Everything You Must Know about Indian Tax Laws

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Income tax

Service Tax

Customs Duty

Central Excise Act

Central Sales Tax/Value Added Tax

CENVAT Credit Scheme

Goods and Services Tax

Income tax

1. Chargeability of income tax

- Article 265 of the Constitution of India provides that "no tax shall be levied or collected except by the authority of law". Therefore, no tax can be levied or collected in India, unless it is explicitly and clearly authorised by way of legislation. The Income-tax Act, 1961 (ITA) was enacted to provide for levy and collection of tax on income earned by a person.

- According to the ITA, every person, whose total income exceeds the maximum amount not chargeable to tax, shall be chargeable to income tax at the rate or rates prescribed in the Finance Act. The ITA defines the term "person" to include an individual, an HUF, a company, a firm (including LLP), an AOP or a BOI; a local authority and every other artificial juridical person.

- The ITA provides an inclusive definition of the expression "income". Therefore, income includes not only those things which this definition explicitly declares, but also all such things as the word signifies according to its natural import.[1] Therefore, before arriving at a conclusion as to the tax implications of a receipt of money, it is imperative to determine whether or not such a receipt amounts to income under the ITA. There will be no incidence of income tax if a receipt of money does not amount to income. For instance, it is important to distinguish a capital receipt from a revenue receipt because, while all revenue receipts are taxable under the ITA, unless specifically exempted, a capital receipt cannot be taxed as income,[2] unless otherwise provided for by the statute.[3]

2. Residential status

- Section 6 of the ITA defines the term "resident", and contains different criteria to determine the residence of various entities such as a company, a firm and an individual, etc. A company is regarded as resident in India if it is an Indian company; or the place of its effective management[4] is in India in the

1 Kanga Palkhivala and Vyas, The Law and Practice of Income Tax, Ninth Edition at p. 142
2 *Padmaraje R. Kadambande v CIT* [1992] 195 ITR 877
3 For example, capital gains under s 45 of the ITA
4 As substituted by the Finance Act, 2015, w.e.f., 1.4.2016

relevant financial year.[1] The expression "place of effective management" has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the busness of an entity as a whole are, in substance made.[2] An AOP, a firm or HUF is considered resident in India, except where during that financial year, the control and management of its affairs is situated wholly outside India. An individual's residential status is dependent on the duration of stay in India.

- A person resident in India is liable to tax on his global income. A non-resident is liable to tax on income which is received or is deemed to be received in India or which accrues or arises or is deemed to accrue or arise to him in India.

3. Scope of income

- The total income of an assessee is determined on the basis of his residential status in India. According to s 5 of the ITA, Indian residents [3]are liable to be taxed on their global income, whereas non-residents are taxed only on income that has its source in India.[4]

- The scope of s 5 is expanded by the legal fiction contained in s 9, which deems certain incomes to be of Indian source. Section 9 provides for circumstances when various types of incomes are deemed to be Indian sourced and hence are liable to tax in India. It specifically provides that all incomes accruing or arising, whether directly or indirectly, through or from any business connection[5] in India, or through or from any property in India, or

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1 A period of 12 months commencing on the 1st day of April

2 As defined in Explanation to s 6(3) of the ITA

3 Defined in s 6 of the ITA

4 Income is said to have its source in India if it is "income which accrues or arises in India, is deemed to accrue or arise in India or is received in India".

5 The expression "business connection" as used in this provision was not originally defined in the ITA. The Supreme Court in the case of R.D. Aggarwal [56 ITR 20] laid down the definition of the term as:
"Business connection means something more than business. It presupposes an element of continuity between the business of the non-resident and his activity in the taxable territory, rather than a stray or isolated transaction".
The ITA was amended by the Finance Act, 2003, and an inclusive definition of the expression was inserted with effect from April 1, 2004. As per this definition, a business connection includes "any business activity carried out through a person who, acting on behalf of the nonresident, (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the

through or from any asset or source of income in India, or through the transfer of a capital asset situated in India, are deemed to be taxable in India to the extent attributable to Indian operations. It has been clarified in the ITA that an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from assets located in India. Such asset can be said to be deriving its value substantially from assets located in India, where the value of such asset exceeds Rs 10 crores (Indian Rupees Ten Million) and the same represents atleast 51% of the value of all the assets owned by the company/entity[1].

4. Tax year

- The financial year in which the income is earned is called the "Previous Year" and which is the year ending on the 31st day of March each year. The year immediately succeeding the previous year is referred to as the "assessment year". The income of the previous year is taxed in the assessment year. The term "Assessment Year" refers to a period of 12 months commencing on the 1st day of April every year and ending on 31st day of March of the following year.

5. Rates of income tax

- Applicable tax rates vary depending on the type of entity and the residential status of the taxpayer. For example, income of a resident company is taxed at the rate of 30%,[2] whereas a non-resident company is taxed at the rate of 40%.[3] However, the applicable rates of income tax are amended every financial year by the corresponding Finance Act. For the tax rates applicable to the assessment year 2016-2017, please refer to **Annexure 1.**

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purchase of goods or merchandise for the non-resident; or (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident."

1 Refer Explanations 5, 6 and 7 in cl (i) of s 9(1) of the ITA

2 exclusive of applicable surcharge and education cess

3 exclusive of applicable surcharge and education cess

- In computation of the income of a non-resident, the provisions of the Double Taxation Avoidance Agreement **(DTAA)** between India and the country of residence of the nonresident are required to be examined, since the ITA provides that its provisions shall be applicable only insofar as they are more beneficial to the taxpayer.[1] Thus, if the provisions of the DTAA are more beneficial as compared to the provisions of the ITA, the non-resident can opt to be taxed with reference to the provisions of the DTAA. Please refer **Annexure 2** for a list of countries with whom India has signed DTAA.

  The only exception where beneficial provisions of DTAA are not available to a non-resident is in case of applicability of General Anti Avoidance Rules[2] or non-furnishing of Tax Residency Certificate by the non-resident.[3]

6. Heads of income

- Income liable to tax in the hands of a person under the ITA has been classified into five mutually exclusive heads of income, namely:
  - »» Salaries,
  - »» Income from house property,
  - »» Profits and gains from business or profession,
  - »» Capital gains, and
  - »» Income from other sources.

- The ITA details the manner of computation for each head of income. Various exemptions and deductions are provided under each head of income and the net amount (net of exemptions and deductions) is included in computing a person's total taxable income. *Ad hoc* deductions and exemptions are provided for, insofar as salaries and income from house property are concerned. No expenditure other than as prescribed can be deducted while computing income under the head "salaries" and "income from house property".

1 Section 90(2) of the ITA
2 Section 90(2A) of the ITA
3 Section 90(4) of the ITA

7. Computation of profits and gains from business or profession

- All expenditure, other than capital or personal expenditure, incurred wholly and exclusively for the purpose of business is allowed as a deduction while computing the business income of an assessee. While this is the general rule, specific deductions are prescribed for certain expenditures like rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business, repair and insurance of machinery, plant and furniture, depreciation of various capital assets, etc. The thrust is on taxing net current income and, therefore, receipts or expenditure of a capital nature are usually not taken into consideration while computing the taxable income of business or profession. However, depreciation is allowed in relation to capital expenditure incurred for obtaining a tangible or intangible asset.

- Certain additional exemptions, concessions and deductions have been provided to promote certain important industries, services or as the case may be, for the economic development of a particular geographical area. For instance, profits and gains derived by an assessee from a newly established undertaking set up in Special Economic Zone (SEZs) will not be included in the total income of the taxpayer for ten consecutive financial years from the date of commencement of operations by such an undertaking. A few such provisions have been discussed in further detail below:

Deduction in respect of newly established units in special economic zones

Section 10AA of the ITA makes special provisions in respect of newly established units in Special Economic Zones. A taxpayer setting up such a unit is entitled to exemption from income tax for a period of fifteen years from the year of commencement of operations by such a unit, in the following manner:

- 100% of profits earned from the export of goods or services for a period of first five years;
- 50% of such profits for next five years; and
- 50% of such profits for further five years subject to re-investment of profits in the business of the taxpayer in prescribed manner;

However, certain general conditions must be satisfied before a taxpayer becomes entitled to this deduction, viz.,

»» The unit should be set up in a notified Special Economic Zone;

»» The unit should not be formed by splitting up or by reconstruction of a business already in existence; and

»» The unit should not have been formed by the transfer of a new business of machinery or plant previously used for any purpose.

Deductions in respect of profits from industrial undertakings or enterprises engaged in infrastructure development, etc

- Special deduction of 100% of profits earned by a taxpayer derived from certain industrial undertakings or enterprises engaged in certain activities are allowed for 10 consecutive financial years under s 80-IA of the ITA. Such deductions are available for undertakings engaged in the following activities:
  - »» Provision of infrastructure facilities;
  - »» Power generation, transmission and distribution or substantial renovation and modernization of existing distribution lines; and
  - »» Undertaking set up for a new power unit.

Deductions in respect of profits from industrial undertakings other than infrastructure development undertakings

- Section 80-IB of the ITA provides for deductions of varying magnitude in respect of profits earned by a taxpayer derived from certain industrial undertakings other than infrastructural undertakings set up in specified backward areas/districts. The deductions are available for 10 consecutive financial years from the date of commencement of its operations. The deduction under the above section is also available to an enterprise engaged in the following activities:
  - »» Operation of a ship;
  - »» Hotels;
  - »» Industrial research;
  - »» Production of mineral oil;
  - »» Developing and building housing projects;
  - »» Business of processing, preservation and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains units;
  - »» Multiplex theatres;
  - »» Convention centres; and
  - »» Operating and maintaining a hospital in rural areas.

