, the said services are not in the nature of fees for technical services within the meaning of Article 13(3) of India-Israel Tax Treat read with clause 2 of the protocol dated 29-1-1996. On identical facts, the CIT(A)'s decision for the AY 2005-06 was accepted by the Revenue and no appeal was filed against the said order of the CIT(A). When the facts are identical, and the difference is only in figures, deviating from the decision of the earlier year's order of the CIT(A) in the absence of any valid reason is not sustainable in law and the same against the principles of consistency;

ii) When the expenses are reimbursable in nature, the reimbursements are not liable to tax as well as considering the issue that since the assessee merely rendered services without imparting any knowledge, skills etc. to TTI-India, the said services are not in the nature of fees for technical services within the meaning of Article 13(3) of India-Israel Tax Treaty.

12) Transfer Pricing – Selection of Comparables – Whether when the assessee is engaged in the function of non-binding advisory services, a company engaged in merchant banking, capital markets, finance markets activities, can be considered as functionally similar for the purpose of benchmarking the international

transactions - Held: No; in favour of assessee.

Lehman Brothers Advisors Pvt. Ltd. vs. ACIT 2015-TII-437-ITAT-MUM-TP

Assessment Year: 2008-2009

Facts

i) The assessee is engaged in the business of providing non-binding advisory and support services to the AE. The OP/TC for the assessee was 20.93 at the entity level.

ii) The assessee submitted that the case was covered by the decision of the Tribunal in the case of *Carlyle India Advisors (P) Ltd. vs. DCIT 2014-TII-58-ITAT-MUM-TP*. Explaining how the case was covered, AR submitted that TPO selected Motilal Oswal Investment Advisors Private Ltd. (MOIAPL) as one of the comparables ignoring the fact that business of the said company was different from that of the assessee. The TPO rejected all the comparables submitted by assessee in the TP study and selected 3 different comparables to benchmark the international transactions of the assessee with MOIAPL whose OP/TC margin at 72.33%.

iii) Explaining how MOIAPL was different, AR brought attention towards the annual accounts of the said MOIAPL and submitted that the same was engaged in multiple business functions such as capital marketing business, structured finance teams etc., which was entire dissimilar to the functions of the assessee.

iv) The AR also mentioned that assessee was engaged in single segment and there were no separate reportable segments as defined in AS-17. Further, AR brought attention towards the fact that the said company MOIAPL was analysed by the Tribunal in adjudicating the appeals of the Carlyle India Advisors (P) Ltd. In this regard, AR pointed out that Tribunal held that the MOIAPL was engaged in the multiple and diversified activities, therefore, the said company was dissimilar with that of the assessee company was having function of 'non binding services'. Therefore, MOIAPL was disqualified for benchmarking the international transactions.

v) On the other hand, the DR submitted that despite the diversified functions, the said company categorised the receipts under the head 'advisory fees' as evident from the annual accounts. Therefore, the fact of diversified activities was not evident from the data available in the annual accounts. In reply to the same, AR demonstrated that though the receipts were categorised under the head 'advisory fees' the said fees was earned by the assessee from diversified activities as mentioned above. Therefore, the said MOIAPL was functionally different as held by the Tribunal in the case of Carlyle India Advisors (P) Ltd.

Decision

On appeal, the Tribunal held in assessee's favour as follows:

i) From the directors' report, it is evident that the said company MOIAPL has undertaken 23 assignments successfully in the year under consideration. Major portion of the income is earned by MOIAPL out of cross-border activity services and related financial services. The capital market business is one of the sources of the advisory fees earned by the assessee. Assessee has also earned fees out of assessee's capability of the structured finance teams, financial markets, i.e. both equity and credit market, is another source of income for the assessee.

ii) These functions of the company were analysed by the Tribunal during the proceedings in the case of Carlyle India Advisors (P) Ltd., where it was observed that the only dispute is whether Motilal Oswal Investment Advisors Pvt. Ltd. can be considered as a comparable for the determination of ALP.

iii) A perusal of three comparables considered by the TPO shows that M/s. Future Capital Investment Advisors Ltd. has operative profit at 21.79% whereas OPM of Motilal Lswal

Investment Advisors Pvt. Ltd. is 72.33%. The comparables used by the TPO themselves are showing extreme OPM. A perusal of the Director's report of Motilal Oswal Investment Advisors Pvt. Ltd. shows that during the year under consideration, the said company has completed 23 assignments successfully as against 14 completed in the immediately preceding year. A close look at the financial statements of the said company show that the income from operations have been shown only as advisory fees whereas it is admittedly an undisputed fact that the said company is engaged in diversified activities. Segmental reporting is not available. Profit and loss account appears to be only of consolidated accounts. The said company is registered with SEBI as a merchant banker and the Director's report show that it is into takeover acquisitions, disinvestments etc. In the absence of specific data it is not possible to make comparison.

iv) It can therefore be safely said that MOIAPL being into merchant banking and cannot be considered as a comparable. We, accordingly, direct the AO not to consider Motilal Oswal Investment Advisors Pvt. Ltd. as a comparable for the determination of ALP and re-determine the ALP excluding Motilal Oswal Investment Advisors Pvt. Ltd. and including M/s. IDC in the light of the provisions of section 92C(2) r.w.s 92C(2A).

13) FTS - Reimbursement of expenses - shared technology services - deduction of tax at source – Whether reimbursement of cost incurred by an assessee is out of the purview of the TDS provision u/s. 195 and consequently the provisions of section 40(a)(ia) could not be invoked in case of non-deduction of TDS upon such reimbursement - Held: Yes. In assessee's favour

DCIT vs. M/s AT & S India Pvt. Ltd. 2015-TII-173-ITAT-KOL-INTL

Assessment Years: 2004-05 & 2008-09

Facts

i) The assessee is a subsidiary of AT&S Austria, and is engaged into business of manufacture and sale of professional grade printed circuit boards. The AT&S Austria had entered into global arrangements for various facilities and services, comprising of WAN Satellite link, Microsoft products software, SAP software and Norton Antivirus software, which are to be used by AT&S Austria and its group companies located in different countries, including India.

ii) During the year under consideration, the assessee had claimed expenses of ₹ 1,59,95,287/- towards shared technology services. It was paid to parent company based in Austria.

iii) During assessment, the AO found that assessee had failed to deduct TDS of such expenses. The AO calls upon the assessee to explain the reasons for non-deduction of TDS. The AR of assessee submitted that these payments were nothing but reimbursement of expense in terms of agreement between assessee and AT&S Austria.

iv) The AO disregarded the claim of assessee and added the same to the total income of assessee for violating the provision of Section 40(a)(ia). On appeal, the CIT(A) held that the said expenses were out of the purview of TDS being reimbursed and also not chargeable of tax in India. Therefore, the addition made by AO stands deleted.

[Contd. on Page 160]

CA. Hasmukh Kamdar

INDIRECT TAXES

Central Excise and Customs – Case Law Update

Limitation

[Commissioner of C. Ex. Chennai-IV vs. Tenneco RC India Pvt. Ltd. 2015 (323) E.L.T. 299 (Mad.)]

Facts in this case were as follows:

The assessee was a manufacturer of shock absorbers falling under Chapter Heading 8708 and 8714 of the CETA, 1985 having three manufacturing units one at Pondicherry, second at Gurgaon and third one at Alandur, Chennai. The unit at Alandur manufactured and cleared shock absorber elements on payment of duty. This unit also manufactured and transferred certain types of shock absorber elements in semi-finished condition to their sister unit at Gurgaon on stock transfer basis. Such semi finished elements were ultimately sold to M/s. Maruti Udyog Ltd., after adding items like spring, dust covers, etc. As the goods were in a semi-finished condition and were not of compatible nature, for the purpose of determining assessable value, valuation was restored to under Rule 6(b)(ii) of Central Excise (Valuation) Rules, 1975 based on cost construction method without addition of any profit margin for the purpose of arriving at the assemble value. Since it was projected as if the unit was incurring losses consistently, a show cause notice was issued to the assessee demanding differential duty by adding profit margin. Finally duty amount of ₹ 3,31,115/- was confirmed as payable for the period 1996-97 under the erstwhile Rule 9(2) of Central Excise Rules 2002, 1944 read with sub-section 11(A)(1) of Central Excise Act, 1944. Equal amount of penalty under Section 11AB of Central Excise Act, 1944, was also demanded. Aggrieved by the order, the assessee filed an appeal.

The Commissioner (Appeals) confirmed the demand order. Challenging the said appeal order, the assessee approached the Tribunal. The Tribunal allowed the assessee's appeal and hence, the Revenue referred the following question of law to the Hon'ble High Court.

"Whether on facts and circumstances of the case, the 2nd respondent Tribunal was right in holding that Revenue neutral situation as the reason for allowing the 1st respondent's appeal irrespective of the fact that the 1st respondent has wilfully suppressed the maintenance of dual accounting system and non-inclusion of profit margin in the assessable value of semi-finished goods cleared to their other unit?"

The Hon'ble Court observed that similar question has been considered by the Gujarat High Court in the case of *Commissioner of Central Excise and Customs, Vadodara II, vs. Indeos Abs Ltd. reported in 2010 (254) E.L.T. 628 (Guj.)* and the issue raised was answered in favour of the assessee. In an identical matter where a similar issue was raised, the Supreme Court, in the case of *Nirlon Ltd. vs. Commissioner of Central Excise,* *Mumbai, reported in 2015 (320) E.L.T 22 (S.C.),* affirmed the view taken by the concerned High Court. The relevant paragraphs of the order read thus,

> "7. We have ourselves indicated that two types of goods were different in nature. The question is about the intention, namely, whether it was done with *bona fide* belief or there was some *mala fide* intention in doing so. It is here we agree with the contention of the learned senior counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty."

> "8. Therefore, it was not permissible for the respondent to invoke the proviso to Section 11A(1) of the Act and apply the extended period of limitation. In view thereof, we confirm the demand in so far as it pertains to show cause notice dated 25-2-2000. However, as far as show cause notice dated 3-3-2001 is concerned, the demand from February, 1996 till February 2000 would be beyond limitation and that part of the demand is hereby set aside. Once we have found that there was no *mala fide* intention on the part of the appellant, we set aside the penalty as well."

In view of the above facts the substantial question of law was answered in favour of the assessee and against the Revenue.

[Contd. from Page 158]

Decision

The Tribunal held in favour of the assessee as follows:

i) In assessee's own case in various assessments including A.Y 2005-06, 2006-07 & 2007-08, wherein this Tribunal has deleted the addition made by AO on account of failure to deduct TDS on share technology services. The Tribunal therein has held that:

"A perusal of the decision of the Supreme Court in the case of Tejaji Farasram Kharawalla Limited, clearly shows that Supreme Court has categorically held that the reimbursement of the actual expenses would not be taxable in the hands of the person receiving the reimbursements. Further Karnataka High Court in a recent judgment in the case of *DIT vs. Sun Microsystems India P. Ltd.* exactly on the similar issue interpreting Article 7 of the DTAA between India and Singapore, which is identically worded to Article 7 of DTAA between India and Austria, and held that if along with technical services rendered, if the service provider also makes available the technology which they used in rendering services, then it falls within the definition of "fees for technical services" as contained in the DTAA. However, if technology is not made available along with technical services what is rendered is only technical services and the technical knowledge is withheld, then such a technical service would not fall within the definition of "technical services" in the DTAA and the same is not liable to tax....In view of the decisions of Apex Court & jurisdictional High Court, we hold that in the process of reimbursement of expenditure, no income can be said to have generated requiring deduction of tax at source. Since there was no liability of deduction of tax at source, section 40(a)(i) cannot be invoked."

ii) It is clear that the reimbursement of cost incurred by the assessee is out of the purview of the TDS provision as it does not generate any income in the hands of the recipient and consequently the provisions of section 40(a)(ia) could not be invoked.

CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES
Service Tax – Statute Update

1. Services provided by an Indian Bank or another entity acting as an agent to the Money Transfer Service Operators ('MTSO'), in relation to remittance of foreign currency from outside India to India

- As per Revenue authorities, service tax is leviable on services provided by an Indian Bank or another entity to MTSO, in relation to remittance of foreign currency from outside India to India.
- However, there was general practice prevalent of non-levy of service tax on aforesaid service during the period 01-07-2012-13-10-2014.
- No service tax is required to be paid on aforesaid service for the period 01-07-2012-13-10-2014.

[Notification No. 19/2015 – Service Tax dated 14.10.2015]

2. Amendment in Mega Exemption Notification No. 25/2012-ST dated 20-6-2012

- Further exemptions provided from 20-6-2015:

Clause of Mega Exemption Notification	Provider of service and Receiver of service	Nature of service
Entry 29(g) & (ga)	Services provided by business facilitator or a business correspondent to banking company or an insurance company, in a rural area, or Services provided by any person as an intermediary to a business facilitator or a business correspondent	In relation to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding
	Services provided business facilitator or a business correspondent	to an insurance company in a rural area
cl. k (iii)	Definition of charitable activities amended to include advancement of religion or spirituality or Yoga.	Yoga as a part of charitable activities now exempt

[Notification No. 20/2015-Service Tax dated 21-10-2015]

3. Monetary limits for launching prosecution and for arrest in Central Excise and Service Tax revised

Monetary limit for prosecution under Section 9(1) of the Central Excise Act, 1944 or Section 89(1) of the Finance Act, 1994 for offences relating to evasion of Central Excise duty or service tax increased from ₹ 50 lakhs to ₹ 1 crore or more.

Arrest of person in relation to offences specified above can be made when evasion of duty or tax or misuse of CENVAT credit is ₹ 1 crore or more.

[Circular No. 1010/17/2015-CX dated 23-10-2015]

4. Consolidated guidelines for launching prosecution under the Central Excise Act, 1944 and the Finance Act, 1994.

Salient features of these guidelines are summarized as under..

- Person liable to be prosecuted
  - When offence under Central Excise Act or Finance Act is committed by a company then every person at the time when offence was committed, was in charge of and was responsible for the conduct of business of company and as well as company shall be deemed to be guilty of the offence and shall be liable for prosecution.
  - Also if it is proved that the offence was committed with the consent or connivance of or due to neglect on part of any director/manager/officer of company then such person shall be deemed to be guilty of that offence and punished accordingly.
- Monetary limit
  - Prosecution under Central Excise Act and Finance Act can be launched only when duty or tax or misuse of CENVAT credit is ₹ 1 crore or more.
  - Above monetary limit would not apply in case of habitual evaders.

    A company/assessee will be treated as habitual evader if:

    - In past 5 years from the date of decision, it is involved in 3 or more cases of confirmed demand at the First Appellate level or above in cases involving fraud, suppression of facts, etc. in past 5 years and;
    - Evasion of duty or tax or misuse of credit is ₹ 1 crore or more in all the cases.
  - Office Register may be used for identifying and monitoring such habitual evaders.
- Authority to sanction prosecution:
  - The criminal complaint for prosecuting a person can be filed only after obtaining sanction from Principal Chief/Chief Commissioner of Central Excise or Service Tax or Principal Director General/Director General, DGCEI (in respect of cases booked by DGCEI) as the case may be.
- Transitional provisions:

  Following cases shall be dealt in accordance with the provisions of this circular:

  - Where sanction has been accorded after the issue of this circular.
  - Where prosecution has been sanctioned but no complaint has been filed.

- Compounding of Offences

  Offence can be compounded as per the provisions of Section 9A(2) of the Central Excise Act, 1944 made applicable to Service Tax *vide* Section 83 of the Act. Provisions of Circular No. 54/2005-CUS dt 30-12-2005 and Circular No. 862/20/2007-CX-8 dated 27-12-2007 may be referred for compounding of offences.

- For procedure of sanction of procedure, Monitoring of Prosecution, Appeal against court order in case of inadequate punishment/acquittal, publication of names of the person acquitted, the readers are requested to read the circular for sake of comprehensiveness.

[Circular No. 1009/16/2015-CX dated 23-10-2015]

5. For output service provider - CENVAT credit of Education Cess and Secondary and Higher Education Cess paid on inputs, capital goods and inputs service received on or after 01-06-2015 and balance of capital goods received in F.Y. 2014-15

Proviso is inserted in Rule 3(7) of CENVAT Credit Rules, 2004 for providing that:

- Credit of Education Cess and Secondary and Higher Education Cess ('EC & SHEC') paid on inputs or capital goods received in the premises of output service provider on or after 01-06-2015 can be utilised for payment of service tax on any output service.

- Credit of balance **fifty** per cent EC & SHEC paid on capital gods received in the premises of output service provider in the FY 2014-15 can be utilised for the payment of service tax on any output service.

- Credit of EC & SHEC paid on input service of transportation of goods by rail in respect of which invoice/bill/challan or service tax certificate for transportation of goods by rail (as referred to in R. 9 of CCR) is received by the output service provider on or after 01-06-2015 can be utilised for the payment of service tax on any output service.

Author's Comment

1. Amendment is only in relation to goods, service or capital goods in transit as on 1-6-2015 and does not provide for utilization of accumulated and unutilised CENVAT balance of Education cess and secondary & higher secondary education cess as on 1st June, 2015 for payment of service tax. In absence of specific provision, service provider will not be entitled to utilize **accumulated and unutilised CENVAT balance** of Cess for payment of service tax.

2. In relation to capital goods received in F.Y. 2014-15, the output service provider is entitled to utilise credit up to 50% in the same financial year and the balance in the subsequent year. However, the service provider who have used less than 50% of CENVAT credit of education cess and secondary & higher secondary education cess in F.Y. 2014-15 will only be allowed to utilise 50% of such credit as per the amendment and the balance if any will go waste.

3. It is recommended that the output service provider should keep the balance of accumulated credit of education cess and secondary & higher secondary education cess of inputs, inputs service and capital goods as availed but not utilised in the CENVAT credit register to keep as claim alive.

[Notification No. 22/2015 – Central Excise (NT) dated 29-10-2015]

CA Bharat Shemlani

INDIRECT TAXES

Service Tax – Case Law Update

1. Services

Cargo Handling Service

1.1 CCE vs. Manoj Kumar 2015 (40) STR 35 (All.)

The assessee in this case engaged in the activity of loading, unloading, packing, unpacking, stacking, re-stacking and shifting of sugar bags from mill floor to godown or from one godown to other godown within factory. The High Court held that, in common parlance cargo means load to be carried by ship, aeroplane, rail or truck and organised activity of handling of such load in said means of transport is cargo handling. The activity carried out by the assessee is not covered under Cargo Handling service as there is no activity of loading or unloading of movement outside factory on public road, ship etc. for any destination.

Renting of Immovable Property Service

1.2 CST, Noida vs. Greater Noida Development Authority 2015 (40) STR 46 (All.)

The High Court in this case held that, clause (v) expanded the scope of Renting of Immovable Property service to renting of vacant land on lease or licence for business or commerce purpose. In view of exclusion of vacant land from ambit of immovable property prior to 1-7-2010, it cannot be said to be merely clarificatory and retrospective from 1-6-2007, when clause (105) (zzzz) was introduced.

1.3 Greater Noida Industrial Dev. Authority vs. CCCE 2015 (40) STR 95 (All.)

The High Court in this case held that, definition of expression 'renting of immovable property' read with Explanation to section 65(105)(zzzz) of FA, 1994 includes lease of various plots allotted by assessee for business/commercial purposes and rent charged/collected in respect of lease so executed liable to service tax. The period of lease whether short duration or for 90 years or perpetuity makes no difference to meaning of expression 'renting of immovable property'. The Tribunal is justified in holding that letting of vacant land is taxable w.e.f. 1-7-2010.

It is further held that, FA, 1994 makes no distinction between a statutory body i.e. juristic person and an individual. Even if a sovereign/public authority provides a service, which is not in the nature of a statutory activity and the same is undertaken for a consideration (not a statutory fee), service tax is leviable as long as the same falls within the scope of a taxable service.

Restaurant Service & Accommodation Service

1.4 Ballal Auto Agency vs. UOI 2015 (40) STR 51 (Kar.)

The High Court in this case held that, levy of service tax on services of restaurant, hotel, inn, guest house, club or campsite with air-conditioning facility is on aspect of transaction of service and not on sale of goods, hence Parliament was competent to levy it. It is further held that, different aspect of single transaction can be taxed under different statutes if taxable events of each taxes are different. It does not allow State Legislature to entrench upon the Union List and tax services by including cost of such services in the value of goods, but it does not disentitle State to tax the sale of goods elements involved in the execution of works contract or in a composite contract.

Business Auxiliary Service

1.5 Mistair Health & Hygiene Pvt. Ltd. vs. CCE, Pune-II 2015 (40) STR 148 (Tri.-Mumbai)

The department in this case sought to levy service tax on manufacture of alcohol based medicament on the ground that, exemption is not available as goods being non-excisable. The Tribunal held that, said medicines are manufactured as per provisions of Drugs & Cosmetics Act, 1940 and rules made thereunder liable to excise duty, albeit by State Government. The issue stands settled in decision in 2010 (18) STR 768 (Tri.-Mumbai) and 2010 (19) STR 515 (Tri.-Mumbai), hence order of levy of service tax is to be set aside.

1.6 Trimurti Octroi Company vs. CCE, Mumbai 2015 (40) STR 152 (Tri.-Mumbai)

The appellant in this case engaged in activity of facilitation of payment of octroi by filling up forms and presenting to octroi officer for clearance on behalf of client. The department demanded service tax under BAS. The Tribunal held that, mere reading of invoice and challans for filling up does not amount to dealing with or handling documents of title as appellant is not having any authority to transfer such title. The adjudicating authority erred in holding levy of service tax on said activity on the ground of handling of documents.

1.7 Abacus Distribution Systems (India) (P) Ltd. vs. CST, Mumbai-I 2015 (40) STR 190 (Tri.-Mumbai)

The Tribunal in this case held that, promotion or marketing of Computer Reservation System (CRS) being provided to overseas entity by employing computer data processing is not covered under BAS during the period 1-7-2003 to 30-4-2006. It is further held that, since services were delivered to recipient located outside India and also used outside India and payment was received in CFE, therefore qualifies as export of service.

1.8 CCE, Coimbator vs. Bharat Cell 2015 (40) STR 221 (Mad.)

The High Court in this case held that, commission paid by BSNL to SIM Card and recharge coupons distributor is not liable to service tax in view of Tribunal decision in G. R. Movers 2013 (30) STR 634 (Tri.-Del.).

1.9 CCE, Mangalore vs. Corporation Bank 2015 (40) STR 302 (Tri.-Bang.)

The Tribunal in this case held that, activity of collecting payments of electricity and telephone bills on behalf of electricity board and telephone company is not liable to service tax during the period 2003-05. The activity is liable under cash management system w.e.f. 1-6-2007.

Banking & Other Financial Services

1.10 Mount Kellett Management (I) Pvt. Ltd. vs. CST, Mumbai-I 2015 (40) STR 165 (Tri.-Mumbai)

The appellant in this case sent feasibility reports abroad to enable foreign investors to decide on investment in India and claimed the same as export of service. The Tribunal held that, said reports have been exported and utilised outside India and remuneration of service having been received in CFE, statutory conditions for export of service have been fulfilled. It is further held that, RBI prescribed the manner of receipt of foreign exchange in Rupees from account of a bank situated abroad from countries other than member countries in Asian Clearing Union and therefore amount received by appellant is deemed to be received in CFE.