However, the undertakings must satisfy the following conditions in order to claim deduction under s 80-IB:

- It should be a new undertaking;
- It should not be formed by the transfer of old plant and machinery;
- It should not manufacture or produce non-priority sector items, as listed in the eleventh schedule to the ITA;
- Manufacture or production should commence within the prescribed time limit for various activities;
- It should employ atleast 10 (for power-assisted undertakings) or twenty (for undertakings operating without the aid of power) workers;
- It must file its return of income on or before the prescribed due date; and
- Tax holiday is also provided in respect of profits of units set up in certain specified States (s 80-IC) and business of hotels and convention centres in specified areas.

Deduction in respect of profits and gains by an undertaking or enterprise engaged in development of special economic zone

Under s 80-IAB of ITA, deduction of 100% of profits derived by a taxpayer from the business of developing or developing, operating and maintaining a notified special economic zone is available for a period of ten consecutive years out of a period of 15 years commencing from the year of notification of the special economic zone.

8. Computation of capital gains

- Any profit or gain arising from the transfer of a capital asset during a financial year is chargeable to tax under the head "capital gains". Capital assets may either be in the nature of long-term capital assets or be in the nature of short-term capital assets. A capital asset held by the taxpayer for not more than thirty six months is a short-term capital asset, while other capital assets are long-term capital assets. However, the above-mentioned period of 36 months stands reduced to twelve months in the case of security of a company listed on a recognised stock exchange and unit of equity oriented mutual funds. Therefore, equity or preference shares which are listed on recognised stock exchange held by a taxpayer will be a long-term capital asset should it be held for a period of twelve months or more.

- Long-term capital gains are taxed at a lower rate as compared to the normal rate of tax.

- Capital gains are generally computed by deducting the following amounts from the value of consideration for which the capital asset has been transferred:
  - »» all expenditure incurred wholly and exclusively in connection with the transfer of the capital asset;
  - »» cost of acquisition of the capital asset; and
  - »» any cost of improvement that may have been incurred by the taxpayer towards the capital asset.

- These costs of acquisition and improvement are taken at their absolute values for computing capital gains arising from the transfer of short-term capital assets. However, indexation benefit is allowed in case of capital gains arising from the transfer of long-term capital assets to neutralise the impact of inflation since the date of acquisition of the asset or April 1, 1981, whichever is later.

9. Transfer pricing

- Section 92 of the ITA provides that income arising from an "international transaction" shall be computed having regard to the arm's length price. The expression "international transaction" has been defined to mean a transaction between two or more "associated enterprises", either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. Further, two enterprises are considered to be "associated enterprises" if one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise. Further, there are certain other circumstances in which two enterprises are deemed to be "associated enterprises". The Indian Transfer Pricing guidelines are to a large extent modeled on the OECD's transfer pricing guidelines and follows transfer pricing policy prevalent in the developed countries. However, transfer pricing regulations are not applicable to transactions where no tax liability arises in India under the provisions of DTAA.[1]

1 *Vanenburg Group B.V. v CIT*, 289 ITR 464; *DDIT v Sun Chemicals BV*, 24 SOT 199

- The Finance Act, 2012 has extended the scope of transfer pricing provisions to specified domestic transactions. In terms of the newly inserted s 92BA of the ITA, the following transactions between two domestic enterprises shall be subject to transfer pricing provisions:

  (i) any expenditure in respect of which payment has been made or is to be made to a person referred to in cl (b) of sub-s (2) of s 40A;
  (ii) any transaction referred to in s 80A;
  (iii) any transfer of goods or services referred to in sub-s (8) of s 80-IA;
  (iv) any business transacted between the assessee and other person as referred to in sub-s (10) of s 80-IA;
  (v) any transaction, referred to in any other section under Chapter VI-A or s 10AA, to which provisions of sub-s (8) or sub-s (10) of s 80-IA are applicable; or
  (vi) any other transaction as may be prescribed.

  The provisions of domestic transfer pricing have been made applicable if aggregate amount of all such domestic transactions exceeds Rs 200 million in a year.

- Existing transfer pricing provisions provided arm's length range of ± 3% for determining the arm's length price. The Finance Act, 2011 has amended the ITA to provide that the percentage of variation permitted as the arm's length range would be as notified by the Central Government for the various industry sectors.

Anti-Avoidance Rules

- Section 94A has been inserted by the Finance Act, 2011 to deal with transactions undertaken with persons located in the notified countries or jurisdictions[1], which do not effectively exchange information with India.

- According to this provision, if a taxpayer enters into a transaction, where one of the parties to the transaction is located in a notified area, transfer pricing regulations will apply to such transaction. No deduction in respect of any payment made to any financial institution located in a notified area will be allowed unless the taxpayer furnishes an authorisation authorising CBDT or any other income tax authority acting on its behalf, to seek relevant information from the financial institution.

1 Central Government may notify any country or territory outside India as a notified jurisdictional area (notified area);

- No deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified area will be allowed under any provision of the ITA unless the taxpayer maintains such other documents and furnishes the information as may be prescribed.

- If any sum is received by a taxpayer from a person located in a notified area, the onus will be on the taxpayer to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner and in case of his failure to do so, the amount will be deemed to be the income of the taxpayer.

- Sub-section (5) of s 94A of the ITA provides that where any person located in a notified area is entitled to receive any sum or income on which tax is deductible under Chapter XVII-B, tax shall be deducted act the highest of the following rates, namely,
  - rates in force; or
  - rates specified in the relevant provisions of the ITA; or
  - rate of 30%

- Vide Notification No. 86/2013 dated 01.11.2013, Cyprus has been notified as a notified jurisdictional area, for the purpose of the aforesaid section. Thus, in terms of the said provision, transactions entered with resident(s) of Cyprus are subject to the provisions of said section.

10. Withholding tax

- A person (except individuals in certain cases) is required to withhold tax from certain specified payments. Separate provisions exist in respect of tax to be deducted on specific transactions with residents and with non-residents.

- The ITA provides for withholding of taxes from payments made to non-residents, which are chargeable to tax under the ITA. Any person, whether resident or non-resident, making payment to a non-resident would be liable to withhold tax from such payment and deposit the same with the Government within the prescribed time. Moreover, prescribed returns are also required to be filed periodically with the tax authorities. The payee is entitled to adjust

the taxes so withheld against his tax liability in India on production of a (tax credit) certificate to be issued by the person withholding the tax.

Rates of withholding tax

The current rates[1] for withholding tax for payment to non-residents are as follows:

Interest	20%
Interest (from a notified Infrastructure Debt Fund)	5%
Dividends (Domestic Companies)	Nil
Royalties	10%
Technical Services	10%
Any other income	Individuals : 30% Companies: 40%

The above rates are general and applicable in respect of countries with which India does not have a DTAA. If the tax rates, as per the DTAA, are more favourable, the same would apply.

However, if the non-resident payee does not have a Permanent Account Number (PAN), the rate of tax withholding shall be 20% or the rates as per the aforesaid table, whichever is higher.

11. Minimum alternative tax (MAT)

- In India, a company, alike other assessees, is liable to pay tax on the income computed in accordance with the provisions of the ITA. However, the profit and loss account of the company is prepared as per the provisions of the [Indian] Companies Act, 1956. The Government has experienced a large number of cases where the companies, though had profits as per their profit and loss account, were not paying any tax because income computed as the per provisions of the ITA was either nil or was a loss. In such cases, though the companies were showing profits in books and declaring dividends to its shareholders, yet they were not paying any income tax. To bring such companies within the income tax ambit, "Minimum Alternate Tax" was introduced on regular basis, w.e.f., the assessment year 1997-1998.

1 Rates mentioned are exclusive of surcharge and education cess

- Thus, in terms of s 115JB of the ITA, a company, is required to pay tax at the rate of 18.5%[1] plus applicable surcharge and education cess on its book profits (as declared in the profit and loss account), if the tax on income computed as per the normal provisions of the ITA is less than the aforesaid tax on book profits.

- A new tax credit scheme was introduced by which the MAT paid could be carried forward and set off against regular tax payable during the subsequent ten -year period[2], subject to certain conditions, viz:
  - »» When a company pays tax under the MAT, the tax credit earned by it shall be an amount, which is the difference between the amount payable under the MAT and the regular tax. Regular tax in this case means the tax payable on the basis of normal computation of total income of the company.
  - »» MAT credit will be allowed to be carried forward for a period of 10* assessment years immediately succeeding the assessment year in which MAT is paid. Unabsorbed MAT credit will be allowed to be accumulated, subject to the 10-year carry-forward limit.
  - »» In the assessment year when regular tax becomes payable, the difference between the regular tax and the tax computed under the MAT for that year may be set off against the MAT credit available.
  - »» It may be noted that the credit allowed will not bear any interest.

- Until the financial year 2010-2011, the MAT provisions were not applicable to SEZ developers and units. However, this benefit has been dispensed with by the Finance Act, 2011. With effect from 01.04.2011, the SEZ developers and units are also required to compute (and pay) MAT on their book profits.

- Finance Act, 2015, w.e.f., 1.04.2016 has specifically excluded from the purview of MAT, any income accruing and/or arising to a foreign company under the heads capital gains arising from transactions in securities or interest, royalty or fees for technical services.

1 With effect from assessment year 2012-2013 (as per the Finance Act, 2011)
2 Where the tax has been paid under s 115JB(1) of the ITA

12. Alternate Minimum Tax

- A concept similar to minimum alternate tax for companies has also been introduced with effect from 01.04.2011 for all assessee, including limited liability partnerships but excluding companies, as companies are governed by MAT provisions. All assessees, other than a company, are required to compute alternate minimum tax (AMT) on their adjusted total income and pay AMT if it exceeds the tax arrived at as per the other provisions of ITA. Provisions for credit and set off (similar to those applicable to companies in case of MAT) have also been enacted.

13. Securities transaction tax

- Securities transaction tax (STT) or turnover tax, as is generally known, is a tax that is leviable on securities transaction carried through a recognized stock exchange in India. STT is leviable on the taxable securities transactions, w.e.f. October 1, 2004. Surcharge is not leviable on the STT.

- Long-term capital gains arising on the sale of shares/securities, which is carried out through the stock exchange and on which STT has been paid, are exempted from tax.