1.11 Union Bank of India vs. CCE&ST, Mumbai 2015 (40) STR 308 (Tri.-Mumbai)

The Tribunal in this case held that, commission earned by banks for activity of receiving and payment of money on behalf of RBI/ Government of India is not liable to service tax.

Outdoor Caterer Services

1.12 Alfa Laval (I) Ltd. Employees Co-op Consumers Society vs. CCE, Pune-I 2015 (40) STR 255 (Tri.-Mumbai)

The appellant a co-operative society running canteen service in recipient's premises and providing food, snacks, etc. to employees of company. The Tribunal held that, such activity is liable to service tax under Outdoor Catering service.

2. Interest/Penalties/Others

2.1 ACST, Chennai vs. Natraj & Venkat Associates 2015 (40) STR 31 (Mad.)

The assessee in this case wrongly paid service tax on Architectural services provided for construction of building in Sri Lanka and pleaded that, limitation under section 11B of CEA, 1944 is not applicable as the amount paid being only a deposit as no tax was required to be paid. The High Court held that, the said plea is not correct as said amount has been paid under Account Head "Service Tax" through TR-6 challan meant for payment of service tax and the contention of it to be a deposit is not sustainable. Refund claims filed beyond statutory period of limitation not tenable even if tax is paid under mistake of law.

2.2 Bombay Intelligence Security (India) Ltd. vs. CST, Mumbai-II 2015 (40) STR 158 (Tri-Mumbai)

The appellant in this case provided various services such as care taking, driving, loading and unloading and fire fighting services etc. The Tribunal *inter alia* held that, no specific head has been mentioned in SCN or in OIO. The settled law is that classification of taxable services required to be specified while demanding service tax.

2.3 Reliance Ports and Terminals Ltd. vs. CCE&ST, Rajkot 2015 (40) STR 200 (Tri.-Ahmd.)

The Tribunal in this case observed that, according to section 26(1)(e) of SEZ Act, 2005 r.w. rule 30(10) of SEZ Rules, 2006, no service tax is payable on services provided to SEZ unit. Further section 51 of the SEZ Act also provides for overriding effect, in case of inconsistent provision in any other Act. It is held that, service tax is not leviable on any service provided to unit situated in SEZ, notwithstanding anything contained in exemption Notification No. 9/2009-ST or 15/2009-ST. The said notifications are issued only to operationalise exemption/ immunity from service tax available in SEZ Act.

2.4 Garima Associates vs. CC&CE, Chandrapur 2015 (40) STR 247 (Tri-Mumbai)

The appellant in this case adjusted advance payment of service tax (excess pyt) against subsequent periods liability without giving any intimation to Superintendent. The department denied adjustment on the ground that appellant case covered by rule 6(4A) and not by rule 6(1A). The Tribunal held that, intention of rule 6(1A) is very clear that whatsoever excess paid in advance ought to be adjusted against forthcoming tax liability and disallowance of the same would unjustly enrich the Government. Further, the intimation of adjustment has been given in ST-3 returns and therefore adjustment of excess payment is admissible.

2.5 Dai Ichi Karkaria Ltd. vs. CCE, Pune-I 2015 (40) STR 275 (Tri.-Mumbai)

The appellant in this case has taken credit as a manufacturer at Pune factory and utilised the same for discharging service tax liability on renting of immovable property at Mumbai. The Tribunal held that, there being no nexus of input credit with output service, hence CENVAT credit is not admissible. Further, the Tribunal allowed re-credit of CENVAT credit erroneously utilised for payment of service tax.

3. CENVAT Credit

3.1 CCE, Delhi-III vs. Bellsonica Auto Components India P. Ltd. 2015 (40) STR 41 (P&H)

The assessee in this case claimed CENVAT credit of service tax paid on construction services for constructing manufacturing plant and rental of immovable property leased on which plant is erected. The High Court held that, land was taken on lease to construct factory to manufacture final product and without factory final product could not have been manufactured and factory needed to be constructed on land. Hence, land and factory were used indirectly in or in relation to manufacture of final product and CENVAT credit is admissible under "means part" of definition of input service. Further, it is held that it is also covered in inclusive part of definition also. It is also held that, amendment in 2011 to definition of Input service does not have retrospective effect.

3.2 Parry Engg. Electronics P. Ltd. vs. CCE&ST Ahmedabad I to III 2015 (40) STR 243 (Tri.-LB)

The Larger Bench of Tribunal in this case held that, Erection, Commissioning or Installation Service and Management, Maintenance or Repair Service used by windmills for generation of electricity away from factory premises which is surrendered to grid and equivalent quantum is withdrawn in the factory from grid are input services and therefore credit of service tax paid thereon is admissible.

3.3 CCE, Delhi-III vs. Technico Industries Ltd. 2015 (40) STR 259 (Tri.-Del.)

The Tribunal in this case held that, as per rule 2(l) of CCR, 2004 manufacturer of goods is entitled to avail CENVAT credit on the services received for setting up of a factory.

3.4 Dy. GM, Tata Motors Ltd. vs. CCE, Pune-I 2015 (40) STR 269 (Tri.-Mumbai)

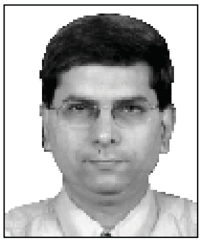
The appellant in this case claimed CENVAT credit of service tax paid on consulting engineer service used in development and manufacture of prototypes of vehicles. The Tribunal in this case held that, huge investment in obtaining services of technical assistance required to develop such prototypes also indicative of it being related to manufacturing activity only. The term "directly" or "indirectly" and "in relation to" used in definition of input service is of wide amplitude having broad and comprehensive meaning. The services received being in relation to ultimate manufacturer of motor vehicles only and fully covered in definition of input service.

3.5 UltraTech Cement Ltd. vs. CCE, Nagpur 2015 (40) STR 284 (Tri.-Mumbai)

The Tribunal in this case allowed CENVAT credit of service tax paid on following;

- Security services, pest control and repair and maintenance of coolers in employees residence colony.
- Maintenance of river pump and security service received at guest house.

[Contd. on Page 169]



Janak C. Pandya, Company Secretary

CORPORATE LAWS
Company Law Update

[2015] 192 Comp Cas 355 (Bom.)
[In the Bombay High Court]
Sridhar Sundararajan vs. Ultramarine and Pigments Ltd. And Another

The provision of section 196(3) of the Companies Act, 2013 does not operate to interrupt the appointment of any director made prior to the coming into force of the 2013 Act. A statute operates in future, it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included.

Brief facts

The Plaintiff has filed the notice of motion seeking an order against the Managing Director **("2nd Defendant")** from functioning or continuing to exercise his powers as chairman and Managing Director **("CMD")** of the Company **("1st Defendant")**. The reasoning of seeking order is as follows.

a. The First defendant is a Listed Company.

b. The 2nd defendant was re-appointed as CMD in 2012. For further period of five years.

c. The Plaintiff was appointed as Joint M.D. on the same day.

d. Section 196(3)(a) of the Companies Act, 2013 ("CA13"), provides for lower and upper age limit of 21 years and 70 years respectively on the appointments and "continued employment" of managing director whole time director and managers.

e. As per above provisions, the terms of CMD ends on November 11, 2014, on his reaching age of 70 years by operation of law.

f. Upon CA13 coming into force, a special resolution is required for CMD continuation in his office.

g. The reliance was placed on several judgments of Supreme Court stating that where the words of a statute are plain and clear, the language of the statute should not be changed by judicial interpretation. The judgments are (1) *Nasiruddin vs. Sita Ram Agarwal [2003] 2 SCC 577 and Dr. Ajay Pradhan vs. State of Madhya Pradesh [1988] 4 SCC 514. (2) S. Sundaram Pillai vs. V.R. Pattabiraman, AIR 1985 SC 582 and (3) Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663 (SC); AIR 1987 SC 1023.*

The submissions made by the 1st and 2nd defendants are as follows.

1. CA13 cannot be possibly retrospective, unless explicitly said as much as in words.

2. It will apply to the appointments only after CA13 came into force.

3. That statutory retrospectivity can never be left to a matter of presumption; it must be clearly stated and referred the judgments in *Gulab Chand vs. Kudilal, AIR 1958 SC 554.*

4. Supreme Court judgment in *P. Suseela vs. University Grants Commission [2015] 3 Scale 726; [2015] 3 All. MR (SC) 981* where in a distinction has been drawn between the impact of statute on existing rights as against its impact on vested rights which was based on the judgments of bench consisting of five-judge in *Trimbak Damodhar Rajpurkar vs. Assaram Hiraman Patil [1962] Suppl. (1) SCR 700.*

Judgments and reasoning

The Court did not grant the interim relief and dismissed the notice of motion. The court has accepted the reliance placed by the defendants in *P. Suseela vs. University Grants Commission.* In support of its judgments, court also provided the reasoning and analysis as follows.

1. The interpretation of word" continue" used in 196(3) should be read with proviso and thus a special resolution is required for an appointment or re-appointment.

2. The section applies only to the appointment or re-appointment. The analysis of sections 269(2) and 267 of the Companies Act, 1956 was made which is now merged in to section 196(3).

3. The age-limit is not an automatic mid-stream disqualification. It only requires passing of special resolution.

4. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included.

[Contd. from Page 167]

3.6 CCE, Meerut vs. Bajaj Hindustan Ltd. 2015 (40) STR 379 (Tri.-Del)

The appellant in this case availed CENVAT credit of service tax paid on construction of dormitories/residential colony. The Tribunal held that, manufacture being continuous/round the clock thus construction was necessary as factory located in remote area. Further, cost of construction considered as expenditure in books of account, activity is in relation to business and service tax paid for business considered as input service entitled for credit.

3.7 Mercedes Benz India (P) Ltd. vs. CCE, Pune-I 2015 (40) STR 381 (Tri.-Mumbai)

The Tribunal in this case held that, there is no provision in rule 6(3) of CCR, 2004 that if assessee does not opt for any option at any particular time, then option under rule 6(3A)(i) of payment of 5% of value of exempted service automatically to be applied. There is no time limit provided to exercise the option, though it is common sense that intention to avail particular option to be intimated before actual availment of said option. The delay in giving intimation can at the best be taken as procedural lapse.

It is further held that, huge demand under rule 6(3A)(i) is not sustainable as the objective of rule 6 is to reverse the credit attributable to exempted service which has been achieved as the appellant has already reversed the proportionate credit along with interest.



CA Mayur Nayak, CA Natwar Thakrar &
CA Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Notifications, Circulars & Press Notes issued by RBI and DIPP

A. Circulars & Press Notes issued by RBI

1. Investment by Foreign Portfolio Investors (FPI) in Government Securities

Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified *vide* Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time permits within prescribed limits investment by foreign portfolio investors (FPI) in Government securities, which were last increased to USD 30 billion *vide* A.P.(DIR Series) Circular No.111 dated June 12, 2013 and the allocation of limits between long term investors and other FPIs was modified and the requirement of investment by FPIs in securities with minimum residual maturity of three years was put in place *vide* A.P. (DIR Series) Circular No.99 dated January 29, 2014 and A.P. (DIR Series) Circular No. 13 dated July 23, 2014.

Now, in line with para 30 of the Fourth Bi-monthly Monetary Policy Statement for the year 2015-16 issued on September 29, 2015, in terms of which a Medium Term Framework (MTF) for FPI limits in Government securities was announced to provide a more predictable regime, the RBI has announced following changes:

– The limits for FPI investment in debt securities will henceforth be announced/ fixed in Rupee terms.

– The limits for FPI investment in the Central Government securities will be increased in phases to reach 5 per cent of the outstanding stock by March 2018. In aggregate terms, this is expected to open up room for additional investment of ₹ 1,200 billion in the limit for Central Government securities by March 2018 over and above the existing limit of ₹ 1,535 billion for all Government securities.

– Additionally, there will be a separate limit for investment by all FPIs in the State Development Loans (SDLs), to be increased in phases to reach 2 per cent of the outstanding stock by March 2018. This would amount to an additional limit of about ₹ 500 billion by March 2018.

– The effective increase in limits for the following two quarters will be announced every half year in March and September.

– The existing requirement of investments being made in G-sec (including SDLs) with a minimum residual maturity of three years will continue to apply to all categories of FPIs.

– Aggregate FPI investments in any Central Government security would be capped at 20% of the outstanding stock of the security. Investments at existing levels in the securities over this limit may continue but not get replenished through fresh purchases by FPIs till these fall below 20%.

Accordingly, for the current financial year, it has been decided to enhance the limit for investment by FPIs in Government Securities in two tranches from October 12, 2015 and January 1, 2016 respectively as under:

(₹ in billion)

	Central Government Securities		State Development Loans		Aggregate
	For all FPIs	Additional for Long Term FPIs	Total	For all FPIs (including Long Term FPIs)	
Existing Limits	1,244	291	1,535	Nil	1,535
Revised limits with effect from October 12, 2015	1,299	366	1,665	35	1,700
Revised limits with effect from January 1, 2016	1,354	441	1,795	70	1,865

For the present, the security-wise limit for FPI investments will be monitored on a day-end basis and those Central Government securities in which aggregate investment by FPIs exceeds the prescribed threshold of 20% will be put in a negative investment list. No fresh investments by FPIs in these securities will be permitted till they are removed from the negative list. There will be no security-wise limit for SDLs for now

(A.P. (DIR Series) Circular No. 19 dated 6th October, 2015)

(This is a welcome move by RBI towards predicate regime for investment in securities market. The increase in the limit for FPI will attract further foreign investments and will also enhance the depth of Securities Market.)

2. Risk Management & Inter-Bank Dealings: Booking of Forward Contracts – Liberalisation

Currently, in terms of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 (Notification No. FEMA/25/RB-2000 dated May 3, 2000) as amended from time-to-time and A.P. (DIR Series) Circulars No. 15 dated October 29, 2007 and 119 dated April 7, 2014 , resident individuals, firms and companies are allowed to manage / hedge their foreign exchange exposures arising out of actual or anticipated remittances, both inward and outward and to book forward contracts, without production of underlying documents, up to a limit of USD 250,000 based on self-declaration.

As announced in the Fourth Bi-monthly Monetary Policy Statement (para. no. 39) on September 29, 2015, with a view to further liberalising the existing hedging facilities, RBI has allowed all resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures, to book foreign exchange forward and FCY-INR options contracts up to USD 1,000,000 (USD one million) without any requirement of documentation on the basis of a simple declaration. While the contracts booked under this facility would normally be on a deliverable basis, cancellation and rebooking of contracts are permitted. Based on the track record of the entity, the concerned AD Cat-I bank may, however, call for underlying documents, if considered necessary, at the time of rebooking of cancelled contracts.

(A.P. (DIR Series) Circular No. 20 dated 8th October, 2015)

(This is a welcome move by RBI to enhance ease of doing business in India and will result into increase in depth of forex market in India.)

3. Memorandum of Procedure for channelling transactions through Asian Clearing Union (ACU)

Attention of Authorised Dealer Category-I banks is invited to the Memorandum containing detailed procedural instructions for channelling transactions through the Asian Clearing Union (ACU) (Memorandum ACM) issued on February 17, 2010 and the subsequent amendment to the same *vide* A.P. (DIR Series) Circular No.63 dated October 18, 2013.

In view of the understanding reached among the members of the ACU during the 44th Meeting of the ACU Board in June, 2015, it has been decided to permit the use of the Nostro accounts of the commercial banks of the ACU member countries, i.e., the ACU Dollar and ACU Euro accounts, for settling the payments of both exports and imports of goods and services among the ACU countries.

Consequently, payments for all eligible –

- export transactions may be made by debit to the ACU Dollar / ACU Euro account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the ACU Dollar / ACU Euro account of the authorised dealer maintained with the correspondent bank in the other member country;

- import transactions may be made by credit to the ACU Dollar / ACU Euro account in India of a bank of the member country in which the other party to the transaction is resident or by debit to the ACU Dollar / ACU Euro account of an authorised dealer with the correspondent bank in the other member country.

It is further reiterated by RBI that all eligible export/import transactions with other ACU member countries (except in the case of certain countries where specific exemptions have been provided by the Reserve Bank of India) shall invariably be settled through the ACU mechanism.

(A.P. (DIR Series) Circular No. 21 dated 8th October, 2015)

(The objective of the Asian Clearing Union (ACU), at the time of its establishment, was to secure regional co-operation as regards the settlement of monetary transactions among the members of the Union and to provide a system for clearing payments among the member countries on a multilateral basis. The members of the union – Bangladesh, Bhutan, India, Maldives, Myanmar, Nepal, Pakistan, Sri Lanka and Iran-employ a home-grown system developed by the Central Bank of Iran to get around SWIFT. The proposed measure will expand the scope of the clearing mechanism resulting into saving in transaction cost and faster settlement of dues.)

4. Annual Return on Foreign Liabilities and Assets (FLA Return) – Reporting by Limited Liability Partnerships

In order to capture the statistics relating to Foreign Direct Investments (FDI), both inward and outward, by Limited Liabilities Partnerships (LLPs) in India, all LLPs that have received FDI and/or made FDI abroad (i.e., overseas investment) in the previous year(s) as well as in the current year, shall submit the FLA return to the Reserve Bank of India by July 15 every year, in the format as prescribed in the A.P. (DIR Series) Circular No. 145 dated June 18, 2014.

Since, LLPs do not have 21-Digit CIN (Corporate Identity Number), they are advised to enter

'A99999AA9999LLP999999' against CIN in the FLA Return.

(A.P. (DIR Series) Circular No. 22 dated 21st October, 2015)

(Comment: Currently there was no specific requirement for submission of FLA by the LLPs. The amendment brings clarity in the reporting requirements.)

5. No fresh permission/renewal of permission to LOs of foreign law firms-Supreme Court's directions

The Hon'ble Supreme Court *vide* its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the *Bar Council of India vs. A.K. Balaji & Ors*. directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of Liaison Office (LO) in India.

Accordingly, RBI has decided not to permit any foreign law firm to open any LO in India till further orders/notification in this regard. Foreign law firms which have been granted permission prior to the date of interim order for opening LOs in India are allowed to continue provided such permission is still in force. No fresh permission/renewal of permission shall be granted by RBI/AD banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

(A.P. (DIR Series) Circular No. 23 dated 29th October, 2015)

(The SC interim judgment establishes that under the Advocates Act, practice of law in India, includes litigious as well as non-litigious practice and does not differentiate practice of foreign law or Indian law. Therefore, no person can practice law in India without enrolment under the Advocates Act. It is now up to the Central Government/Bar Council to legislate and frame appropriate rules. Until such time, foreign law firms cannot practice of any law, without due enrolment/qualifications prescribed under the Advocates Act.)

6. Subscription to National Pension System by Non-Resident Indians (NRIs)

RBI, in consultation with the Government of India, has allowed NRIs under FEMA to invest in National Pension System (NPS) governed and administered by the Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act.

The subscription amounts shall be paid by the NRIs either by inward remittance through normal banking channels or out of funds held in their NRE/FCNR/NRO account. There shall be no restriction on repatriation of the annuity/accumulated savings.

(A.P. (DIR Series) Circular No. 24 dated 29th October, 2015 / Notification No. 353 dated 6th October, 2015)

(Comment: This is a step in right direction to increase global transactions in Indian Rupees and has the potential to boost business of Indian pension funds. NRIs' can now access old age income security in their own country.)

B. Press Notes issued by RBI and DIPP

1. FDI up to 100% in White Label ATM Operations under Automatic Route

Government of India, through insertion of new sub-paragraph 6.2.18.8 to Consolidated FDI Policy Circular has allowed NBFC with minimum Net Worth of ₹ 100 Cr. To invest in White Label ATM Operations

(DIPP Press Note No. 11 dated 1st October, 2015)

(Comment: This decision will ease and expedite foreign investment inflows in the activity and thus give a fillip to the Government's effort to promote financial inclusion in the country)

Ajay Singh, *Advocate*

BEST OF THE REST

1. Auction sale of secured asset- Forfeiture of earnest money deposited by successful bidder - Held documents like sanctioned plan, Tax receipts and record of rights could have been obtained by bidder by exercise of ordinary diligence-Moreover under Act Bank sells secured assets as it owner – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), S.13(6).

Petition had been filed by an unsuccessful bidder in an auction sale conducted by the Respondent Bank under the provisions of SARFAESI Act. Pursuant to taking physical possession of secured assets, the bank issued a public notice for sale of secured assets on "As is what is basis" and "whatever there is basis". The Petitioner deposited earnest money and participated in the said auction and after being declared the highest bidder, was called upon to deposit 25% of the sale amount in terms of the clause 10 of the aforesaid public notice. The petitioner failed and neglected to do so and accordingly the respondent bank forfeited the earnest amount. Such action of the bank has been challenged in this writ petition.

The contention of the Writ petitioner was that the petitioner did not deposit the earnest amount inasmuch as the bank was unable to furnish relevant documents relating to the property put on sale namely 1) Municipal Sanctioned building plan, 2) B. L & LRO Tax receipt and 3) Parcha. It was the duty of the bank to satisfy the intending purchaser as to title of the property notwithstanding the notice which referred to sale being "As is where is basis".

The Hon'ble Calcutta High Court observed that in clause 10 of the sale notice it was made amply clear that if the purchaser fails to deposit 25% of the sale price after adjusting the earnest deposit immediately after confirmation of sale, the earnest money shall stand forfeited. The Petitioner participated in the auction being aware of the aforesaid clause. The petitioner has failed to deposit 25% of the sale price within the time stipulated in spite of repeated notice given by the respondent bank, as a consequence the bank forfeited this earnest deposit in terms of the aforesaid clause.

The Hon'ble High Court further observed that the contention of the petitioner that he declined to pay further payments in the absence of bank providing copy of the

Municipal Sanctioned building plan, Tax receipt and record of rights relating to the property does not appear to be convincing inasmuch as it appears from record that earlier tax receipts relating to the property had been made available to him. That apart, the aforesaid documents could have been procured by exercise of ordinary diligence. Hence, the court did not find much force in the submission of the petitioner that the failure of the bank to supply the aforesaid documents could have cast doubt in the mind of a reasonable person of ordinary prudence as to title of the property or the same constitutes as justifiable ground to decline to make payment of a portion of the sale price as stipulated in auction notice. The purpose of the aforesaid clause was to ensure that a bidder does not withdraw from the transaction in a arbitrary and whimsical manner.

Further, in view of the clear statutory mandate under SARFAESI Act the right of the bank to effect sale of its secured assets cannot be called into question. The Court was of the opinion that the action of the respondent bank in forfeiting the secured deposit was in terms of the clause of the auction notice and therefore is unexceptionable and accordingly the writ was dismissed.