14. Dividend distribution tax

- Section 115-O of the ITA provides that any amount declared, distributed or paid by a domestic company by way of dividend shall be chargeable to dividend distribution tax (DDT). Only a domestic company (not a foreign company) is liable for DDT. Such tax on distributed profit is in addition to income tax chargeable in respect of total income. It is applicable whether the dividend is interim or otherwise and whether such dividend is paid out of the current profits or accumulated profits.

- Rate of DDT is 15% plus surcharge and education cess on dividends distributed by companies and 25% on dividends paid by money market mutual funds and liquid mutual funds to all investors.

- With a view to remove the cascading effect of DDT in multi-tier corporate structure, dividend received by any company from its subsidiary which has

been subjected to DDT shall be liable to be reduced from the amount of dividend distributed by such recipient shareholder company, subject to DDT.

- Until the financial year 2010-2011, DDT provisions were not applicable to SEZ developers. However, this benefit has been taken away by the Finance Act, 2011 with effect from 01.06.2011. So, even SEZ developers are required to pay DDT on dividends declared, distributed or paid on or after 01.06.2011.

15. Taxation of dividends received from foreign subsidiaries

Dividend received (gross) by an Indian company from its foreign subsidiary(ies) (in which the recipient Indian company holds a minimum threshold shareholding of 26%) has now been taxable at a concessional rate of 15%[1]. Until 31.03.2011, any dividend received from foreign subsidiary(ies) was taxable at the normal rates. This amendment, brought by the Finance Act, 2011, is intended to encourage inflow of passive income lying abroad to boost the economy.

Buyback of shares by the Indian company

- The Finance Act, 2013 inserted new Chapter XII-DA consisting of sections 115-QA to 115-QC, w.e.f., 1.06.2013, to provide that tax shall be payable by the company (whose shares are not listed on a recognised stock exchange) on buy back of its own shares at the rate 20% of the "distributed income".

- For the aforesaid purpose, "distributed income" is to be computed by reducing the amount received by the company on issuance of shares from the consideration paid on buyback. The said additional income tax paid by the company shall be the final tax liability and consequently, the amount/ consideration received by the shareholder(s) would be exempt from tax in their respective hands.

16. Return of income

- A person having income liable to tax in India is required to file a return of income with the income tax authorities (also referred to as the "Revenue"). The return of income must be filed before specific due dates prescribed for various kinds of entities for each financial year. Every company, including a

1 Section 115BBD of the ITA.

foreign company, deriving income from India, is required to file such a return in India.

- Effective from 01.06.2011, the liaison offices of foreign companies are required to furnish a statement of its activities in prescribed form to the income-tax authorities within 60 days from the close of the financial year.

17. Books/records to be maintained and audited

- The ITA requires an assessee carrying on business or profession to maintain books of accounts if the gross receipts exceed the specified threshold. Every assessee carrying on business with gross receipts exceeding Rs 1,00,00,000 (Indian Rupees Ten Million), or profession with gross receipts exceeding Rs 50,00,000 (INR Five Million) in a financial year is statutorily required to get the books of account audited by a Chartered Accountant and furnish Tax Audit Report.

18. Assessment and dispute resolution

- Detailed provisions exist in the ITA for assessing the income of a taxpayer for any previous financial year. Normally, the assessment of income is made on the basis of the return of income filed by the assessee. However, there may be cases where the Revenue may call for certain details in order to make a correct assessment of the taxpayer's income. The income tax law in India also provides for reopening of assessments in cases where income chargeable to tax had escaped assessment. The Commissioner of Income Tax (CIT) has wide powers to revise an assessment if the order is erroneous or prejudicial to the interest of Revenue.

19. Dispute resolution panel

In order to facilitate expeditious disposal of disputes, a new dispute resolution mechanism has been introduced. In case of specified assessee (an Indian company, in whose case, a Transfer Pricing adjustment is proposed, and a foreign company), it has been provided that prior to passing of final assessment order, the assessing officer should serve a copy of draft order to the assessee, to enable the assessee to record his objections to the draft order before the Dispute Resolution Panel (DRP). The DRP is a panel consisting of three senior Revenue officers, who have been given the powers to review the objections of the

assessee and issue necessary directions to the Revenue officer to pass the assessment order in accordance with such directions. An appeal against the order passed by the Revenue officer in accordance with the directions of the DRP can be preferred directly before the second appellate authority, the Income Tax Appellate Tribunal (**ITAT**). This mechanism is optional and the assessee may decide not to avail of this resolution mechanism and take the traditional approach and prefer an appeal before the first appellate authority, the CIT(A) against the assessment order passed by the Revenue officer. The advantage of opting for the DRP route is that there is no demand raised until the final order is passed by the assessing officer after considering the directions of DRP. Also, the assessee can approach the ITAT for stay of demand raised by the assessing officer as per the final order, after filing appeal to the ITAT against such order.

20. Appeals: Administrative, Quasi-Judicial and Judicial Hierarchy

- The ITA makes detailed provisions for appeals and revisions. Any assessee aggrieved by an assessment order made by the Revenue may prefer an appeal against the order to a Commissioner of Income Tax (Appeals) (CIT(A)), who is a senior revenue officer and a quasi-judicial authority. The assessee can only approach the CIT to seek revision of the order, if it is prejudicial to him.

- The taxpayer as well as the Revenue has a right to prefer an appeal against the order of the CIT(A) before the ITAT. The order of the ITAT may further be appealed against before the appropriate High Court, if a substantial question of law is involved. The order of the High Court is appealable before the Supreme Court.

21. Advance ruling

- With as many as four statutory appellate forums, assessees often find themselves caught in long-drawn and expensive litigations against the Revenue and, in the process, face a great deal of uncertainty regarding their tax liability. To address this situation, the ITA provides for advance rulings for certain eligible applicants. The Authority for Advance Rulings (AAR) is required by statute to issue its ruling within six months of receiving an application from an eligible applicant. These rulings are binding on taxpayers as well as the Revenue.

22. Closure of business

- When any business or profession is discontinued in a year, the Revenue has the power to tax the income for the period starting from the 1st day of April of that year up to the date of discontinuance as if such income was that of the immediately preceding financial year. The intimation should be given to the Revenue in the event that a business or profession in India is discontinued. Such intimation is required to be given within a period of fifteen days from the date of discontinuance of the business.

- Discontinuation of an entity carrying on business has tax consequences. The winding up of the business and distribution of the assets to the constituent members may entail tax liabilities arising from transfer of the assets to the constituent members. In the case of a company, money or assets received by a shareholder on liquidation in lieu of the share capital contributed by him, would result in capital gains in his hands depending upon the amount/value of assets received vis-à-vis the cost of acquisition of the shares. Further, to the extent the company in liquidation has accumulated profits the amount distributed is liable to dividend distribution tax. In the case of dissolution of a partnership firm or AOP, the firm would be liable to tax on capital gains on the assets distributed to its partners on the basis of the market value of the asset on the date of distribution. The partners are not, however, liable to tax on the assets so received.

- In the case of a partnership firm or an AOP where the business is discontinued or the firm/AOP is dissolved, the members of such AOP at the time of discontinuance/ dissolution and their legal representatives shall be jointly and severally liable for the tax liabilities of such dissolved firm/AOP.

- In the case of a company, which goes into liquidation, the liquidator is required to give a notice to the tax authorities of his appointment as such liquidator. The tax authorities are empowered to require the liquidator to keep aside a sum, which the authorities consider sufficient to provide for the existing and future tax liabilities of the company in liquidation.

- In the case of a private limited company, the undischarged tax liabilities can be recovered from its directors, even after the company is liquidated, unless the director proves that the non-recovery of the taxes from the company cannot be attributed to any gross negligence or misfeasance on its part. It may be difficult to wind up a company if there are tax liabilities outstanding

against the company or litigation is pending with the tax department till an arrangement is made to the satisfaction of the tax department as regards security for the estimated amounts which the company may be liable to pay.

23. Corporate restructuring: Tax implications

The growing need for restructuring of business enterprises on account of increasing competition and globalisation, by ensuring preservation of tax benefits and simplifying procedural requirements, has been recognised in the provisions under the ITA.

Amalgamation

Under the ITA, in the case of amalgamation of companies, which is approved by the Court, the benefit of unabsorbed tax allowances of an amalgamating company owning an industrial undertaking or carrying on certain other specified business is available to the amalgamated company without the necessity of obtaining any formal approvals, subject only to fulfillment of the conditions prescribed therein. The conditions which are required to be fulfilled are as under:

- The book value of the assets of the amalgamating company as on the date of amalgamation should not be less than 75% of the book value of the assets held two years prior to the date of amalgamation;
- The business in which losses have been incurred by the amalgamating company should have carried on for a period of at least three years prior to the date of amalgamation;
- The amalgamated company should hold continuously for a minimum period of five years from the date of amalgamation, at least 75% of the book value of the fixed assets of the amalgamating company;
- The amalgamated company should continue the business of the amalgamating company for a minimum period of five years from the date of amalgamation;
- The amalgamated company should achieve production of at least 50% of the installed capacity of the undertaking of the amalgamating company before the end of four years from the date of amalgamation and should continue to maintain such capacity utilisation till the end of five years from the date of amalgamation; and
- The amalgamated company must furnish a certificate in the prescribed form, to be issued from a chartered accountant, to the Revenue.

The transfer of assets of the amalgamating company to the amalgamated company pursuant to the amalgamation does not attract any capital gains tax. Similarly, issue of shares of the amalgamated company to the shareholders of amalgamating company in lieu of their shares in the amalgamating company does not attract any capital gains tax. The amalgamated company is also entitled to claim depreciation on the fixed assets of the amalgamating company to the same extent as the amalgamating company was entitled to as if no amalgamation had taken place.

Demerger

Demerger in the context of the Indian tax laws signifies a transfer of the division/ undertaking of a company to another company under a scheme of arrangement approved by the Court. Provisions exist in the current laws to maintain tax neutrality in respect of the assets transferred by the demerged company to the resulting company through a scheme of demerger. The provisions are broadly on the same lines as those in the case of an amalgamation. The losses identifiable to the unit/division to be demerged or in the absence of such identifiability, proportionate losses of the demerged company can be availed of by the resulting company. Under the present provisions, however, the condition regarding the continuation of business, holding of the minimum percentage of assets etc., as applicable to an amalgamation, do not apply in the case of a demerger.

Conversion of proprietorship or partnership firm into a company

Tax neutrality exists where a sole proprietorship or partnership firm is converted into a company, subject to fulfillment of some specified conditions.

Conversion of private or unlisted public company into limited liability partnership

Tax neutrality exists where private or unlisted public company (not having gross receipts from business of more than INR 6 million in the preceding three years) is converted into Limited Liability Partnership, subject to fulfillment of specified conditions.

24. Administration

The Income Tax Act is administered by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India. The CBDT, from time to time, comes out with Circulars/Notifications clarifying the provisions of law, framing rules, etc, in connection with effective implementation of the provisions of the ITA.

Service Tax

25. Taxation of Service

Service tax was introduced for the first time in 1994 through insertion of Chapter V in the Finance Act, 1994 (the "Finance Act") as a mean to broaden the indirect tax base. It may be noted that there is no separate enactment for service tax till date and it continues to be governed by the provisions of Chapter V of the Finance Act (ss 64 to 100) and the rules incorporated under the Service Tax Rules, 1994.

The Finance Act provides for methods of levying service tax, the circumstances in which the levy would arise, the procedures to be followed and allied matters such as registration, self-assessment, penalty, etc. Initially, the levy of service tax was confined only to three services. Since then, year after year, the scope of service tax gradually increased and extended to over 120 services. The Finance Act, which provides for levy of service tax has been substantially amended by the Finance Act, 2012, w.e.f., 1.07.2012. There has in fact been a paradigm shift in the law relating to levy of service tax, pursuant to the aforesaid amendments. Generally speaking, service tax is now leviable on all services except those mentioned in the negative list and exemption notification.

The relevant statutes governing the levy of service tax are as follows:

(i) Finance Act, 1994 – Chapter V (ss 64 to 100): This chapter extends to the whole of India except the State of Jammu and Kashmir

(ii) Service Tax Rules, 1994

(iii) Point of Taxation Rules, 2011

(iv) Service Tax (Determination of Value) Rules, 2006

(v) Service Tax (Advance Rulings) Rules, 2003

(vi) Place of Provision of Services Rules, 2012

(vii) CENVAT Credit Rules, 2004

26. Important provisions governing levy of service tax are discussed in the succeeding paragraphs

Levy of service tax

- Service tax is levied on all services except those mentioned in the negative list and exemption notification.
- Presently, the service tax is levied at the rate of 14% on the value of taxable services.

Taxable services

Section 66B of the Finance Act is the charging section. The terms "taxable service" is defined to mean any service on which service tax is leviable under s 66B of the Act. Hitherto, the liability to pay service tax was on realisation of the value of taxable service. However, with the introduction of Point of Taxation Rules, 2011, w.e.f. 01.06.2011, the liability to pay service tax has been shifted to invoice method, ie, on raising of invoice.

Persons liable to pay service tax

Liability to pay service tax is cast on the service provider. However, in some cases, recipients of services have been made liable (on partial/ reverse charge method) to pay service tax under the Finance Act.

Exemption to small service providers

Service tax is exempted up to Rs 10,00,000 (Indian Rupees One Million), being the aggregate value of all taxable services provided by a service provider during a financial year. The aggregate taxable value means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year, but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under s 66 B of the Finance Act or under any other notification. However, the above exemption is not admissible to:

(a) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(b) such value of taxable services in respect of which service tax shall be paid by the recipient of services (on reverse charge method) under the Finance Act.

27. General exemptions

Other than the threshold exemption to small service providers, certain relevant exemptions from payment of whole of the amount of service tax are provided by way of Notifications, as under.

- Services provided to the United Nations or specified international organizations.

- Services provided to a developer of Special Economic Zone or a unit in Special Economic Zone. However, under the present provisions (*vide* Notification No. 12/2013 dated 01.07.2013), specified service received by SEZ unit/ Developer is *ab initio* exempt when used exclusively used for the authorized operations. For this purpose, the SEZ unit/Developer would need to seek an approval from the Approval Committee, of the list of services as are required for the authorized operations. In relation to the specified services that are not exclusively used for authorized operations, the SEZ unit/ Developer shall be liable to first pay service tax and subsequently claim refund thereof.

- Exemption to taxable service provided to Foreign Diplomatic Missions or Consular Post for official use and also for personal use or for the use of their family members.

- Certain specified taxable services received by an exporter of goods and used for export of goods (vide Notification No. 41/2012-ST dated 29.06.2012).

28. Compliance under Service Tax

- Registration to be obtained from jurisdictional Central Excise authorities.

- Every person who has provided taxable service of value exceeding Rs 9,00,000 (Indian Rupees Nine Hundred Thousand), in the preceding financial year, is required to register with the concerned superintendent of Central Excise in Form ST-1. In case a recipient of service is liable to deposit service tax (under reverse charge method), he is also required to obtain registration.

29. Provision for centralized registration

- Service provider located in one or more premises having centralized accounting or centralized billing system, may register such premises or office from where such centralized billing or centralized accounting systems are located and thus, hold centralized registration. The Commissioner of Central Excise in whose jurisdiction centralized account or billing office of the assessees exists, is empowered to grant centralized registration.

- Payment of tax is on monthly/quarterly basis, depending upon the category of the assessee.
- Filing of half-yearly service tax returns in Form ST-3. Return for half year ending on 30th day of September and 31st day of March is required to be filed by the 25th day of October and 25th day of April, respectively.

- Assessment of service tax is on self-assessment basis.

30. CENVAT Credit

- Credit under central excise and service tax has been extended across goods and services. The CENVAT Credit Rules, 2004 provide *inter alia* for availment of the credit of (i) the service tax paid on input services; (ii) central excise duties paid on inputs/capital goods; and (iii) additional customs duty leviable under s 3 of the Customs Tariff Act, equivalent to the duties of excise. Such credit amount can be utilized towards payment of service tax by an assessee on their output services.

- Such credit can also be availed by a manufacturer and utilised for discharging their liability towards service tax and/or central excise duties.

31. Export and import of services

The Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import of Service Rules) have been superseded by the Place of Provision of Services Rules, 2012 (PoP Rules). Presently, the PoP Rules govern where a service is provided/deemed to be provided and accordingly determine whether a service qualifies as export/ import of service.

32. Advance ruling

- Advance ruling means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided by the applicant.

- Authority for Advance Rulings for Central Excise, Customs and Service Tax is meant to provide binding ruling on the important issues such that intending applicants will have a clear-cut indication of their duty/ tax liability in advance.

Questions on which an advance ruling can be sought

Advance rulings, concerning service tax matters, can be sought in respect of:

(i) Classification of any service as a taxable service under Chapter V of the Finance Act;

(ii) Valuation of taxable services for charging service tax:

(iii) Principles to be adopted for the purposes of determination of the value of the taxable service under the Finance Act;

(iv) Applicability of notifications issued under the Finance Act;

(v) Admissibility of credit of duty or tax in terms of the rules made in this regard; and

(vi) Determination of the liability to pay service tax on a taxable service under the Finance Act.

Persons eligible to apply for an advance ruling

(i) A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident;

(ii) A resident setting up a joint venture in India in collaboration with a non-resident;

(iii) A wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which proposes to undertake any business activity in India;

(iv) A joint venture in India;

(v) A resident falling within any such class or category of persons, as the Central Government may, by notification in the official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-s (1) of s 96C of the Finance Act.

33. Administration

The service tax law is administered by the Central Excise Commissionerates functioning under the Central Board of Excise & Customs (CBEC), Department of Revenue, Ministry of Finance, Government of India.

Customs Duty

34. Chargeability of Customs Duty

- The import and export duty is a Union subject under Entry 83 to List-I of the Seventh Schedule to the Constitution of India under the heading "Duties of Customs including Export Duties". Article 246(1) of the Constitution confers exclusive powers upon Parliament to make laws with respect to any of matters enumerated in the Union List. In exercise of its powers, Parliament enacted the Customs Act, 1962 (the "Customs Act").

- Section 12 of the Customs Act, the charging section, provides that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (CTA), or any other law for the time being in force, on goods imported into, or exported from India. Customs duties include both import and export duties. However, since export duties contribute only nominal revenue due to emphasis on raising competitiveness of exports, import duties alone constituted major part of the revenue from customs duties.

- According to s 2(18) of the Customs Act, "export" with its grammatical variations and cognate expressions means taking out of India to a place outside India.

- According to s 2(23) of the Customs Act, "import" with its grammatical variations and cognate expressions means bringing into India from a place outside India.

35. Levy of customs

Broadly, the following enactments deal with the matters relating to Customs Duty:

1. Customs Act, 1962
2. Customs Tariff Act, 1975
3. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
4. Customs Valuation (Determination of Value of Export Goods) Rules, 2007
5. Customs (Advance Ruling) Rules, 2002
6. Customs, Central Excise Duty and Service Tax Drawback Rules, 1995
7. Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995
8. CENVAT Credit Rules, 2004
9. Customs (Compounding of Offences) Rules, 2005

Customs duties are levied on the goods at the rates specified in the Schedule(s) to the CTA as amended from time to time. The taxable event is imported into or exported from India.

36. Export duties

Under the Customs Act, goods exported from India may be subject to the levy of export duty. The items on which export duty is levied and the rate at which the duty is levied are given in the CTA. Depending on the prevailing circumstances and export sensitivity, export duties are levied on various items from time to time.

37. Import duties

Import duties generally consist of the following:

1. **Basic Customs duty**

   Basic Customs Duty (BCD) is levied under s 12 of the Customs Act. Normally, it is levied as a percentage of value as determined under s 14(1) of the Customs Act. The rates at which BCD is charged vary from item-to-item. BCD may be fixed on ad valorem basis or specific rate basis. In other words, BCD may be a percentage of the value of the goods or at a specific rate.