Sujit Dasgupta vs. State Bank of India & Another AIR 2015 Calcutta 246

2. Summons to appear before Enforcement Directorate – Summons refused by the accused – Offence of not responding to summons – Is independent of offence. Foreign Exchange Regulation Act, 1973 Ss.40, 56

The facts of this case was the Appellant was summoned by the Chief Enforcement Officer Enforcement Directorate, Regulation Act, 1973 and correspondence relating to a transaction relating to a transaction with Flavio Briatore of M/s Benetton Formula Ltd. London to which the Appellant as Chairman of United Breweries Ltd was a party. Allegation against the assessee was requisite permission of the RBI was not taken for fee payable on agreement made with the English company for advertisement of Kingfisher Brand name on racing cars which was in violation of the FERA Act. Approval was later sought from the Finance Ministry which was rejected. Since Appellant failed to appear in response to summons issued more than once a complaint u/s. 56 of the Act was filed. The Trial court after considering the material on record summoned the appellant and framed charge against him u/s 56 of the Act. The appellant challenged the order before the High Court. The High Court rejected the contentions by holding that framing of composite charge could not be treated to have caused prejudice so as to vitiate the proceedings.

On appeal the Hon'ble Supreme Court held that a complaint is maintainable if there is default in not carrying out summons lawfully issued. Averments in the complaint show that the summons dated 21st December, 1999 were refused by the appellant and earlier summons were not carried out deliberately. From the tenor of the letter filed by the appellant, it appeared that it was not a case of mere seeking accommodation by the appellant, but requiring date to be fixed by his convenience. Such stand by a person facing allegation of serious nature could hardly be appreciated obviously the enormous money power makes him believe that the State should adjust its affairs to suit his commercial convenience.

Further, the Hon'ble Apex Court's observed that the appeal was required to be dismissed for more than one reason. The fact that adjudicating officer chose to drop the proceedings against the appellant did not absolve the appellant of the criminal liability incurred by him by virtue of the operation of section 40 r.w.s 56 of the Act.

The court further observed that the offence u/s. 56 r.w.s.40 of the Act is an independent offence. If the factual allegations contained in the charge are to be proved eventually at the trial of the criminal case, the appellant is still liable for the punishment notwithstanding the fact that the presence of the appellant was required by the adjudicating officer in connection with an enquiry into certain alleged violations of the various provisions of the Act, but at a subsequent stage the adjudicating officer opined that insufficient or no material to proceed against the appellant for the alleged violation of the Act, is immaterial. Exonerating such as accused, who successfully evades the process of law and thereby commits an independent offence on the ground that he is found to be not guilty of the substantive offence would be destructive of law and order, apart from being public interest. Such an exposition of law would only encourage unscrupulous elements in the society to defy the authority conferred upon the public servants to enforce the law with impunity. It is also possible, in certain cases that the time gained by such evasive tactics adopted by a person summoned itself would result in the destruction of the material which might otherwise constitute valuable evidence for establishing the commission of a substantive offence by such a recalcitrant accused. Therefore, the appeal was dismissed by the Court.

Vijay Mallya vs. Enforcement Directorate, Min. of Finance AIR 2015 Supreme Court 2726

3. Minor's Property-Share to guardian-Father seeking permission to construct residential house on property of his daughter – Father proposing to raised building on property at his own cost by claiming 50% of undivided share in property-Construction of house necessary for residence of family including minor – Proposed construction in welfare of minor – Held Permission liable to be granted- Guardians and Wards Act 1890, S.29

The appellant has received a property in a partition suit between her father and grandfather. She along with her parents was residing at USA and they could not attend the maintenance of the property. It was an old building requiring repairs. The appellant is now residing at Bengaluru and pursuing her studies in Bengaluru. The family has no accommodation at Bangalore. Hence they proposed to pull down the existing structure and put up a new construction.

The appellant being a minor represented by her father/natural guardian filed a petition under section 28 of the Guardian's and Wards Act r.w.s 8 of the Hindu Minority and Guardianship Act, 1956 seeking permission for her parents to develop the petition schedule property and construct two residential houses on the two floors and further permission for her parents to take 50% of the undivided interest in the schedule property along with first floor of the proposed construction as their share and balance 50% of undivided interest along with ground floor of the proposed construction towards the share of the minor appellant. The plea was that arrangement is for the benefit of the appellant since the property would be developed and the appellant can encash the rent that may be earned by renting out the ground floor.

The District Judge was of the opinion that, the parents being the guardians of the minor were not entitled to create the interest in the schedule property and granting permission as sought is out of the powers granted u/s 29 of the Act. The District judge granted permission for to invest money in the schedule property and to construct two residential houses on the two floors but rejected to grant permission for the parents to take 50% of undivided interest in the property. Thereafter, the parents filed an appeal before the High Court of Karnataka.

The Hon'ble Karnataka High Court observed that section 29 makes it clear that the guardian is not prohibited from mortgage, creating charge or alienating by any other mode of the immovable property of his ward, but he has to obtain prior permission from the court for such transactions.

It further observed that the family proposes to settle down at Bengaluru and they have no accommodation of their own at Bengaluru, they intend to put up a construction in the petition schedule property, which was gifted to the minor as per the terms of compromise entered in a partition suit between the father and grandfather of minor. There was no reason to infer *mala fide* on the part of the father of the minor in canvassing that if he expends his money in the property belonging to his daughter, it cannot be termed as expenditure for tax purpose. In that view of the matter only, he is offering to take 50% of the undivided interest in the property and reside with the minor and also his wife in the first floor of the building. Apart from 50% of the undivided interest from the first floor building, the minor would be entitled for the rentals. The appeal was allowed by the Hon'ble High Court holding that the rejecting the permission would sub-serve the welfare of the minor

Kumari Nahusha vs. Nil AIR 2015 (NOC) 933 (Kar)

4. Consumer complaint – Registered Agreement to sale-Stipulated sale consideration – Held written note for any other amount for consideration not binding on parties – The Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale Management and Transfer) Act, 1966 (MOFA); Consumer Protection Act

In this case appellant Developer had entered in a registered agreement for sale of the flat with the respondent/complainant dated 9-5-2011. The said agreement stipulated a total price of the flat for ₹10 lakhs. Appellant developer admitted to have received only ₹10 lakhs prior to execution of the agreement to sale whereas agreed consideration of the said flat was ₹15.65 lakhs and not ₹10 lakhs as per a written note. The Opponent developer relied on the handwritten note.

The District Forum Kolhapur passed an order allowing the consumer complaint partly with directions to execute registered sale deed by complying with all the legal requirements for handing over possession of Unit No. B-2 admeasuring 58.55 sq mtrs. Aggrieved by the order passed by the District Forum, appellant preferred an appeal.

The Hon'ble State Consumers Disputes Redressal Commission Maharashtra Mumbai observed that agreement to sale has been executed and duly registered on 9-5-2011. As provided under the provisions of the MOFA and model agreement thereunder any provision inconsistent therewith is not binding on the parties. The written note dated 29-4-2011 is outside the registered agreement to sale. It was therefore held that the order passed by the District Forum is not inconsistent with the legal provisions and thus held that the appeal was unsustainable and was liable to be dismissed.

Amey Developers Pro. Suresh Rajaram Dharmadhikari vs. Vidya Mahesh Salokhe, [First Appeal No.A/15/958 dated 8-9-2015, State Consumer Disputes Redressal Commission, Mumbai]

5. Consumer Complaint – Coaching classes – Change in location of Coaching centre after assurance of

travel service – No travel service provided – Refusal by classes to grant refund of fees – Held there was deficiency in service on the part of coaching classes-Entitled to proportionate refund: Consumer Protection Act, 1986, Sec.12

An advertisement was given by the Appellant Coaching classes in Mach 2012 wherein it was stated that appellant was going to start a study centre giving coaching for preparation of 12th class CBSE+IIT/Engineering. The respondent had approached the proprietor of said study centre on 24-3-2012 as his daughter was interested for joining the coaching centre. The Appellant informed that coaching fee was ₹75200/- per year. After negotiations the coaching fees was settled at ₹44200/-. Out of which ₹5000/- was paid in cash immediately and balance fee of ₹35200/- was deposited on 17-4-2012. Only two students booked the admission at Rajouri Garden Centre. Later the other girl left and only the respondent's daughter remained and was asked to attend the classes at Janakpuri centre and it was also assured that the appellant would make free transport service upto Janakpuri till starting of the classes at Rajouri Garden. On this assurance, appellant's daughter attended the classes but no transport facility was provided to her. It became very difficult for his daughter to attend the classes at Janakpuri every day. As a result respondent had moved an application for the refund of fee. However fee was not refunded despite various visits. Therefore, the respondent approached the District Forum by filing a complaint u/s 12 of the Act.

The stand of the appellant was that the coaching centre was at Janakpuri and coaching never started at Rajouri Garden and only ₹5000 was given by respondent and full fee was not paid by him. Appellant further claimed that the daughter has attended classes for 2 months and entire study material was provided to her and therefore she was not entitled to any refund.

The District Forum after considering evidences from both parties ordered an refund of ₹30000/- for which no services was rendered and ₹5000/- was also awarded as compensation. Aggrieved by the District Forum the appellant filed an appeal before the State Commission Delhi.

It was observed by the Hon'ble Delhi Commission that no evidence was given by the appellant that the daughter of respondent had taken admission at Janakpuri Center as noted in the impugned order. Even in the appeal nothing was shown by Appellant to substantiate its stand that admission was taken by respondent at Janakpuri coaching centre. It was also observed that the respondent is a resident of Rajouri Garden. Further, it was categorically stated in the affidavit filed by the respondent that ₹5000/- was paid vide receipt on 15-4-2012 bearing number 903 and ₹35200/- was paid on 17-4-2012 *vide* receipt number 904. In the said affidavit the said receipts were annexed. The District Forum passed the order after considering that the respondent had taken admission of his daughter at Rajouri Centre but was not given coaching there nor any transport facility for Janakpuri Centre. Further, there was no denial of the said receipts in the affidavit. Therefore, it was held there was no illegality in the finding and decision to grant refund of proportionate fee by the District Forum.

Brilliant Classes vs. Satish Kumar, [The State Commission Delhi; First Appeal-59/2015 dated 3-3-2015].

CA Rajaram Ajgaonkar

ECONOMY AND FINANCE

UNEASY CALM

There were no great surprises in the month of October and as expected, global markets remained volatile. The US economy continued with a positive momentum and that gave some comfort for the world as many other economies and especially those of the emerging markets have shown subdued sentiments with a downward trend.

Though China has put up a brave face by supporting its plummeting stock markets, how sustainable are its efforts is a big question. The risk for the Chinese markets still looks real and that fact cannot be ignored easily by the savvy investors. A Government can support stock markets in the country for a short run by its policies as well as its governing power but it may not be able to change the fundamentals overnight. Structural imbalances can take even longer time to get corrected and the country may have to undergo the pain till such time the correction happens. China may have already got into a structural imbalance due to skewing of its demography and that may hurt the economy. After a great run for decades, China is slowing down and the slowdown does not seem to be temporary. In the process of becoming the manufacturing hub of the world, the country has created huge capacities in various sectors. The country wanted to make use of the gains of economy of scale and so the heavy capacity build up happened in the manufacturing sector over the last couple of decades. The growth in the world has not kept pace with this capacity increase and as a result, there is substantial excess capacity in many sectors. The lackluster growth in demand has made many production capacities in a number of countries unviable. Not only China but most of the industrial nations are suffering from excess in the manufacturing sector. It is not going to be easy to utilise the capacities as the demand is not growing at adequate speed due to many issues, which are local as well as international for many countries. For the world to start growing well, these capacities need to be either exhausted by the growth of demand or they need to be shut down or dismantled. This is a painful act and may result in large corporate casualties. It may not be easy for many countries to escape this pain. The times may become more challenging for the months to come. The major hope is the improving economy of the US. If it keeps growing at the current rate, then the world economy will clock reasonable growth numbers and sentiments will remain upbeat. The start of rising interest rates by the US FED remains a key event, which the world will look forward to. It has large scale repercussions, not only for the US but also for rest of the world. It can adversely impact the emerging markets and the sustainability of their growth.