2. **Additional duty of customs (countervailing duty - excise)**

   Additional duty of customs is levied under s 3(1) of the CTA to countervail excise duty for the time being leviable on a like article if produced or manufactured in India. If such excise duty on a like article is leviable at any

percentage of its value, the additional duty of customs to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article. "Additional Duty" is often referred to as "Countervailing Duty" (CVD).

3. **Additional duty of customs (countervailing duty - sales tax/VAT)**

Additional duty of Customs is levied under s 3(5) of CTA to countervail sales tax/VAT/local tax or any other charge for the time being leviable on a like article or its sale, purchase or transportation in India. The Central Government, may by notification in the official gazette, direct that the prescribed imported articles shall, in addition to basic customs duty and additional duty under s 3(1) of the CTA, be liable to an additional duty at a rate not exceeding four percent (4%) of the value of the imported articles as specified in that notification.

4. **National Calamity Contingent Duty**

In terms of s 3 of the CTA read with s 136 of the Finance Act, 2001, imported goods are charged to National Calamity Contingency Duty (NCCD) in the same manner as the relevant provisions for levy and collection of the duty of excise on such goods applicable in terms of the Central Excise Act, 1944. Accordingly, in terms of proviso to sub-s (2) of s 3 of the CTA, imported goods shall be charged to additional duty of customs on the basis of MRP/ RSP, if in case of an imported article, the MRP/RSP is required to be declared under the Legal Metrology Act, 2009 and Rules made thereunder notified with effect from 01.03.2011, and such a product is listed under the Notification prescribing levy of excise duty on MRP basis, ie, Notification No.49/2008-CE (N.T.) dated December 24, 2008 as amended.

5. **Safeguard duty**

Sections 8B, 8C, 9A, 9B and 9C of the CTA read with the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and the Customs Tariff (Transitional Products Specific Safeguard Duty) Rules, 2002 form the legal basis for imposition of safeguard duty. The Central Government is empowered to impose safeguard duty on specified imported goods if it is satisfied that imports of a particular product, as a result of tariff concessions or other World Trade Organisation (WTO) obligations undertaken by the importing country, increase unexpectedly to an extent that they cause or threaten to cause serious injury to domestic producers of "like or directly competitive products". The relevant provisions under the CTA seek to provide relief to the domestic producers against injury caused by imports in accordance with the WTO Agreements. These provisions are aimed at offsetting the

adverse effects of increased imports, subsidised imports or dumped imports and imports from the Peoples' Republic of China.

6. **Anti-dumping duty**

Sections 9A, 9B and 9C of the CTA read with the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These laws are based on the Agreement on Anti-Dumping which is in pursuance of Article VI of the General Agreement on Trade and Tariffs (GATT), 1994.The domestic industry can seek necessary relief and protection against dumping of goods and articles by exporting companies and firms of any country from any part of the world in terms of the above legal framework.

7. **Countervailing duty on subsidised articles**

Sections 9 of the CTA read with the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 form the legal basis for anti-subsidy investigations and levy of countervailing duty. These laws are in consonance with the WTO agreements on anti-subsidy countervailing measures. If a country or territory pays any subsidy (directly or indirectly) to its exporters for exporting goods to India, the Central Government can impose countervailing duty up to the amount of such subsidy under s 9 of the Customs Tariff Act. The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty or Subsidized Articles and for Determination of Injury) Rules, 1975 [Customs Notification No. 1/95 (N.T.) dated 1.1.95] provide detailed procedure for determining the injury to domestic industry in case of subsidised goods.

8. **Protective duties**

Section 6 of the CTA empowers the Central Government to levy protective duties in certain cases. Accordingly, based on the recommendations of the Tariff Commission, 13 if the Central Government is satisfied that an immediate action is necessary to protect the interests of the Indian industry, it may levy protective customs duty at a rate recommended by the Tariff Commission. Such levy has to be levied by way of a Notification in the official gazette and is valid till the date prescribed in the Notification.

9. **Education cess/secondary and higher education cess**

In addition to the normal customs duties, education cess at the rate of 2%, and secondary and higher education (SHE) cess at the rate of 1%, on aggregate duties of customs (including CVD) is leviable. If goods are fully exempted from duty or are chargeable to Nil duty or are cleared without payment of duty under prescribed procedure (such as clearance under bond), no cess would be leviable. However, no education cess and SHE cess is leviable on anti-dumping duty, safeguard duty and protective duties. Further, certain cesses are leviable on some specified articles of exports like coffee, coir, lac, mica, pan masala, tobacco (unmanufactured), marine products, cashew kernels, black pepper, cardamom, iron ore, oil cakes and meals, animal feed and turmeric. These cesses are collected as parts of customs duties and are then passed on to the agencies in charge of the administration of the concerned commodities.

38. Rate of duty

- Customs duty is leviable based on the ITC (HSN) tariff classification of goods. There are different rates of customs duty prescribed for different tariff classifications. Item specific rates of duty are given in the relevant Schedule(s) to the CTA. In determining the applicable rate of customs duty for a particular item/class, exemption notification, if any, issued with respect to such item/class should be taken into consideration.

- Further, where India has entered into Bilateral/Multilateral Trade Agreement(s) with its trading partner countries wherein preferential rate of duties has been contemplated, the levy of customs duty in such cases shall be governed by the provisions of such Bilateral/Multilateral Trade Agreement(s). Such preferential rates of customs duty under the Bilateral/Multilateral Trade Agreement(s) are implemented through exemption notification(s) issued by the Government.

39. Classification of Goods

- The CTA consists of XXI sections and 98 chapters. A section is a grouping of a number of chapters which codify a particular class of goods. The section notes explain the scope of chapters/headings, etc. The chapters consist of chapter notes, brief description of commodities arranged according to HSN Numbers, which are allotted in the schedules either in four digits or in six digits or in eight digits. Every four digit code is called a “heading” and every six digit code is called a “subheading” and the eight digit code indicates the “specific commodity number”.

- The process of arriving at a particular heading/sub-heading/specific commodity number, either at four digit or six digit or eight digit level for a commodity in the Tariff Schedule is called "classification". This helps in determining the rate of duty leviable as prescribed by the law.

- Further, classification of goods under a particular tariff heading is governed by a set of General Interpretative Rules, which form an integral part of the CTA. According to these Rules, classification is to be determined according to the terms of the headings or sub-headings or chapter notes.

40. Advance ruling

- Advance rulings enable any non-resident and resident investor to know in advance the customs duty liability on the proposed imports into India and proposed exports from India.

- Advance ruling means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay customs duty in relation to the proposed imports into or exports from India, by the applicant.

- Authority for Advance Rulings for Excise and Customs (AAR) is meant to provide binding ruling on the important issues so that prospective investors will have a clear indication of their customs duty liability in advance. It assures the applicant of the finality of the customs duty liability.

- The relevant provisions for obtaining an advance ruling are contained in Chapter V-B of the Customs Act, 1962. The Customs (Advance Rulings) Rules, 2002 notified vide Notification No. 55/2002-Customs (N.T.) dated August 23, 2002 as amended provide for the format to be used for filing an application.

Persons eligible to apply for advance ruling

(i) A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident;

(ii) A resident setting up a joint venture in India in collaboration with a non-resident;

(iii) A [Indian] wholly owned subsidiary Indian company, of a foreign company, which the holding company is a foreign company, who or which proposes to undertake any business activity in India;

(iv) A joint venture in India;

(v) A resident falling within any such class or category of persons, as the Central Government may, by notification in the official gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under s 28H(1) of the Customs Act. The notified class of person also includes (i) the limited liability partnership as defined in cl (n) of sub-s (1) of the s 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or (ii) limited liability partnership which has no company as its partner; or (iii) the sole proprietorship; or (iv) one person company.

Issues on which advance rulings can be sought

(a) classification of goods under the CTA;

(b) applicability of a notification issued under s 25(1) of the Customs Act having a bearing on the rate of duty;

(c) the principles to be adopted for the purposes of determination of the value of the goods under the provisions of the Customs Act;

(d) applicability of notifications issued in respect of duties under the Customs Act, the CTA and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under the Customs Act;

(e) determination of origin of the goods in terms of the rules notified under the CTA and matters relating thereto.

41. Administration

Customs law is administered by the Customs Commissionerates functioning under the Central Board of Excise & Customs (CBEC), Department of Revenue, Ministry of Finance, Government of India.

Central Excise Act

42. Chargeability of Central Excise Duty

- The central excise duty has been mentioned under Entry 84 to List I of the Seventh Schedule to the Constitution of India (the "Union List") as:

  Entry No. 84 –Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotics, but including medical and toilet preparations containing alcohol, opium or narcotics.

- The Seventh Schedule to the Constitution of India indicates bifurcation of powers to make laws, between the Union Government and State Governments.

- Article 246(1) of the Constitution of India confers exclusive powers upon the Parliament to make laws with respect to any of matters enumerated in the Union List.

- Article 246(3) of the Constitution of India confers exclusive powers upon the State Government to make laws for the State with respect to any matter enumerated in List II of the Seventh Schedule to the Constitution of India (the "State List"). Power to impose excise on alcoholic liquors, opium and narcotics is vested with State Governments under Entry No. 51 of List II of the Seventh Schedule to the Constitution of India and it is called "State Excise". The Act, Rules and rates for State excise on liquor are different for each State.

- Matters in respect of which both the Union and State Governments can exercise power to make laws are contained in List III of the Seventh Schedule to the Constitution of India (the "Concurrent List"). However, in case of Union Territories, the Union Government can make laws in respect of all the entries in all three lists.

- In exercise of its powers, the Parliament enacted the Central Excise Act, 1944 (the "Central Excise Act") and Rules thereunder, which *inter alia* provide for

levy, collection and connected procedures with respect to central excise duty (called "CENVAT").