The Indian economy remains in a positive mood though it is widely complained that the progress is not taking adequate speed. The assembly elections in Bihar was never such a big event as it has become this time. The ruling party at the Centre has made it a prestige issue for itself; as its win is quite critical for pushing the reforms agenda in the assemblies. Religion, caste, community etc. play a very important role in the voting pattern in Bihar and the economic agenda has not been a major influence so far. The speed of the reforms process in the country may be influenced by the election results of Bihar. As a fallout, the elections have become a major economic event for India having impact on the economy, atleast over a short run.

There is a complaint from some sectors of the society that things are not changing at the ground levels in India. It may be partially true but it cannot be the barometer of the efforts made by the Government and steps taken by the ruling party to bring in changes. Unfortunately, intolerance is on the rise in the country. Religion is increasing influence on the minds of the people, if not so much on their lives. Tolerance is decreasing due to many influences and easy availability of information, which may be only partially correct and concealing important factual elements. This is leading to increasing tensions in and between some communities as well as regions. The trend is unhealthy for the image of India and its people. It may damage the investment climate. The people of the country need to practice tolerance, if growth is to be accelerated for the good of people of the country. Politics will remain as it always was but people of India can make a difference, if they can control their actions as well as emotions for the betterment of the community and the nation.

The corporate results for the quarter ended 30th September are trickling in and many of them are as subdued, as were expected. The local demand for goods and services is sluggish due to slow economic growth. Due to low demand in the international market, Indian exports have also suffered. Fortunately for the country, imports have come down especially due to low crude oil and petroleum product prices. Even after lower imports, the trade gap is not shrinking. This is a matter of concern. Indian prosperity can improve, if the country is able to export more. However, due to low global demand and stiff competition in supply, the situation may not improve immediately. India has a dream to become a manufacturing hub and theoretically it is very much possible due to the slowdown in China. Practical difficulties will always be there to achieve the goal. Indians and their Government will have to work with a different mindset; and will have to adopt appropriate policies to achieve that goal.

A heartening development is that inflation in India is taming down, although there are hiccups of high prices in certain food commodities, mainly due to supply side constraints. However, it may only be a question of time before this issue gets sorted out. If the Government allows the Reserve Bank of India (RBI) to pursue its policy of benchmark interest rates and liquidity management, it is likely that the prices may come down further, especially due to weak commodity prices in the global market. Weak commodity prices make imports cheaper and ensure domestic prices do not rise beyond a limit. Low global demand results in low exports, making more commodities available in the local markets, thereby keeping their price in check. Erratic Monsoon in the current year has strained the water supply in the country and has adversely affected the food grain production. The phenomenon may continue in the ensuing Rabi season resulting in very low growth in agriculture for the current fiscal year. This may cause adverse pressure on food grain prices. However, due to reduced prices of petroleum products, fuel, metals and their derivative manufactured items; the overall inflation will remain in control and may even ease further. This may give a chance to the RBI to further reduce the interest rate in the last quarter of the current financial year or the next few quarters thereafter. The reduction of interest rates, albeit gradual, will give respite to Indian businesses and their profitability can inch up over a medium term..

The results for the quarter ended 30th September, 2015 are on expected lines but still disappointing. Some sections of the investors had high expectations and that has made the stock markets rally in the initial weeks of October. The euphoria is getting tapered and the markets have started moving south. Though some investors are hopeful that the Nifty may not drop substantially and may get support at 7900 level, a deeper correction cannot be ruled out at the end of the result season. Investors need to be cautious in such a scenario and should not take blind risks. Though there are views expressed in some quarters that the Nifty can touch 8400 level by the end of the current quarter, it may not be an easy task. It is advisable to remain cautious in the month of November. If the ruling party in the country does not win convincingly in the Bihar assembly elections, it will not only be a negative development for the party but it will give a setback to the reforms process in the country in general and the GST Bill in particular. Apart from this specific event and the corporate results, Indian stock markets will continue to be affected by the global developments and will remain volatile. The investors may do well by not getting aggressive on their investment plans in the current month and remain watchful.

The investors, who are keen on investing in Gold, have a good opportunity to invest in Sovereign Gold Bond scheme which opens on 5th November, 2015. The investment earns 2.75% per cent returns per annum on the bonds and it is a hedge against the rise in gold prices. In a way, it is a better substitute for investing in gold in bullion form. Those small investors who are planning a wedding for their children after a few years and accumulating Gold for that purpose may consider this option. These bonds can be sold on exchange and can be redeemed after 5 years. The advantage is in the form of monetary returns at the rate of 2.75% percent per annum which is not available for the hoarded Gold.

Interest rates are likely to remain stable during the forthcoming few months as there is no expectation of an immediate change in the RBI policy. Liquidity situation in the economy may not change immediately and therefore not much change is expected in the interest rates on deposits. Prices of Government and private sector bonds may remain range bound. Investors should keep their asset allocation in interest bearing deposits and bonds intact as interest rates may fall in the years to come on a gradual basis in India. On every such event, the bond prices may rise and rate on new fixed deposits may fall.

The Rupee, which depreciated along with many other currencies of the world and especially of the developed countries over the last few months has stabilized in the month of October. In fact, it has gradually made up some of the lost ground. If FED does not announce a rate hike during this calendar year and no fear is created in respect of such a hike by comments of the US authorities, the Rupee may continue to remain in the current price zone with a slight positive bias. This may give stability to the importers as well as exporters as they can plan their affairs better.

The great expectations which were created since the advent of the new Government have not been met on many counts but there is no need to lose hope. Things are expected to improve, though gradually. Investors may stick to their prefixed investment discipline as regards the asset class, which will turn out to be a beneficial strategy in these volatile times.


Ajay Singh, *Advocate*, CA. Ashok M. Manghnani
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th October, 2015 and 8th November, 2015 are being reported as under.

I. Admission of New Members

1) The following new members were admitted in the Managing Council Meeting held on 20th October, 2015.

Life Membership

1.	Mr. Bansal Krishan Gopal	Advocate	New Delhi
2	Mr. Harjai Jatin Banwari Lal	CA	Jaipur
3	Mr. Shah Devavrat Anilkumar	Advocate	Jalgaon

Ordinary Membership

1	Mr. N. S. Sivaswamy Srinivasa Sastry	CA	Tamil Nadu
2	Mr. Talwar Tilak Raj S. L.	Advocate	New Delhi
3	Mr. Jayendran Neelakantan K.	CA	Mumbai
4	Mr. Rambhia Keyur Mahendra	CA	Mumbai
5	Mr. Marfatia Jayesh Vipin (Oct. 15 to Mar. 16)	CA	Mumbai
6	Mr. Jhunjhunwala Prakash Gourisankar	CA	Mumbai
7	Mr. Jain Amit Ashok (Oct. 15 to Mar. 16)	CA	Mumbai
8	Mr. Siddham Pramod Dattatray (Oct. 15 to Mar. 16)	Advocate	Mumbai
9	Mr. Mehta Vipulchandra Himatlal	CA	Mumbai
10	Ms. Kakaria Shruti Vipul	CA	Mumbai
11	Mr. Baldev Raj Om Prakash (Oct. 15 to Mar. 16)	CA	New Delhi
12	Mr. Vasant Chitral Sunil	CA	Mumbai
13	Mrs. Iyer Ruchita Rajiv	CA	Mumbai

Student Membership

1	Mr. Parekh Umang Ashok	CA (Appear)	Mumbai

II. Past Programmes

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
1.	**ALLIED LAWS COMMITTEE**		
	Full Day Seminar on Charitable Trusts Jointly with Bombay Chartered Accountants Society	**7th November, 2015** (For details of Seminar, kindly visit our website www.ctconline.org)	
2.	**CORPORATE MEMBERS COMMITTEE**		
	Seminar on Internal Financial Controls – Views of an Expert Panel of Designers, Implementers and Reviewers of IFC	**9th October, 2015** ***(For details of the programme, kindly visit our website www.ctconline.org)***	
3.	**MEMBERSHIP & PUBLIC RELATIONS COMMITTEE**		
A.	**Half Day Seminar at Jalgaon** Jointly with Jalgaon Branch of WIRC of ICAI & Jalgaon District Tax Practitioners Association	**10th October, 2015** ***(For details of the seminar, kindly visit our website www.ctconline.org)***	
B.	**Self Awareness Series** ***(For details of the programme, kindly visit our website www.ctconline.org)***	**14th October, 2015** *Subject : Experience Stress free life through Yoga and Meditation*	Mr. Peter D'Souza
C.	**Full Day Seminar on Dhule**	**11th October, 2015** ***(For details of the seminar, kindly visit our website www.ctconline.org)***	
4.	**STUDENT AND IT CONNECT COMMITTEE**		
	Seminar on "Multiply Your Network with Social Media"	**8th October, 2015** ***(For details of the seminar, kindly visit our website www.ctconline.org)***	
6	**DELHI CHAPTER**		
A.	**Full day Seminar on 'Transfer Pricing – Recent Developments & Controversies, Royalty, Intra-group services, Cost Contribution Arrangement, Assessments, Domestic TP and Form 3CEB/Audit'**	**10th October, 2015** Subject : 1) Key note address on developments & controversies on TP related matters	1) Mr. Vinod Wahi, Advocate, Former Member of Company Law Board / Retired CCIT-1, Delhi

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
		2) Royalty and Intra-Group Services 3) Cost Contribution Arrangement 4) Transfer Pricing assessment related controversies 5) Transfer Pricing Study, Form 3CEB, Domestic Transfer Pricing	2) Mr. Sandeep Puri, Partner, PwC 3) Mr. Kapil Bhatnagar, Director – Transfer Pricing, PwC 4) Mr. Nishant Saini, Partner, KPMG 5) Mr. Gaurav Garg, MD, JGarg
7	**OTHER**		
B.	**Our beloved Past Presidents, Shri K. K. Ramani, Advocate, Shri P. C. Joshi, Advocate & CA Narayan Varma** Has completed 50 years of the professional journey with unparallel milestones and charting glorious path, a journey that immensely enriched the tax profession in general and the CTC in particular	**23rd October, 2015** To commensurate the glorious journey, we have organised a function to felicitation function and grace the occasion	***To view Photographs visit our website www.ctconline.org***

III. FUTURE PROGRAMMES

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
1.	**ALLIED LAWS COMMITTEE**		
A.	**Two Days Interactive Residential Conference with Different Professionals on Law Applicable to Real Estate and Redevelopment** Venue : Silent Hill Resort, National Highway No. 8, Vaitarna River Bridge, Manor, Palghar – 401 403	**19th December, 2015 to 20th December, 2015** Subject : **Inauguration & Keynote Address** **Session - I** **Overview of Laws relating to Real Estate Development**	Eminent Faculty Mr. Sanjay Buch, Advocate & Solicitor