- Section 3 of the Central Excise Act, the charging section, provides that there shall be levied and collected, in such a manner as may be prescribed, a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in Special Economic Zones) specified in the Second Schedule to the Central Excise Tariff Act, 1985 (CETA) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

- The central excise duty is on the act of manufacture or production. The duty is collected, on the goods manufactured or produced, at the time of their removal from the factory. Generally, the manufacturer of goods is responsible to pay duty to the Government. The rates at which the central excise duty is to be paid are stipulated in the CETA.

43. Levy of Central Excise Duty

Broadly, the following laws deal with the matters relating to Central Excise Duty:

(i) Central Excise Act, 1944

(ii) Central Excise Tariff Act, 1985

(iii) Additional Duties of Excise (Goods of Special Importance) Act, 1957

(iv) Central Excise Rules, 2002

(v) CENVAT Credit Rules, 2004

(vi) Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000

(vii) Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008

(viii) Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001

(viii) Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

44. Levy of Excise Duty

Section 3(1)(a) of the Central Excise Act provides that there shall be levied and collected in such a manner as may be prescribed a duty of excise to be called the

CENVAT on all excisable goods (excluding goods produced or manufactured in Special Economic Zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the CETA.

From the above, it can be observed that there are four basic conditions for levy of central excise duty, namely

(i) the duty is on goods; the word "goods" has not been defined the Central Excise Act. Article 366(12) of the Constitution of India defines "goods" includes all "material, commodities and articles". This definition is wide for the purpose of central excise and case law on this is quite well developed.

(ii) the goods must be excisable;

(iii) the goods must be manufactured or produced; the term manufacture is defined under s 2(f) of the Central Excise Act as to include any process (i) incidental or ancillary to the completion of a manufactured product; (ii) which is specified in relation to any goods in the Section or Chapter notes of (the First Schedule) to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

(iv) such manufacture or production must be in India.

Unless all of these conditions are satisfied, central excise duty cannot be levied.

Further, a special duty of excise, in addition to the duty of excise specified in s 3(1)(a) above, on excisable goods (excluding goods produced or manufactured in Special Economic Zones) specified in the Second Schedule to the CETA which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule shall be levied and collected in such manner as may be prescribed.

45. Types of Excise Duty

Excise duties are generally of the following types:

1. **Basic excise duty**

Basic excise duty is levied under the Central Excise Act. Basic excise duty is levied at the rates specified in the First Schedule to the CETA read with exemption notification, if any. Normally, basic excise duty is levied as a percentage of value as determined under the provisions of the Central Excise Act. The rates at which basic excise duty is charged vary from item to item. Basic excise duty may be fixed on ad valorem basis or specific rate basis. In other words, basic excise duty may be a percentage of the value of the goods or at a specific rate.

2. **Additional duty on goods of special importance**

Additional duty of excise is levied and collected on goods of special importance under s 3(1) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Accordingly, there shall be levied and collected in respect of the goods described in the First Schedule which are produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto, duties of excise at the rate or rates specified in the said Schedule.

3. **National Calamity Contingent Duty**

Section 136 of the Finance Act, 2001 provides that in the case of goods specified in the Seventh Schedule, being goods manufactured or produced, there shall be levied and collected for the purposes of the Union, by surcharge, a duty of excise, to be called the National Calamity Contingent Duty (the "NCCD"), at the rates specified in the said Schedule.

The NCCD chargeable on the goods specified in the Seventh Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act or any other law for the time being in force.

The provisions of the Central Excise Act and the Rules made thereunder (including those relating to refunds and exemptions from duties and imposition of penalty) shall, as far as may be, apply in relation to the levy and collection of the NCCD as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act or Rules, as the case may be.

4. **Additional duty on textile and textile articles**

Additional duty of excise is levied and collected on textile and textile articles under s 3(1) of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978.

5. **Duty on medicinal and toilet products**

A duty of excise is imposed on medicinal preparations under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

6. **Additional duty on mineral products**

Additional duty on mineral products (viz., motor spirit, kerosene, diesel and furnace oil) is payable under the Mineral Products (Additional Duties of Excise and Customs) Act, 1958.

7. **Additional excise duty on pan masala and tobacco products**

Additional duty of excise by way of surcharge has been imposed under cl 85 of the Finance Act, 2005 w.e.f 01.03.2005.

46. Registration under the Central Excise Act

The following categories of persons require registration under the Central Excise Act read with the Central Excise Rules, 2002:

(i) Every manufacturer of dutiable excisable goods.

(ii) First- and second-stage dealers (including manufacturer's depots and importers) desiring to issue CENVAT invoices.

(iii) Persons holding warehouses for storing non-duty paid goods.

(iv) Persons who obtain excisable goods for availing end-use based exemption.

(v) Exporter-manufacturers under rebate/bond procedure; Export Oriented Units (EOUs) and Special Economic Zone (SEZ) units which have interaction with the domestic economy.

(vi) Registered importer issuing CENVATable invoice

Separate registration is required in respect of separate premises (factory, depot, godown, etc.) except in cases where two or more premises are actually part of the same factory (where processes are interlinked) but are segregated by public road, canal or railway line. In the case of textiles, a single registration will do for all the premises listed therein.

47. Persons Exempted from Registration

The following categories of persons are exempted from registration:

- Manufacturers of goods which are chargeable to Nil rate of duty or are fully exempted.
- Manufacturers of goods which are exempted on the basis of "value of clearances" made in a financial year and remain under the exemption limit (SSI). In cases where the value of clearances excluding export turnover in the current financial year exceeds Rs 90,00,000 (Indian Rupees Nine Million), the assessee has to file a declaration prescribed under Notification No. 36/2001-C.E. (N.T.), dated June 26, 2001 for getting exempted. In other words, no declaration is required to be filed if the value of such clearances is below Rs 90,00,000 (Indian Rupees Nine Million).
- Persons manufacturing excisable goods under the Customs warehousing procedures provided final products including scrap are exported and no duty drawback is claimed.
- Wholesale traders or dealers of excisable goods (except first-stage dealer, second-stage dealer and depot).
- In respect of ready-made garments, the job-worker need not get registered if the Principle manufacturer undertakes to discharge the duty liability.
- Approved/licensed units in SEZs and 100% EOUs. However, if the SEZ units, or as the case may be, EOUs are having clearances in or procurement from the Domestic Tariff Area (DTA), such units would not be eligible to avail exemption from registration.

48. Liability to pay duty is on the manufacturer

The manufacturer of excisable goods or the person who stores such goods in a warehouse shall be liable to pay the central excise duty leviable on excisable goods.

49. Valuation of excisable goods

Excise duty is payable on any one of the following criterion:

- As a percentage of tariff value fixed under s 3(3) of the Central Excise Act;
- Based on annual production capacity under s 3A[1] of the Central Excise Act;
- As a percentage of the assessable value fixed under s 4 of the Central Excise Act;

1 Inserted w.e.f. May 10, 2008

»» Based on the Maximum Retail Price (MRP) under s 4A of the Central Excise Act. The goods covered under MRP-based valuation are those goods which are governed by the provision of Legal Metrology Act, 2009 notified w.e.f. 01.03.2011 and Rules framed thereunder;

»» Specific duty based on criteria, viz, weight, measure, volume, etc (viz, cigarettes, sugar, cement clinkers, marble slabs and tiles, etc).

50. Rate of Central Excise Duty

Rates of central excise duty are specified in the First Schedule to the CETA. The rates of special excise duty are specified in the Second Schedule to the CETA. However, w.e.f. 01.03.2006, all goods have been exempt from Special Excise Duty. The Schedule to the CETA contains unique 8-digit code for all excisable goods. It is aligned with customs tariff and is based on the International Trade Classification Harmonised System of Nomenclature [ITC (HS)].

51. Classification of Goods

- The CETA consists of XX sections and 96 chapters. A section is a grouping of a number of chapters which codify a particular class of goods. The section notes explain the scope of chapters/headings, etc. The chapters consist of chapter notes, brief description of commodities arranged according to HSN Numbers, which are allotted in the schedules either in four digits or in six digits or in eight digits. Every four-digit code is called a "heading" and every six-digit code is called a "subheading" and the eight-digit code indicates the "specific commodity number".

- The process of arriving at a particular heading/sub-heading/specific commodity number, either at the four-digit or at the six-digit or at the eight-digit level for a commodity in the Tariff Schedule is called "classification". This helps in determining the rate of duty leviable as prescribed by the law.

- Further, classification of goods under a particular tariff heading is governed by a set of General Interpretative Rules, which form an integral part of the CETA. According to these Rules, classification is to be determined according to the terms of the headings or sub-headings or chapter notes.

- Choosing the right heading or sub-heading of the tariff and determining the applicable rate for the particular goods is commonly referred to as classification of goods.

Exemption from excise duty

- Under s 5A of the Central Excise Act, the Central Government has the power to grant exemption, full or partial, from payment of duty either generally by issue of a Notification or in a specific case of an exceptional nature, by means of a special order. The power is exercisable in public interest.

Small-scale industry and excise exemption

- For the purpose of promoting Small Scale Industrial (SSI) units, excise duty exemption has been granted to such units.

- For the purpose of excise duty, a manufacturing unit shall be eligible to claim exemption as an SSI unit if the turnover of such manufacturing unit is less than Rs 4,00,00,000 (Indian Rupees Forty Million) during the *previous financial year*. Further, turnover of up to Rs 1,50,00,000 (Indian Rupees Fifteen Million) is fully exempted from excise duty provided CENVAT Credit is not availed on inputs, etc. SSI units do not require registration until the threshold limit is crossed.

- However, a person has the option not to avail this exemption. Such a person should intimate his intention of not availing exemption before removing goods on the payment of duty. In such a case, the person can pay normal rate of duty and avail credit and such option cannot be withdrawn during the financial year.

Manner of payment of excise duty

- The excise duty is to be paid on monthly basis by the fifth day of the succeeding month (sixth day of the following month in case of e-payment through internet banking) except for the month of March when duty is to be paid by the 31st day of March.

- Electronic payment (e-payment) of excise duty using the internet banking facility has been made mandatory for assesses w.e.f. 1.10.2014.

- The buyers, on the basis of tax invoice issued by the manufacturers, would be allowed to avail CENVAT credit in respect of the duty paid/payable on such goods immediately on receipt of the goods by them.

Advance ruling

- Advance rulings enable a non-resident investor to know in advance the central excise duty liability on the proposed imports into India and proposed exports from India.

- Advance ruling means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay central excise duty in relation to the proposed imports into or exports from India, by the applicant.

- Authority for Advance Rulings for Excise and Customs (AAR) is meant to provide binding ruling on the important issues so that prospective investors will have a clear indication of their customs duty liability in advance. It assures the applicant of the finality of the customs duty liability.

- The Central Excise (Advance Rulings) Rules, 2002 notified vide Notification No. 28/2002-C.E. (N.T.) dated August 23, 2002 as amended provide for the format to be used for filing an application.

Persons eligible to apply for advance ruling

(i) A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident;

(ii) A resident setting up a joint venture in India in collaboration with a non-resident;

(iii) A [Indian] wholly owned subsidiary Indian company, of a foreign company, which the holding company is a foreign company, who or which proposes to undertake any business activity in India;

(iv) A joint venture in India; and

(v) A resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under s 23C of the Central Excise Act. The notified class of person also includes (i) the limited liability partnership as defined in cl (n) of sub-s (1) of

the s 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or (ii) limited liability partnership which has no company as its partner; or (iii) the sole proprietorship; or (iv) one person company;

Issues on which advance rulings can be sought

The question on which the advance ruling is sought shall be in respect of:

(a) classification of goods under the CETA;

(b) applicability of a notification issued under s 5A(1) of the Central Excise Act having a bearing on the rate of duty;

(c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of the Central Excise Act;

(d) notifications issued in respect of duties of excise under the Central Excise Act, the CETA and any duty chargeable under any other law for the time being in force in the same manner as duty of excise leviable under the Central Excise Act;

(e) admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods; and

(f) determination of the liability to pay duties of excise on any goods under the Central Excise Act.

52. Administration

Central excise law is administered by the Central Excise Commissionerates functioning under the Central Board of Excise & Customs (CBEC), Department of Revenue, Ministry of Finance, Government of India.

Central Sales Tax/Value Added Tax

53. Central Sales Tax

Introduction

The Central Sales Tax Act, 1956 (the CST Act) is an Act of the Parliament to formulate the principles for determining when sale or purchase of goods takes place in the course of inter-state trade or commerce. It provides for levy and collection of tax on such inter-state sale of goods. It also formulates principles for determining when sale or purchase of goods takes place outside a state or in

the course of import into or export from India. It specifies and declares certain goods to be of special importance in inter-state trade and commerce and specifies in relation to them the restrictions and conditions to which the state sales tax laws shall be subject.

Principles for determining inter-State sales

Section 3 of the CST Act enunciates the principles when sale or purchase of goods can be said to have taken place in the course of inter-State trade or commerce. It provides that sale or purchase of goods shall be deemed to be an inter-state sale or purchase if such sale or purchase either:

(a) occasions the movement of goods from one state to another; or

(b) is effected by transfer of documents of title to the goods during the movement from one State to another.

It is provided that if the movement of goods commences and terminates in the same State, it shall not be an inter-state transaction merely because in the course of such movement the goods pass through the territory of another State.

It is also provided that where the goods are delivered to a carrier or other bailee for transmission, the movement of goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Thus, for an inter-state sale or purchase, material fact is the movement of goods from one State to another, as a result of sale. Consequently, the movement of goods should arise from or have a nexus to the sale. Similarly, inter-state sale also materializes when the document of the title to the goods is transferred during the movement of goods from one State to another.

Principles for determining a sale outside the State

Section 4 of the CST Act provides that when a sale or purchase of goods is determined to take place inside a state such sale or purchase shall be deemed to have taken place outside all other states. The said section also provides that sale or purchase shall be deemed to take place inside a state if the goods are within the state:

(a) In the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) In the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer.

Principles for determining sale or purchase in the course of import or export

Section 5 of the CST Act provides that:

(i) Sale or purchase of goods is deemed to take place in the course of export only if the sale or purchase either occasions such export or is effected by transfer of documents of the title to the goods after the goods have crossed the custom frontiers of India.

(ii) Sale or purchase of goods is deemed to take place in the course of import of the goods into the territory of India, if the sale or purchase either occasions such import or is effected by a transfer of documents of the title to the goods before the goods have crossed the customs frontiers of India.

Liability to Central Sales Tax

Central sales tax is levied on inter-state sales. However, second or subsequent sale in a continuous chain is exempted subject to certain condition. No tax is payable on export sales or sales outside the state.

Registration

Compulsory registration

Every dealer effecting an inter-state sale is liable to pay CST. Such a dealer liable to pay CST is required to apply for and obtain registration certificate under s 7(1) of the CST Act.

Voluntary registration

A dealer not liable to pay CST, for the reason that he is not effecting inter-state sales, may need to obtain registration under the CST Act if he is effecting inter-state purchases. For this purpose, s 7(2) provides for 'voluntary registration' to a dealer if he is holding a registration certificate under the local sales tax law.

54. Value Added Tax

Proceedings alongside the path of liberalisation and economic reform, the Government, way back in 2003, has introduced a much simpler and effective tax system in the form of Value Added Tax (VAT) across twenty-nine states and seven union territories in the country. In so far as VAT is concerned, presently, the states are empowered to levy VAT in their respective state jurisdiction. VAT is known across the world for eliminating a cascading effect associated with the chargeability of sales tax on transaction related to intra-state sales. Haryana was

the first state to adopt VAT in the year 2003, Uttar Pradesh being the last to transit to VAT system in 2008.

Introduction of VAT has been stated to be a step towards a single Goods and Sales Tax (GST) regime whereby it is proposed that in the years to come all the central levies and state levies will merge into a single levy in the form of GST.

VAT is charged as a percentage of prices at which goods are sold/ transacted and it is imposed at each stage of transaction in the production and distribution chain. Presently, there are different rates of VAT notified for each commodity by the respective state governments and it may vary from 5% to 14.5%, with exemption provided on necessary items.

It is a general consumption tax that applies, in principle, to all commercial activities involving the production and distribution of goods. VAT is known to be a consumption tax because it is borne ultimately by the final consumer. VAT is, as such, levied at every point in the series of sale by the registered dealer with the provision of credit of input tax paid at the previous point of purchase by the state registered dealer. This mechanism ensures tax neutrality regardless of number of transaction involved in the entire chain. However, no input tax credit is available in case of purchases made on inter-state basis. Nonetheless, for a seller, in case of inter-state sales, he is entitled to claim set off of input tax credit after partially reversing the same in the state from where such goods have moved.

CENVAT Credit Scheme

With effect from September 10, 2004, the Government has notified the CENVAT Credit Rules, 2004 (CCR), which deals with availment and utilisation of credit of duties and taxes, viz, central excise, service tax, education cess, etc.

55. Credit of duty paid on inputs and input services

- The Scheme of granting credit of duty/tax paid on inputs, capital goods and input services is commonly known as the CENVAT Credit Scheme. A manufacturer or service provider has to pay excise duty or service tax as per normal procedure on the basis of an assessable value. However, a manufacturer or service provider gets credit of duty paid on inputs, capital goods or, as the case may be, service tax paid on input services. Thus, the manufacturer or the service provider actually ends paying the incremental excise duty/service tax (ie, the difference between the excise duty/service tax charged on clearance of

final goods or provision of taxable services and the excise duty/service tax paid on inputs/input services).

"Inputs" goods eligible for CENVAT Credit

- **In case of a manufacturer:** The manufacturer is entitled to take credit of excise duty paid on (a) all goods used in the factory by the manufacturer of the final product; (b) any goods including accessories cleared along with final product, the value of which is included in the value of the final products; and (c) all goods used for generation of electricity or steam for captive use,

  Light Diesel Oil (LDO) and motor spirit (petrol) is not available as CENVAT Credit, even if these are used as raw materials or as fuel. Similarly any goods used for construction of a building or civil structure or laying of foundation or making of structures for support of capital goods is outside the purview of CENVAT credit scheme. Motor vehicles and any goods used primarily for personal use or consumption of any employee have been excluded from the definition of inputs [r 2(k)(i) of CCR].

- **In case of a service provider:** The service provider is entitled to take credit of the inputs used directly for providing output services. However, HSD, LDO and motor spirit (petrol) are not eligible as 'inputs'. Similarly any goods used for construction of a building or civil structure or laying of foundation or making of structures for support of capital goods is outside the purview of CENVAT credit scheme. Motor vehicles and any goods used primarily for personal use or consumption of any employee have been excluded from the definition of inputs [r 2(k)(ii) of CCR].

'Input services' eligible for CENVAT Credit

- A manufacturer/service provider will be entitled to credit of service tax paid by him on input services which are used by him directly or indirectly in or in relation to manufacture of final product/provision of output services. This would include even services which are received prior to commencement of manufacture/ provision of output services. In addition to this, services like advertising, accounting, auditing, storage, transport, legal services, etc, which are not directly related to manufacture/provision of output services but are related to the sale of manufactured goods/provision of output services, would also be permitted for credit. However, services used for construction of a building or a civil structure or laying of any foundation for support of capital

goods and services used primarily for personal use or consumption of employer have been excluded from the definition of input services [r 2(l) of CCR].

Capital goods eligible for CENVAT Credit

- Capital goods (machinery, plant, spare pats of machinery, tools, dies, etc) as defined in r 2(a) of the CCR, used for manufacture of final product and/or used for providing output taxable services, will be eligible for CENVAT Credit. Capital goods should be used in the factory. Under the CENVAT Credit scheme, 50% credit is available in the year in which the capital goods received in a factory or in the premises of the provider of output services at any point of time and balance in subsequent financial year or years [r 4(2) of CCR].