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
		Session – II ***Indirect Tax :*** *Service Tax on Construction Industry (Issues and Controversy*	CA Rajiv Luthia
		Session – III	Mr. K. Gopal, Advocate & Past President
		a. Direct Tax (Issues and Controversies) on Real Estate	Chairman – Eminent Faculty
		b. Issues arising while drafting Deeds and Documents such as Stamp duty, Registration with special reference to above documents related to real estate	Shri Nirav Jain, Advocate & Solicitor
		Session – V Indirect Tax (Issues and Controversy) MVAT	CA Deepak Thakkar
		Session – VI **Funding arrangements for Real Estate Development for developers & Self Redevelopment process and Procedure including funding Options, reit** **Brains' Trust** – Panel Discussion with some Special Issues (Direct Tax, Indirect Tax, Drafting of Documents) ***(For further details of the programme, kindly visit our website www.ctconline.org)***	CA Sunil Goyal **Moderator** Mr. Vipul Joshi, Advocate & Past President **Panellist** **Legal Documents** Mr. K. K. Ramani, Advocate & Past President **Direct Taxes** Shri K. Gopal, Advocate & Past President **Indirect Tax** CA Deepak Thakkar
B.	**Half Day Seminar on Labour Laws** Jointly with BCAS Venue : BCAS, 7, Jolly Bhavan, 2, New Marine Lines, Mumbai – 400 020	**23rd January, 2016** Subject : 1) ESI, Bonus and Gratuity Act, Shop and Establishment Act 2) PF Act, Maternity Benefit Act Sexual Harassment Act	Mr. Ramesh Soni Mr. Talakshi R. Dharod

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
2.	**DIRECT TAXES COMMITTEE**		
A.	**Lecture Meeting on TDS Procedures** Venue : Walchand Hirachand Hall, 4th Floor, IMC.	**23rd December, 2015** Subject : • *Prosecution Notices issued by TDS win* • *Difficulties in TDS credit for various reasons* • *Procedure to file the TDS Returns online (with digital signature)* • *Correction of wrong PAN and its implications* • *Demands arising on account of incorrect PAN and Measures to avoid the same* • *Rectification on account of levy of interest* • *Issues related to branch-wise TAN and salary deductions in different branches* • *Issues relating to Challan splitting* • *Issues relating to wrong code on challans and wrong Assessment Year* • *Status of Refund on account of excess payments* • *Changes made by Traces in their programme and web-site in recent past*	Members are requested to attend the above Lecture Meeting in large number and take the advantage of the same. Programme will be followed by **Questions & Answers.** The members are also requested to send their queries on the topic at the office of the Chamber in advance. An attempt will be made to cover maximum queries and difficulties during the course of the meeting
B.	**Lecture Meeting on Section 14A – The Unending and Unpredictable Journey** Venue : Walchand Hirachand Hall, 4th floor, IMC, Churchgate, Mumbai.	**22nd January, 2016** **Subject** : *Section 14A – The Unending and Unpredictable Journey*	CA Yogesh Thar

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
C.	**Full Day Seminar on Capital Gains** Venue : Terrace Hall, West End Hotel, New Marine Lines, Mumbai – 400 020	**16th January, 2016** **Subject :** • *Fundamentals of Capital Gains, covering Section 2(14), Section 45, Section 47, Section 48, Section 49, Section 55 & Section 55A* • *Capital Gains on Shares and Securities* • *Capital Gains on sale on immovable properties* • *Deeming fictions covering Section 50, Section 50B, Section 50C, Section 50D, Section 56(2) etc.* • *Exemptions covering Sections 54, 54F, 54EC etc.*	Eminent Faculties in the Profession will address the Seminar
D.	**Workshop on Direct Tax** Jointly with The Malad Chamber of Tax Consultants Venue : Conference Hall, N. L. College, S. V. Road, Malad (West), Mumbai – 400 064.	**5th, 6th, 12th, 13th & 20th December, 2015** ***(For details of the programme, kindly visit our website www.ctconline.org and refer The CTC News Letter – November 2015)***	Eminent Faculties in the profession will address the Workshop
3.	**INDIRECT TAXES COMMITTEE**		
A.	**Seminar on Applicability of VAT and Service Tax on IPR and IPR Related Transactions (Viz., Trademark, Copyrights, Franchise, etc.)** Venue : Terrace Hall, West End Hotel, New Marine Lines, Mumbai	**12th December, 2015** Subject : *1) Study of Applicability of Service Tax VAT on IPR and IPR related transaction.* *2) Brains Trust Session*	1) CA Parind Mehta & CA Divyesh Lapsiwala 2) Trustees : Mr. V. Sridharan, Senior Advocate & Mr. C. B. Thakkar, Advocate

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
B.	**4th Residential Refresher Course on Service Tax** Venue : Aamby Valley, City Post Ambavane, Dist. Pune – 410 401, Maharashtra, India	**29th January, 2016 to 31st January, 2016** **Subject :** *Paper – I – Assorted case Studies in Service Tax* *Paper – II – Case Studies in CENVAT Credit for Service Provider* *Paper – III – Case Studies in Valuation & Bundled Services* *Presentation–I – Refunds, Rebates & adjustment of Service Tax Controversies & issues*	 Mr. V. Raghuraman, Advocate Mr. K. Vaitheesvaran, advocate Mr. L. Badrinarayan, Advocate CA Prashant Deshpande
C.	**Workshop on MVAT Act, Service Tax & Allied Laws Jointly with AIFTP (WZ), BCAS, CTC, MCTC, STPAM and WIRC of ICAI** Venue : STPAM Library Hall, 1st Floor, R. No.104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010.	5th, 19th December, 2015 16th, 30th January, 2016 6th, 20th February, 2016 5th, 19th March, 2016, 2nd, 16th & 30th April, 2016 ***(For details of the programme, kindly visit our website www.ctconline.org and refer The CTC New Letter – November 2015)***	Eminent Faculties will be announced later
4.	**MEMBERSHIP & PUBLIC RELATIONS COMMITTEE**		
A.	**Documentary Film on Nani Ardeshir Palkhivala** Venue : CTC Conference Room, 3 Rewa Chambers, Gr. Floor, 31, New Marine Lines, Mumbai.	**23rd November, 2015** **Subject :** The documentary film of Shri Nani A. Palkhivala "Nani – The Crusader".	Note : Members are restricted on first come first basis for 30 members only due to space constraint. All members are co-ordialy invited
B.	**Full Day Seminar on Direct Tax at Aurangabad** Jointly with Aurangabad Branch of WIRC of ICAI and Aurangabad Tax Practitioners Association Venue : ICAI Bhavan, Near MIT College, Beed Bypass, Aurangabad – 431 004	**12th December, 2015**	The Subjects and Faculties will be announced in the next CTC News.

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
5.	**INTERNATIONAL TAXATION COMMITTEE**		
	Announcement – Workshop on Taxation of Foreign Remittances Venue : Terrance Hall, West End Hotel, New Marine Lines, Mumbai – 400 020	**22nd & 23rd January, 2016**	The faculties and subject will be announced in the next News Letter
6.	**LAW & REPRESENTATION COMMITTEE**		
	Request for Suggestions on Pre-Budget Memorandum	Like every year, this year also The Chamber intends to make exhaustive Pre-Budget representation	Members are requested to send their suggestions by e-mail to office@ctconline.org
7.	**RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE**		
	39th Residential Refresher Course Venue: Mercure Lavasa, Accor Group of Hotels, Lavasa & Lavasa International Convention Centre, Lavasa. (www.mercurelavasa.com, www.licc.in)	**18th February, 2016 to 21st February, 2016** **Subject :** 1. Go Live with Luminaries	1. Mr. Arvind Sonde, Advocate will Go Live with Mr. Y. P. Trivedi, Senior Advocate, Past President & Mr. S. E. Dastur, Senior Advocate & Past President
		2. Group Discussion I. Select Case Studies – Moot Court Approach – Session to be conducted and concluding remarks	I. Mr. Hiro Rai, Advocate

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
		II. Unearned Income u/ss. 56(2)(vii), (viia), (viib) r.w.s Explanation to section 68 and its related Valuation Principles. III. Tax and Stamp Duty Issues of Contemporary Topics – Including, Joint ventures / Unincorporated Entities / SPVs, Private Trusts, Business Restructuring, etc. 3. Presentation on the Critical Analysis and Issues in ICDS vis-à-vis Accounting Standards and Income Tax Act. 4. Brains' Trust : Direct Tax	II. CA Jagdish Punjabi III. CA Anup Shah 3. CA Yogesh Thar 4. CA Rajan Vora & Mr. Vipul Joshi, Advocate
8.	**STUDENT AND IT CONNECT COMMITTEE**		
A.	**Half Day Workshop on Excellence in Excel** Venue : CTC Conference Room, 3, Rewa Chamber, Ground Floor, 31, New Marine Lines, Mumbai – 400 020.	**5th, 12th and 19th December, 2015** **Subject :** Advance Excel	CA Adarsh Madrecha (BCAF, ACA, ISA)
B.	**Half Day Visit at National Stock Exchange** Venue : National Stock Exchange, BKC	**8th January, 2016** Subject : • Introduction to capital Market, Introduction to Stock Exchanges, brief introduction of NSE • Various products of NSE – IPO, Listing, Secondary Market, delisting, etc. • Trading in various segments – Cash segment, Stock Derivative, Index Derivative, and Currency derivative Do's & Don'ts in market	Various eminent Faculties & officers from NSE

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
9.	**DELHI CHAPTER**		
A.	Full Day Seminar on "Case Studies on Secondment and Expatriate – Taxation & Regulatory Issues from both Employer's and Employee's Perspective' Venue : India International Centre, Conference Room No. 2, Main Building, Max Mueller Marg, Lodhi Estate, New Delhi – 110 003	**12th December, 2015** **Subject :** • Secondment of employees – Typical secondment arrangement • Expatriate – Residential Status, Critical Tax Issues • Tax Issues from an employer's perspective (including PE risks) • Expatriate – Social Securities, Provident Fund, and Regulatory aspects • Black Money Law Implications on Expatriates	CA Paresh Parekh, Partner, EY CA (Ms.) Surabhi Marwah, Partner, EY CA Vikas Garg, Head of Services, Broadening Horizons Services Pvt. Ltd. CA Puneet Gupta, Senior Manager, EY.
B.	**Full Day Seminar & Felicitation Function of Past President at CTC – Delhi Chapter** Venue : India International Centre, Conference Room No. 2, Main Building, Max Mueller Marg, Lodhi Estate, New Delhi – 110 003	**16th January, 2016** The Chamber is felicitating Shri V. P. Verma, our beloved Past President & Present Advisor to Delhi Chapter for his unparallel milestones and charting glorious path, a journey that immensely enriched the tax profession in general and the CTC in particular We have organised the function as a mark of our respect and gratitude towards him. President & Managing Council Members invite you to join us to this felicitation function and grace the occasion	Details of the seminar will be announced in the next CTC news

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
10.	**OTHER**		
	Important Announcement – Taxcon 2015 "Conflicts and Convergence in Tax Laws" Venue: Khimji Kunverji Vikamsey Auditorium, ICAI Towers, Gr. Floor, G Block, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.	**27th & 28th November, 2015** **Subject :** Sales, Service or Works Contract (Inclusive EPC Contracts) i. Service Tax & VAT ii. Income Tax **Update on GST** **Intricate issues of Business Restructuring** i. Income Tax ii. VAT & Service Tax ICDS - Unsettling Settled Laws? Panel Discussion – Controversies in Real Estate Transaction. Moderator – Panellists – i. Income Tax ii. VAT iii. Service Tax **Brains' Trust Session** **Trustees –** i. Income Tax ii. Service Tax iii. VAT	CA Sunil Gabhawalla, Mumbai CA Hitesh Gajaria, Mumbai Mr. Dilip Dixit, Pune CA Anup Shah, Mumbai CA Parind Mehta, Mumbai CA Pinakin D. Desai, Mumbai CA Yogesh Thar, Mumbai Mr. Saurabh Soparkar, Sr. Advocate, Ahmedabad Mr. P. C. Joshi, Advocate, Mumbai Mr. Shailesh Sheth, Advocate, Mumbai Mr. Hiro Rai, Advocate, Mumbai Mr. Vikram Nankani, Sr. Advocate, Mumbai Mr. Vinayak Patkar, Advocate, Mumbai.
11.	**PUBLICATION FOR SALE**		
A.	Transfer Pricing	₹ 1000/- (Discounted Price)	Edition 2014
B.	Study Material of 9th Residential Conference on International Taxation held at Goa	₹ 500/- (Discounted Price)	Edition 2015

For Further details of the Future Events, kindly visit our website www.ctconline.org.