- However, the CENVAT Credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output services claims as depreciation under s 32 of the Income-tax Act, 1961 [r 4(4) of CCR].

56. Compliances

- In terms of r 9A(1) of CCR, a manufacturer of final products is required to furnish **annually** by 30th April of each financial year, a declaration in Form ER-5, in respect of each of the excisable goods manufactured or to be manufactured, the Principle inputs, etc.

- In terms of r 9A(3) of CCR, a manufacturer of final products is required to furnish within 10 days from the close of each month, to the Superintendent of Central Excise, a **monthly** return in Form ER-6, in respect of information regarding the receipt and consumption of each Principle input with reference to the quantity of final products manufactured by him.

- In terms of r 9(7) of CCR, a manufacturer of final products is required to file a monthly return, in Form ER-6, within 10 days from the close of each month to the Superintendent of Central Excise. A manufacturer or service provider cannot avail CENVAT credit after period of one year from issuance on invoice or any other documents referred in r 9(1) of CCR.

Goods and Services Tax

57. Introduction

It is speculated that Goods and Services Tax will be introduced in India in April 2016. The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 was introduced in the Lok Sabha on 18.12.2014. The Bill makes enabling provisions for introduction of GST. As per Statement of Objects and Reasons appended to the Bill, the object to have common national market and avoid cascading effect of taxes.

The model of GST proposed to be adopted in India is one of Dual GST, whereby a Central Goods and Services Tax (CGST) and a State Goods and Services Tax (SGST) will be levied on the taxable value of every transaction of supply of goods and services. The taxes which are proposed to be subsumed under GST are as follows:

Subsumed under CGST	Subsumed under SGST
Central Excise Duty	VAT / Sales tax
Additional Excise Duties	Entertainment tax
Excise Duty-Medicinal and Toiletries Preparation Act	Luxury tax
Service Tax	Taxes on lottery, betting and gambling
Additional Countervailing Duty (CVD) Special Additional Duty of Customs - 4% (SAD)	State Cesses and Surcharges
Surcharges and cesses	Entry tax not in lieu of Octroi

Goods and Services Tax means a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption.[1] The word used in the Bill is 'supply' and not 'sale'. Thus, stock transfers, branch transfers will also get covered under GST net. 'Services' has been defined to mean anything other than goods.[2] GST is consumption based tax, ie, tax will be payable in the State in which goods and services are to be consumed.

1 Proposed Article 366(12A) of Constitution of India
2 Proposed Article 366(26A) of Constitution of India

58. Expected rates of GST

The rates of GST are not notified and there are various rates being discussed. Initially, the rate envisaged was 16% [8% SGST, 8% CGST] and 16% IGST. The Committee of State Finance Ministers has proposed CGST of 12.77% and SGST of 13.91%, ie, 26.68%. This may be on the basis that excise duty rate is 12.5% (currently) and general State VAT rate is about 15%, and thus the aggregate rate is expected to be around 24-27%.

59. Integrated GST for interstate transactions

In case of inter-state supply of goods and services, there will be integrated GST (IGST) imposed by Government of India.[1] IGST will also be imposed on imports.[2] The IGST rate, which is expected to be double the CGST rate, is expected to be equal to SGST plus CGST rate. However, IGST rate will be same all over India and will not vary from state to state. Revenue from IGST will be apportioned among Union and States by the Parliament on basis of recommendation of Goods and Service Tax Council (GST Council).[3] The advantage of IGST is that the taxes will move along with goods and services, eliminating need for obtaining refund of taxes in case of inter-state transactions.

60. 1% Additional tax on supply of goods (ATSG) in interstate supply for two years

1% tax will be imposed on inter-state supply of goods for two years or such period as may be recommended by GST Council.[4] This tax is in lieu of present Central Sales Tax and no set off is available to the dealer for the additional tax.

61. Goods and Service Taxes Council

The GST Council is mainly a recommendatory body on various issues relating to GST.[5] Decision in GST Council be taken with at least 75% of weighted

1 Proposed Article 269A(1) of Constitution of India
2 Proposed explanation to Article 269A(1) of Constitution of India
3 Proposed Article 269A(2) and Article 270(1A) of Constitution of India
4 Proposed Section 18(1) of Constitution (Amendment) Bill, 2014
5 Proposed Article 279A(1) of Constitution of India

average voting in favour of the decision. The Union Government will have 33.33% voting power and States will have 66.67% voting power.

62. Registration number of assesse

The registration number of dealer is expected to be passed on income tax PAN number. PAN is a 10-digit number. Further 3 to 5 digits will be added. Thus, each dealer will have 13/15 digit PAN-based registration number and each will have to obtain state wide registration.

63. Value for purpose of GST

Provision for valuation is expected to be on same line as per present Central Sales Tax/State Vat laws. However, it is envisaged that SGST and IGST will be on same 'value' and there will be no 'tax on tax' as at present, ie, SGST will be payable on 'net value' without addition of CGST in the 'value'.

64. Electronic returns

The returns will be filed by dealer (on monthly basis). The return will contain details of invoices made on customers with their Tax Registration Numbers and tax paid. The return has to be filed along with payment of taxes.

65. Administration of taxes

CGST and IGST will be administered by the Central Government while SGST will be administered by respective State Governments. There will be separate returns, separate payment of taxes, separate assessments and may be even separate appeals.

Annexure 1

Rates of Income Tax

I. Individuals (Resident as well as Non-resident)

The rates for income tax for individuals for the assessment year 2016-17 are as follows:

Income Range(INR)	Tax rate (%)
Upto 2,50,000	Nil
2,50,000 - 5,00,000	10%
5,00,000 – 10,00,000	20%
Above 10,00,000	30%

»» Where an individual, being resident in India, whose total income/taxable income does not exceed INR 5,00,000 shall be entitled to deduction from the amount of income tax equal to 100% of his income tax or Rs. 2000 whichever is less[1].

»» Senior citizens (above 65 years but less than 80 years being resident in India) with income up to INR 300,000 are exempted from income tax.

»» Very senior citizens (80 years or above being resident in India) with income upto INR 5,00,000 are exempted from tax.

»» Surcharge of 12% is applicable in cases with where taxable income is more than INR 1 crore (Ten Million) (Marginal relief applicable).

»» Education cess of 2% and Secondary and higher education cess of 1% is leviable on the amount of income tax and surcharge .

II. Companies

Company/Tax	Tax rate (Inclusive of applicable surcharge and cess)
A. Domestic Company	
(i) Regular Tax	
(a) Where total income is equal to or less than INR 10 million	30.90%
(b) Where total income is more than INR 10 million but does not exceed 100 million	33.063%[2]
(c) Where total income is more than INR 100 million	34.608%[3]
(ii) Minimum Alternate Tax	
(a) Where total income is equal to or less than INR 10 million	**19.055%**
(b) Where total income is more than INR 10 million but less than 100 million	20.388%
(b) Where total income is equal to or more than INR 100 million	21.341%
(iii) Dividend Distribution Tax	**20.358%**
B. Foreign Company	
(i) Regular Tax	
(a) Where total income is equal to or less than INR	**41.20%**

1 Section 87A of the ITA
2 inclusive of surcharge @ 7% - marginal relief applicable & cess
3 inclusive of surcharge @ 12% - marginal relief applicable & cess

Company/Tax		Tax rate (Inclusive of applicable surcharge and cess)
	10 million	
	(b) Where total income is more than INR 10 million but less than 100 million	42.024%[1]
	(c) Where total income is equal to or more than INR 100 million	43.26%[2]
	(ii) Minimum Alternate Tax (inclusive of cess)	
	(a) Where total income is equal to or less than INR 10 million	**19.06%**
	(b) Where total income is more than INR 10 million and less than 100 million	19.436%%
	(c) Where total income is equal to or more than INR 100 million	20.007%

1 inclusive of surcharge @ 2% - marginal relief applicable & cess
2 inclusive of surcharge@ 5% - marginal relief applicable & cess

ANNEXURE 2

Name of the Country	Name of the Country	Name of the Country
▪ Aden ▪ Armenia ▪ Australia ▪ Austria ▪ Albania ▪ Afghanistan ▪ Bangladesh ▪ Belarus ▪ Belgium ▪ Brazil ▪ Bulgaria ▪ Bhutan ▪ Bostwana ▪ Colombia ▪ Croatia ▪ Canada ▪ China ▪ Cyprus ▪ Czech Republic ▪ Denmark ▪ Estonia ▪ Ethiopia ▪ Fiji ▪ Finland ▪ France ▪ Georgia ▪ Germany ▪ Greece ▪ Hungary ▪ Iceland ▪ Indonesia ▪ Iran ▪ Israel ▪ Ireland ▪ Italy ▪ Japan ▪ Jordan	▪ Kazakhstan ▪ Kenya ▪ Korea ▪ Kuwait ▪ Kyrgyz Republic ▪ Libya ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta ▪ Mauritius ▪ Mongolia ▪ Montenegro ▪ Morocco ▪ Mozambique ▪ Myanmar ▪ Namibia ▪ Nepal ▪ Netherlands ▪ New Zealand ▪ Norway ▪ Oman ▪ Pakistan ▪ Philippines ▪ Poland ▪ Portuguese Republic ▪ Qatar ▪ Romania ▪ Russia ▪ Saudi Arabia ▪ Singapore	▪ Slovenia ▪ Serbia ▪ South Africa ▪ Sudan ▪ Spain ▪ Sri Lanka ▪ Sweden ▪ Swiss Confederation ▪ Syria ▪ Tanzania ▪ Tajikstan ▪ Thailand ▪ Trinidad and Tobago ▪ Turkey ▪ Turkmenistan ▪ United Arab Emirates ▪ Uganda ▪ United Kingdom ▪ United States of America ▪ Ukraine ▪ Uzbekistan ▪ Vietnam ▪ United Mexican States ▪ Yemen Arab Republic ▪ Zambia

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