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The Chamber of Tax Consultants

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre–eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

STUDENT AND IT CONNECT COMMITTEE

Seminar on 'Multiply Your Network with Social Media' held on 8th October, 2015 at Kilachand Hall, IMC.

CA Avinash Lalwani, President welcoming the delegates. Seen from L to R: S/Shri CA Parimal Parikh, Chairman, Manoj Kotak, Speaker, Sameer Lodha, Speaker and CA Dinesh Tejwani, Vice Chairman.

Mr. Manoj Kotak, BDM, Image online Pvt. Ltd addressing the delegates.

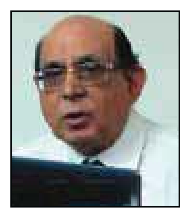
Mr. Sameer Lodha, Digital Strategy & MFT. Consultant addressing the delegates.

Section of Delegates.

DELHI CHAPTER

Full Day Seminar on 'Transfer Pricing – Recent Developments & Controversies, Royalty, Intra-Group Services, Cost Contribution Arrangement, Assessments, Domestic TP & Form 3CEB/Audit' held on 10th October, 2015 at India International Centre, New Delhi.

CA Suhit Aggarwal, Vice Chairman, CTC Delhi Chapter welcoming the delegates. Seen from L to R : S/Shri R. P. Garg, Chairman, CTC Delhi Chapter, Vinod Wahi, Speaker, Sandeep Puri, Speaker and Kapil Bhatnagar, Speaker.



Mr. Vinod Wahi, Advocate, Former Member of Company Law Board/ Retired CCIT-I, Delhi delivering Keynote address to delegates.

Speakers

Mr. Sandeep Puri, Partner, PwC

Mr. Kapil Bhatnagar, Director – Transfer Pricing, PwC

Mr. Nishant Saini, Partner, KPMG

Mr. Devendra Gulati, Associate Director, KPMG

Mr. Gaurav Garg, MD, JGarg

DIRECT TAXES COMMITTEE

Intensive Study Group (Direct Taxes) Meeting on the subject "Recent Important Decisions under Direct Taxes" held on 12th October, 2015 at CTC Office.

Mr. Mandar Vaidya, Advocate addressing the members

ALLIED LAWS COMMITTEE

Allied Laws Study Circle Meeting on the subject "Opportunity to Professionals in Insurance Sector" held on 15th October, 2015 at Kilachand Hall, IMC.

Mr. G. L. N. Sharma, Managing Director, Hannover Re Consulting Services, addressing the members.

INDIRECT TAXES COMMITTEE

Indirect Taxes Study Circle Meeting on the subject "Service Tax Investigations Audit & Scrutiny" held on 13th October, 2015 at Babubhai Chinai Hall, IMC.

CA Rajiv Luthia Chairing the session.

CA Shrikant Shenoy, Group Leader addressing the members.

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Circle Meeting on the subject "Recent issues in Taxation of Share Capital / Share Premium with reference to sections 68 & 56(2)" held on 16th October, 2015 at Babubhai Chinai Hall, IMC.

CA Bhupendra Shah, Group Leader addressing the members.

Study Circle on International Taxation Meeting on the subject "Non Discrimination under International Tax Law" held on 26th October, 2015 at Kilachand Hall, IMC.

CA Harshal Bhuta, Group Leader addressing the members.

Study Group Meeting on the subject "Recent Judgments under Direct Taxes" held on 21st October, 2015 at Babubhai Chinai Hall, IMC.

CA Sanjay R. Parikh, Group Leader addressing the members. Seen from L to R : S/Shri CA Ashok Sharma, Chairman, CA Avinash Lalwani, President, CA Dilip Sanghvi, Vice Chairman and CA Dinesh R. Shah, Convenor.

MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Half Day Seminar at Jalgaon held on 10th October, 2015 at Jalgaon Branch of WIRC of ICAI, Jalgaon.

CA Avinash Lalwani, President of CTC, Mr. M. R. Shirude, President of Jalgaon District Tax Practitioners Association, CA Kaushal Mundada Chairman of Jalgaon Branch of WIRC of ICAI lighting the lamp for inaugural. Seen from L to R : S/Shri CA Anil Shah, CA Niranjan Doshi, Speaker CA Ashok Sharma, Speaker Mr. Rahul Hakani, ITP, Mr. Sahebrao Patil Secretary of Jalgaon District Tax Practitioner Association Jalgaon, CA Hemant Parab, Chairman of Membership & PR Committee, ITP Shirish Sisodia, CA Palavi Mayur, Secretary of Jalgaon Branch of WIRC of ICAI and CA Nitin Zawar Vice Chairman of Jalgaon Branch of WIRC of ICAI.

Seen from L to R : S/Shri Sahebrao Patil, Secretary of Jalgaon District tax Practitioner Association (JDTPA), CA Ashok Sharma, Speaker, Adv. M. R. Shirude President of JDTPA. CA Avinash Lalwani, President of CTC, CA Kaushal Mundada, Chairman of Jalgaon branch WIRC of ICAI, CA Hemant Parab, Chairman of CTC Membership Committee, Speaker Mr. Rahul Hakani, Advocate, CA Pallavi Mayur, Secretary of Jalgaon branch WIRC of ICAI

Mr. Rahul Hakani, Advocate addressing the delegates. Seen from L to R: S/Shri CA Kaushal Mundada, Chairman of Jalgaon branch WIRC of ICAI and CA Mahesh Makreja.

CA Ashok Sharma addressing the delegates. Seen from L to R: S/Shri CA Niranjan Doshi, CA Avinash Lalwani, President, CTC and Rahul Hakani, Advocate, Speaker.

Full Day Seminar on Dhule, Jointly with Dhule District Tax Practitioners Association, Dhule Branch of WIRC of ICAI & Indian Medical Association held on 11th October, 2015 at IMA, Hall, Opp. Cumine Club, Dhule.

Dignitaries on the dais. Seen from L to R : CA V. C. Agrawal, Secretary of Dhule Branch of WIRC of ICAI, Mr. Shivkumar Dongre, Chairman of Dhule Tax Practitioner Association, Dr. Charuhas Jagtap, Representative of IMA Dhule, CA Hemant Parab, Chairman of Membership & PR Committee, CTC, CA Avinash Lalwani, President of CTC, CA G.B. Modi, Chairman of Dhule Branch of WIRC of ICAI, Mr. Mahesh Bafna, Secretary of Dhule Tax Practitioners Association, Mr. Sunil Mundada, State Chairman of Builder Association of India, Mr. Sanjay Desale, Secretary of Dhule Builder Association, CA Rajaram Kulkarni, Vice Chairman of Dhule Branch of WIRC of ICAI.

Speakers

CA Hitesh R. Shah

CA Hemant Parab

Mr. Nirav Jani, Advocate

Mr. Rahul Hakani, Advocate

CA Vyomesh Pathak

Self Awareness Series on the subject "Experience Stress Free Life through Yoga and Meditation" held on 14th October, 2015 at CTC Conference Room.

Mr. Peter D'Souza, addressing the members.

Felicitation Function of Shri K. K. Ramani, Advocate, Shri P. C. Joshi, Advocate & CA Narayan Varma for completing 50 years of the professional journey held on 23rd October, 2015 at Walchand Hirachand Hall, IMC.

CA Avinash Lalwani, President welcoming the members. Seen from L to R : S/Shri CA Hitesh R. Shah, Vice President, CA A. S. Merchant, Past President, P. C. Joshi, K. K. Ramani & Narayan Varma, Past Presidents, CA Hinesh Doshi, Hon. Treasurer, Ajay Singh & CA Ashok Manghnani, Hon. Jt. Secretaries.

CA A. S. Merchant, Past President welcoming the guests. Seen from L to R : S/Shri CA Hitesh R. Shah, Vice President, CA Avinash Lalwani, President, P. C. Joshi, K. K. Ramani & Narayan Varma, Past Presidents, CA Hinesh Doshi, Hon. Treasurer, Ajay Singh & CA Ashok Manghnani, Hon. Jt. Secretaries.

Shri Y. P. Trivedi, Past President offering Shawl & Shrifal to Shri K. K. Ramani, Advocate & Past President. Seen from L to R : S/Shri CA Avinash Lalwani, President & P. C. Joshi, Past President.

CA Avinash Lalwani, President felicitating Shri K. K. Ramani, Past President by offering plaque.

Shri S. E. Dastur, Past President offering Shawl & Shrifal to Shri P. C. Joshi, Past President. Seen from L to R : S/Shri CA Avinash Lalwani, President.

CA Avinash Lalwani, President, CA Hitesh R. Shah, Vice President & Shri Ajay Singh, Hon. Jt. Secretary offering plaque to Shri P. C. Joshi, Past President.

Felicitation Function of Shri K. K. Ramani, Advocate, Shri P. C. Joshi, Advocate & CA Narayan Varma for completing 50 years of the professional journey held on 23rd October, 2015 at Walchand Hirachand Hall, IMC.

Shri Kishor Vanjara, Past President offering the Shawl & Shrifal to CA Narayan Varma, Past President. Seen from L to R : S/Shri P. C. Joshi, K. K. Ramani, Past Presidents, Ajay Singh, Hon. Secretary, CA Hinesh Doshi, Hon. Treasurer and CA Ashok Manghnani, Hon. Jt. Secretary.

CA Hinesh Doshi, Hon. Treasurer & CA Ashok Manghnani, Hon. Jt. Secretary offering Plaque to CA Narayan Varma Seen from L to R : S/Shri P. C. Joshi, K. K. Ramani, Past Presidents and Ajay Singh, Hon. Secretary.

Shri K. K. Ramani, Past President addressing the members on his Journey of 50 years in Profession. Seen from L to R: S/Shri CA Hitesh R. Shah, Vice President, CA A. S. Merchant, Past President, P. C. Joshi, Narayan Varma, Past Presidents, CA Hinesh Doshi, Hon. Treasurer, Ajay Singh & CA Ashok Manghnani, Hon. Jt. Secretaries.

Shri P. C. Joshi, Past President addressing the members on his Journey of 50 years in Profession. Seen from L to R: S/Shri K. K. Ramani & Narayan Varma, Past Presidents, CA Hinesh Doshi, Hon. Treasurer, Ajay Singh & CA Ashok Manghnani, Hon. Jt. Secretaries.

Section of members

CA Narayan Varma, Past President addressing the members on his Journey of 50 years in Profession. Seen from L to R: S/Shri CA Hitesh R. Shah, Vice President, CA A. S. Merchant, Past President, P. C. Joshi, K. K. Ramani, Past Presidents, CA Hinesh Doshi, Hon. Treasurer, Ajay Singh & CA Ashok Manghnani, Hon. Jt. Secretaries.

President Shri Avinash Lalwani and Past Presidents **Sitting from L to R:** Dr. K. Shivaram, S/Shri S.E. Dastur, P. C. Joshi, K.K. Ramani, Narayan Varma and **Standing from L to R:** S/Shri Bhavesh Vora, Pradip Kapasi, Akberally Merchant, Ajit Rohira, K. Gopal, Yatin Desai, Paras Savla, Vipin Batavia and Kishor Vanjara at the felicitation function

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